

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)**  
**"G" BENCH, MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND**  
**SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO. 6981/MUM/2019 (A.Y: 2013-14)**

|                                                                                                                  |    |                                                                                     |
|------------------------------------------------------------------------------------------------------------------|----|-------------------------------------------------------------------------------------|
| The Greater Bombay Co-OP Bank Ltd.,<br>89, GBCB House, Bhuleshwar<br>Mumbai-400002<br><br><b>PAN: AABAT4479N</b> | v. | DCIT-1(3)(2)<br>5 <sup>th</sup> Floor, Aayakar Bhavan<br>M.K. Road, Mumbai - 400020 |
| <b>(Appellant)</b>                                                                                               |    | <b>(Respondent)</b>                                                                 |

|                              |          |                          |
|------------------------------|----------|--------------------------|
| <b>Assessee by</b>           | <b>:</b> | <b>Shri Ashok Sharma</b> |
| <b>Department by</b>         | <b>:</b> | <b>Shri Ambuselvam</b>   |
|                              |          |                          |
| <b>Date of Hearing</b>       | <b>:</b> | <b>09.09.2021</b>        |
| <b>Date of Pronouncement</b> | <b>:</b> | <b>26.11.2021</b>        |

**ORDER**

**PER S. RIFAUR RAHMAN (AM)**

**1.** This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)–3, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 27.09.2019 for the A.Y. 2013-14.

**2.** Brief facts of the case are that, assessee filed its return of income on 30.09.2013 declaring total income at ₹.Nil. The case was selected for

scrutiny. The original assessment u/s. 143(3) of Income-tax Act, 1961 (in short "Act") was completed on 23.02.2016 assessing total income at ₹.3,69,72,750/- by making addition of ₹.4,95,75,956/- and ₹.1,91,32,172/- after disallowing assessee's claim of deduction u/s.36(1)(vii) and 36(1)(viia) of the Act respectively. Aggrieved with the above order assessee preferred an appeal before the Ld.CIT(A) and Ld.CIT(A) partly allowed the appeal of the assessee and deleted the addition of ₹.4,95,75,956/-. However, the disallowance of ₹.1,91,32,172/- was sustained. Aggrieved assessee preferred an appeal before the ITAT and ITAT vide its order in ITA.No. 5288/Mum/2016 dated 27.06.2018 restored the issue to the file of the Assessing Officer to examine the original as well as the revised returns of income and compute the income in accordance with law. In view of the directions of the ITAT, notices were issued to the assessee and in response to the notice assessee submitted following submissions, for the sake of clarity it is reproduced below: -

*"We are in receipt of your above mentioned notice in connection with restoration of issue of contingent provisions for standard assets by the Hon'ble ITAT. We have claimed contingent provisions for standard assets amounting to Rs. 1,91,32,172/-. The provision is made in respect of standard assets at the rates prescribed by RBI. The amount /s debited to P & L A/c. and correspondingly credited to P & L A/c. under the head Interest Income. During the course of Assessment proceedings we have filed a revised computation of total income by withdrawing/reducing the claim from the income*

*computed. The net business loss after making this adjustment was Rs. 1,18,37,283/-. The AO in his Assessment order, while computing the total income started with the figure of Rs. (1,18,37,283/-) and arrived at total income of Rs. 3,69,72,751/- making certain addition/s disallowances. As such it is submitted that, since AO acted on revised computation of income wherein we have already withdrawn the contingent provisions for standard assets, once again disallowing the said provision of standard assets amounts to double disallowance which is not justifiable. We are submitting herewith copy of original as well as revised computation of total income."*

**3.** Subsequently, assessee vide its letter dated 19.10.2018 also made following submission: -

*"The Hon'ble ITAT has restored the issue of claim of contingent provisions for standard asset to your good self to examine the original as well as the revised returns and compute the income keeping in view the observations of the ITAT. On referring to Page No. 3 of ITAT order it will be seen that the Hon'ble Tribunal has decided that when the AO acted upon the second revised return wherein the assessee had withdrawn its claim once again disallowing the provisions for standard assets while computing the income b the AO amounts to double disallowance. This aspect of the matter has been loss sight by the lower authorities. The Tribunal further held that "we are of the opinion that when the AO started to compute the income by taking the loss as declared by the assessee in the second revised computation, there shall not be any further disallowance of provision for standard assets as the assessee has already withdrawn the claim and computed the loss at Rs. 118,37,283/-. As such while giving effect to ITAT order we submit that the amount of Rs.1,91,32,172/- should reduced. During the course of Proceedings we have submitted copy of P&L a/c., details of contingent Provisions of standard assets and the details of interest income. On going through the computation of total Income your good self had raised a query regarding the reduction of Rs. L,91,32,172/- from the Total Income. At the outset we would like to submit that the Tribunal has no where in its order required your goodself to verify the allowance of the figure of Rs. L91,32,172/-. Without prejudice to our above submissions we submit that the bank has made a provision of Rs.1,91,32,172/- on account of contingent provision for Standard Asset. The same amount has been shown as income in the interest income the details of which have already been filed. As such we submit that this a contra entry. The amount of provision made is recovered from the party and shown in the interest income. This*

