आयकर अपीलीय अधिकरण

पटना 'डीबी' पीठ, कोलकाता में

IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA 'DB' BENCH AT KOLKATA

[वर्चुअल कोर्ट**]**

[Virtual Court]

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

डॉ मनीष बोरड, लेखा सदस्य

के समक्ष

Before

SRI RAJPAL YADAV, VICE PRESIDENT
&
DR. MANISH BORAD, ACCOUNTANT MEMBER

I.T.A. Nos.: 29 & 30/Pat/2019
Assessment Years: 2010-11 & 2011-12

The Siwan Central Co-operative Bank Ltd................Appellant
[*PAN: AACAT 0114 B*]

Vs.

DCIT, Circle-2, Muzaffarpur..................................Respondent

Appearances by:

Sh. A.K. Rastogi, Sr. Adv. &
Sh. Rakesh Kumar, Adv., appeared on behalf of the Assessee.

Sh. Saumyajit Das Gupta, CIT D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : August 30th, 2022
Date of pronouncing the order : September 20th, 2022

आदेश

ORDER

Per Manish Borad, Accountant Member:

The captioned appeals filed by the assessee pertaining to the Assessment Years (in short "AY") 2010-11 & 2011-12 are directed against separate orders passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by ld. Commissioner of Income-tax (Appeals), Jamshedpur [in short ld. "CIT(A)"] dated 28.09.2018.

2. The assessee is in appeal before this Tribunal raising the following grounds:

Assessment Year 2010-11:

"1. For that the Ld. CIT(A) has erred in deciding the appeal ex-parte.

2. For that the ld. CIT(A) has failed to bring on record any evidence or material indicating the dates on which the notices dated 11.01.2017, 05.10.2017, 18.12.2017, 20.02.2018, 05.03.2018, 11.06.2018 and 23.08.2018 were served on the appellant.

3. For that the initiating proceedings u/s 147 / 148 without existence of the condition precedent for such invocation.

4. For that the invocation of proceedings u/s 147 / 148 is ab initio void and without jurisdiction.

5. For that the invocation of section 147 in the case of the appellant on mere change of opinion.

6. For that the authorities below have erred in violating the directions issued by Apex Court issued in the case of GNK Driveshaft.

7. For that the Ld. CIT(A) has erred in holding that the appellant has failed to substantiate the disallowance/ additions made by the A.O.

8. For that the Ld. CIT(A) has erred in holding that the grounds on which deletion has been sought for lacks merit.

9. For that the Ld. CIT(A) has erred in holding that the claims of the appellant are not allowable as per law and accordingly the various disallowances / additions of Rs.3,20,487 and Rs.2,95,62,024/- made by the A.O. were sustained.

10. For that the Ld. CIT(A) has erred in deciding the appeal without giving proper and adequate opportunity of being heard to the Appellant.

11. For that the Ld. CIT(A) has erred in disallowing Rs.3,20,487/- u/s 40a(ia) for non deduction of tax on expenses under the head advertisement and publicity.

12. For that the Ld. CIT(A) has erred in sustaining addition of Rs.2,95,62,024/-on account of provisions made for various items listed at 2nd page of the impugned order.

13. For that the Ld. CIT(A) has erred in not computing the income of the appellant with reference to section 43D of the I.T. Act.

14. For that the Ld. CIT(A) has erred in allowing only 7.5% as provisions for bad and doubtful debts in view of section 36(viia) of the I.T. Act whereas the entire bad debt is an allowable deduction.

15. For that the disallowance of Rs.3,20,487/- and additions of Rs.2,95,62,024/-sustained by the Ld. CIT(A) are wrong, illegal and unjustified on the facts and in the circumstances of the appellant's case.

16. For that the order passed is violative of principles of equity, natural justice and fair play.

17. For that the whole order is bad in fact and law of the case and is fit to be modified and/or restore the matter back to the Ld. CIT(A) for deciding the appeal after allowing proper opportunity of being heard and the appellant undertakes to make compliance upon receipt of the notice of hearing.

18. For that the other grounds, if any, shall be urged at the time of hearing of appeal."

<u>Assessment Year 2011-12:</u>

"1. For that the Ld. CIT(A) has erred in deciding the appeal ex-parte.