*amount recovered from the party is paid back to the party and as such there is no element of income. What can be taxed is the real income and not notional income. We have explained and produced before you the copies of journal entries, in respect of the above transactions, ledger extract and list of parties from whom the interest is recovered and paid back. We are submitting herewith the copies of the same for your record."*

4. After considering the submissions of the assessee, Assessing Officer sustained the addition with the following observations: -

*"7. Now, in its submission, the assessee also submitted that he has made contra entry of Rs. 1,91,32,172/- in its books of accounts and also credited the amount Rs. 1,91,32,172/- in the profit & Loss account of A.Y 2013-14, therefore, vide noting sheet dated 01.10.2018, the assessee was asked to furnish the documentary evidence of the same. In response, vide submission dated 25.10.2018, the assessee furnished the copy of ledger account and profit & loss account, however, on perusal of the same, the amount of Rs. 1,91,32,172/- is not found credited in the profit & loss account of the assessee. In view of above discussion, the contention of the assessee is not found correct, therefore, no relief is allowed to the assessee on this ground. Penalty proceedings u/s. 271(1)(c) of the I.T. Act are separately initiated for furnishing inaccurate particulars of income."*

5. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and Ld.CIT(A) also sustained the addition with the following observations: -

**"5. Decision:**

*I have carefully considered the facts of the case, AO's contentions as well as submissions of the appellant. As per the directions of the TAT, Mumbai, AO issued a notice u/s 142(1) and called for the details in respect to its claim of deduction u/s 36(1)(viii) of Rs.1,91,32,172/-. The AO perused the details furnished by the appellant, however the submission of the appellant was not found acceptable. During course of original assessment proceedings, AO noted that the appellant debited an amount of Rs. 1,91,32,172/- in the Profit and Loss account in AY 2013-14 towards "Contingent Provision for Standard Assets". However, as the appellant had disclosed the loss for AY 2013-14, thus AO held that the deduction u/s 36(1)(viii) of I.T Act,*

*1961 is not allowable to the appellant. The AO noted that the appellant was required to add back the amount of Rs. 1,91,32,172/- debited on account of contingent provision for standard assets in the 'Original computation of Income'. However, in place of adding back of the above amount, it was claimed as claimed as deduction in the "original computation of income". Thereafter, the appellant furnished the 'Revised computation of income' where in such amount was added back and the impact of wrong deduction claimed in the original computation of income was nullified. However, the deduction claimed by the appellant in the P & L A/c of "Contingent Provision for Standard Assets" remained to be disallowed, therefore, in assessment order, AO disallowed the contingent provision for standard assets of Rs. 1,91,32,172/-. The said addition was confirmed in the 1<sup>st</sup> appeal.*

*Thereafter, Hon'ble ITAT vide ITA No.5288/ Mum/ 2016 had restored this issue to the file of the Assessing Officer with a direction to examine the original as well as the revised returns and compute the income of the appellant in accordance with the law. The AO issued the notice u/s 142(1) and asked the appellant to furnish the details in respect of the deduction claimed of Rs.1,91,32,172/-. In response, the appellant had submitted that it has made a contra entry of Rs.1,91,32,172/- in its books of accounts and credited such amount in the profit and loss account. The AO vide order sheet noting dated 01/10/2018 directed the appellant to furnish the documentary evidence of the same. The appellant vide submission dated 25/10/2018 furnished the copies of ledger account and profit & loss account. The AO perused the documents and held that the amount of Rs.1,91,32,172/- is not found credited in the profit and loss account of the appellant and therefore found the contention of the appellant as incorrect and did not allow the relief to the appellant. During course of appellate proceeding, AR made the written submission and reiterated the same facts. It is observed that the appellant had not been able to prove that the amount of Rs.1,91,32,172/- is credited to profit & loss account and had not substantiated that double addition has been made in the set-aside assessment order. It is observed that the appellant had adopted different stands as per its convenience since the appellant, during course of original assessment, had made the submission as under :*

*"With reference to our IT scrutiny assessment, we have to stale that on review of the computation of total income for AY 2013-14 by us it has come to our notice that the deduction on account of contingent provision for standard assets Rs.1,91,32,172/- has been inadvertently claimed as a deduction in the computation of income. This expenditure is debited in P & L A/c and as such the deduction is inadvertently*

*claimed twice. As such we are submitting herewith a revised computation of total income withdrawing the claim of deduction of account of contingent provision for standard assets. We would request you to kindly accept the revised computation of total income and oblige."*

*My predecessor, during 1<sup>st</sup> round of appeal, had confirmed the addition under the reason that the appellant had not furnished any details of provision for standard assets and logical explanation of debiting such provision. Also, before me, the appellant had merely stated that the provision is a mere contra entry debited and credited to profit and loss account, however the appellant had not furnished the documentary evidences and explanation to support its claim. Also, the appellant had not discharged its onus to prove that the addition had resulted into double addition. As regards contention of the AR that AO had not followed the directions of Hon'ble ITAT is misguided since AO had allowed sufficient opportunity to the appellant, however the appellant had not furnished justification along with supporting documents to support its claim. I find that AO had provided adequate opportunity to the appellant, however, the appellant had failed severely to furnish the documents to support the claim made in the revised return. In view of the above discussion, the contention of the appellant is not found correct, therefore no relief is allowed to the appellant on this ground. On going through the findings of the AO, I do not find any reason to interfere with the order of AO, hence Grounds of appeal Nos. 1 to 5 are dismissed."*

**6.** Aggrieved assessee filed an appeal before us raising following grounds in its appeal: -

*"1. The Learned CIT(A) erred in confirming the double addition of Rs. 19132172/in respect of contingent provision for standard assets not appreciating the fact that the claim is contra entry and that the amount of Rs. 19132172/was credited in the interest account.*

*2. The learned AO and CIT(A) erred in violating the principles of judicial discipline in as much as they have acted contrary to the directions of Hon'ble tribunal which is a superior authority.*

*3. The appellant craves leave to add, alter or amend any grounds of appeal at the time of hearing."*

**7.** Assessee made submissions which are similar to the submissions made before the Ld.CIT(A) and prayed that the sustenance of contingent provision amounts to double addition by the Assessing Officer may be deleted. On the other hand, Ld. DR relied on the order passed by lower authorities.

**8.** Considered the rival submissions and material placed on record, after carefully going through the submissions made by the assessee and Profit and Loss Account and computation of return of income filed by the assessee before us, while going through the records we observed that in Profit and Loss Account (Refer Page No. 26 of the Paper Book) assessee declared net profit for the year ₹.88,09,117.66. The above profit declared by the assessee after making contingent provision for standard assets to the extent of ₹.1,91,32,972/-. While calculating computation of total income for the year ended 31.03.2013 assessee declared net profit as per Profit and Loss Account (Refer Page No. 56 and 58 of the Paper Book) and reduced the contingent provision for standard assets of ₹.1,91,32,972/- and while submitting the revised computation of total income assessee nullified the reduction of contingent provision in the earlier computation and adds back the contingent provision for standard

assets. Therefore, in the net result the assessee by adding and subtracting the contingent provision for standard assets reverts back to net profit, as per Profit and Loss Account declared by the assessee. We observed that Assessing Officer disallowed the contingent provision for standard assets in the original assessment by observing that assessee is not eligible to claim the contingent provision. Therefore, assessee claims that by determining contingent provision Assessing Officer makes double disallowance which is not proper. After considering the submissions of the parties we would like to explain the facts by a simple example.

**9.** Let us consider assessee declares actual profit of ₹.300/- and makes a contingent provision for standard assets of ₹.200/- then the net profit of the assessee would be:

|     |                               |   |       |
|-----|-------------------------------|---|-------|
| (A) | Actual profit of the assessee | : | 300/- |
|     | Contingent provision          | : | 200/- |
|     | Net profit after adjustment   | : | 100/- |

Now let us consider, assessee while calculation computation of income reduces contingent provision in original computation: -

|     |                                           |   |           |
|-----|-------------------------------------------|---|-----------|
| (B) | net profit as per Profit and Loss Account | : | 100/-     |
|     | Less contingent provision                 | : | 200/-     |
|     | And assessee declared taxable income      | : | (-) 100/- |

Now let us consider, assessee recomputed the computation of total income by nullifying the adjustment made in computation of income as below:

|     |                                           |   |       |
|-----|-------------------------------------------|---|-------|
| (C) | net profit as per Profit and Loss Account | : | 100/- |
|     | Add contingent provision                  | : | 200/- |
|     | Total                                     | : | 300/- |
|     | Less contingent provision                 | : | 200/- |
|     | Net taxable income                        | : | 100/- |

The net tax income declared by the assessee in revised computation is exactly same as the profit declared by the assessee in the Profit and Loss Account i.e. ₹.100/-.

**10.** We observed from the Assessment Order that assessee is not eligible to claim the contingent provision and Assessing Officer disallows the same and assessee is in agreement with the above disallowance. However, perceives that Assessing Officer made double disallowance with the above example. In our considered view assessee's actual profit declared by the assessee in Profit and Loss Account is ₹.88,09,117.66 and the contingent provision which assessee is not eligible is to be added back. Therefore, the actual profit as per Profit and Loss Account should be ₹.2,79,42,089/- (₹.88,09,117.66 + ₹.1,91,32,972/-) therefore the taxable profit of the assessee should be ₹.2,79,42,089/-. In our considered view

the addition proposed by the Assessing Officer is proper and we do not see any reason to interfere with the findings of the Ld.CIT(A). Accordingly, appeal filed by the assessee is dismissed.

**11.** In the result, appeal of the assessee is dismissed.

Order pronounced on 26.11.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-  
**(MAHAVIR SINGH)**  
**VICE PRESIDENT**

Mumbai / Dated 26.11.2021  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**