2. For that the ld. CIT(A) has failed to bring on record any evidence or material indicating the dates on which the notices dated 10.01.2017, *05.10.2017, 18.12.2017, 20.02.2018, 05.03.2018, 11.06.2018 and 23.08.2018 were served on the appellant.*

3. For that the Ld. CIT(A) has erred in holding that the appellant has failed to substantiate the disallowance/ additions made by the A.O.

4. For that the Ld. CIT(A) has erred in holding that the grounds on which deletion has been sought for lacks merit.

5. For that the Ld. CIT(A) has erred in holding that the claims of the appellant are not allowable as per law and accordingly 'the various disallowances / additions of Rs. 1,46,675/-, Rs.3,68,41,943/- and Rs.2,88,460/- made by the A.O. were sustained.

6. For that the Ld. CIT(A) has erred in deciding the appeal without giving proper and adequate opportunity of being heard to the Appellant.

7. For that the Ld. CIT(A) has erred in disallowing Rs. 1,40,675/- u/s 40a(ia) for non deduction of tax on expenses under the head advertisement and publicity.

8. For that the Ld. CIT(A) has erred in sustaining addition of Rs. 3,68,41,943/-on account of provisions made for various items listed at 2nd page of the impugned order.

9. For that the Ld. CIT(A) has erred in not computing the income of the appellant with reference to section 43D of the I.T. Act.

10. For that the Ld. CIT(A) has erred in allowing only 7.5% as provisions for bad and doubtful debts in view of section 36(viia) of the I.T. Act whereas the entire bad debt is an allowable deduction.

11. For that the Ld. CIT(A) has erred in upholding addition of Rs.2,88,460/- on the ground that the same is on account of income tax.

12. For that the disallowance of Rs. 1,40,675/- and additions of Rs.3,68,41,943/- and Rs.2,88,460/- sustained by the Ld. CIT(A) are wrong, illegal and unjustified on the facts and in the circumstances of the appellant's case.

13. For that the order passed is violative of principles of equity, natural justice and fair play.,

14. For that the whole order is bad in fact and law of the case and is fit to be modified/and/or restore the matter back to the Ld. CIT(A) for *deciding the appeal after allowing proper opportunity of being heard and the appellant undertakes to make compliance upon receipt of the notice of hearing.*

15. For that the other grounds, if any, shall be urged at the time of hearing of appeal."

3. At the outset, ld. Counsel for the assessee submitted that the impugned order for both the AYs 2010-11 & 2011-12 are not speaking orders and ld. CIT(A) has not dealt with the issues separately and has summarily dismissed the assessee's appeal. Ld. Counsel for the assessee, further, made the following written submissions:

"The Ld. CIT(A) has passed an ex-parte order for the two years in question and has accordingly dismissed the appeal confirming the various additions / disallowances made by the Assessing Officer. It is a case where the Assessing Officer and the Ld. CIT(A) has completely ignored the special provisions u/s 43D allowing certain concession and start with a non-obstante clause and is applicable to public financial institutions, public companies, Scheduled Bank or a Co-operative Bank with respect to income by way of interest to such category of Bad and Doubtful Debts having regards to the guidelines issued by RBI in relation to such debts. Further, the Assessing Officer has also resorted to disallowances of ascertained liabilities on the ground that the same has not actually been expanded / spent during the year under consideration which inter alia include audit fee, Miscellaneous Embezzlement, Theft, Robbery and defalcated amount without considering the fact that the appellant is maintaining its accounts on mercantile basis. The Ld. CIT(A) without any due application of mind and without considering the statutory provisions u/s 43D and provisions of Section 36(vii) of Income Tax Act as also the guidelines issued by RBI from time to time has dismissed the appeals by resorting to ex-parte order.

It is, therefore, earnestly prayed that the orders of AO and CIT(A) may kindly be set aside with a direction to the Assessing Officer to pass orders afresh after considering the impact of Section 43D & guidelines of RBI."

4. Per contra, ld. D/R was fair enough not to oppose this request of the ld. Counsel for the assessee of restoring the issues to ld. AO for passing order afresh after considering the impact of Section 43D of the Act and the guidelines of Reserve Bank of India.

5. We have heard rival contentions and perused the records placed before us. We observe that that the assessee is a cooperative bank engaged in banking business. Return of income for AY 2010-11 & 2011-12 were filed on 30.10.2010 & 26.03.2013 declaring total income of Rs. 8,23,520/- & 69,60,890/-. For AY 2010-11 re-assessment proceedings were carried out u/s 147 of the Act and vide order dated 10.02.2014 assessment was completed at an income of Rs. 2,84,03,079/- as against the return of income of Rs. 8,23,520/-. For AY 2011-12 the assessment proceedings were carried out u/s 143(3) of the Act and vide order dated 10.02.2014 income assessed at Rs. 3,85,42,952/- as against the return of income of Rs. 94,952/-. The assessee challenged the respective additions made for respective assessment years before the ld. CIT(A).

6. On perusal of the impugned orders, we find that they are almost identical except for change in assessment year and the figures of income and additions. We also find that for AY 2010-11 in para 3 of the impugned order, ld. CIT(A) deals with the reference to various opportunities given to the assessee but no submissions were made. In para 2 ld. CIT(A) reproduced the assessment order, grounds of appeal raised by the assessee and statement of fact enclosed with Form No. 35. The finding is in para 3.1 & 3.2 and

the 7 grounds raised by the assessee have been dismissed by ld. CIT(A) giving the following finding:

> *"3.1. The grounds of appeal are related to various additions made to the income of the appellant. I find that the appellant has failed to substantiate any of the grounds related to various disallowances/ additions to its income. In the absence of any material over and above what has been stated in the grounds of appeal I find that all the grounds lack merit. I find that all the claims made by the appellant for which disallowances have been made in the assessment order are not allowable claims as per law. Therefore, all grounds related to the disallowances made in the assessment order are rejected/ dismissed. In other words, addition of Rs. 2,98,82,511/- are confirmed.*
>
> *3.2. Other grounds of appeal and contentions of the appellant have become infructuous or are only consequential in nature. The same are, therefore, not adjudicated."*

7. From perusal of the above finding of ld. CIT(A) we notice that ld. CIT(A) has not dealt with the issues properly and separately and, therefore, the impugned order is not a speaking order as ld. CIT(A) has summarily dismissed/rejected all the grounds and confirmed the additions. In the similar fashion ld. CIT(A) has dealt with the grounds raised for AY 2011-12 and summarily rejected the same also. Before us, ld. Counsel for the assessee submitted that both the lower authorities have completely ignored the applicability of special provisions of Section 43D of the Act applicable to public financial institutions, public banks, scheduled banks or a cooperative bank. Ld. CIT(A) also has not considered the provisions of Section 43D & 36(viia) of the Act as well as the guidelines issued by the Reserve Bank of India from time to time.

9. On perusal of the impugned order as well as the submissions made by the ld. Counsel for the assessee, we find merit in the

contentions and are of the considered view that since the assessee is a cooperative bank and provisions of Section 43D of the Act as well as the guidelines of the Reserve Bank of India are applicable, the assessment proceedings/re-assessment proceedings should have been carried out in light of the provisions of Section 43D as well as the guidelines of the Reserve Bank of India. It is a fact that ld. CIT(A) has summarily dismissed the assessee's appeal without dealing with the issues in detail and similarly ld. AO has also not adjudicated the issues addressing relevant provisions of the Act.

10. We are, therefore, inclined to restore all the issues in the instant appeal to ld. AO for passing *de-novo* assessment order. Needless to mention that proper opportunity of being heard should be provided to the assessee. The assessee is also directed to remain vigilant and file necessary documents, if considered necessary, in support of its grounds of appeal and should not take adjournment, unless otherwise required for reasonable cause. In case after providing sufficient opportunity to the assessee, there is no compliance by the assessee, then ld. AO can frame the assessments in accordance with law.

10. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Kolkata, the 20th September, 2022.

Sd/-	*Sd/-*
[Rajpal Yadav]	[Manish Borad]
Vice President	Accountant Member

Dated: 20.09.2022

Bidhan (P.S.)

Copy of the order forwarded to:

1. ***The Siwan Central Co-operative Bank Ltd., Siwan, Bihar.***
2. ***DCIT, Circle-2, Muzaffarpur.***
3. CIT(A), Jamshedpur.
4. CIT-
5. CIT(DR), Patna Bench, Patna.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata