

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR  
श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 349/JP/2018  
निर्धारण वर्ष / Assessment Year :2014-15

Jhalawar Kendriya Sahakari Bank Ltd., Opposite Surya Mandir, Main Market, Jhalarapatan, Distt.- Jhalawar-326023.	बनाम Vs.	A.C.I.T., Circle-1, Kota.
स्थायी लेखा सं./जीआईआर सं./ PAN/GIR No.: AAATJ 2424 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 341/JP/2018  
निर्धारण वर्ष / Assessment Year :2014-15

A.C.I.T., Circle-1, Kota.	बनाम Vs.	M/s Jhalawar Kendriya Sahakari Bank Ltd., Sahakar Bhawan, N.H. 12, Jhalawar
स्थायी लेखा सं./जीआईआर सं./ PAN/GIR No.: AAATJ 2424 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Vinod Gupta (CA)  
राजस्व की ओर से / Revenue by : Smt. Neena Jeph (Addl.CIT-DR)

सुनवाई की तारीख / Date of Hearing : 29/08/2018  
उदघोषणा की तारीख / Date of Pronouncement : 07/09/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

These cross appeals are directed against the order dated 13/12/2017 of Id. CIT(A), Kota for the A.Y. 2014-15. The assessee has raised following grounds of appeal:

- “1. *Impugned order passed U/s 250/143(3) is bad in law and on facts being against the principle of natural justice and for many more other reasons.*
2. *Under the facts and circumstances, Ld. A.O. has erred by disallowing provision on the basis of agreement of arrears of Rs. 15,00,000/-, further, CIT(A) erred by sustaining the same. The disallowance sustained is unjustified, illegal or excessive.*
3. *Under the facts and circumstances, Id. A.O. has erred by disallowing provision for bad and doubtful debts of Rs. 95,597/- considered it as excess, further, CIT(A) erred by sustaining the same. The disallowance sustained is unjustified, illegal or excessive.*
4. *Under the facts and circumstances, the Id. A.O. has erred by initiating penalty proceeding under Section 271(1)(c) of the Income Tax Act, 1961.*
5. *That the appellant craves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing.”*

2. At the time of hearing, the Id AR of the assessee has stated at bar that the assessee does not press grounds No. 1 and 3 of the appeal and the same may be dismissed as not pressed. The Id DR has raised no objection if grounds No. 1 and 3 of the appeal are dismissed as not pressed. Accordingly, grounds No. 1 and 3 of the appeal are dismissed being not pressed.

3. Ground No. 2 of the appeal is regarding the disallowance of provision for wages. The assessee is a cooperative bank constituted under Rajasthan Co-operative Society Act, 2001. The assessee filed its return of income on 29/11/2014 declaring total income of Rs. 3,32,25,920/-. During

the scrutiny assessment, the Assessing Officer noted that the assessee has made claim of Rs. 15,00,000/- lacs as provision for agreement in arrears which is an investment and not the actual payment to its employees. The Assessing Officer was of the view that only actual amount paid towards agreement arrear is an allowable deduction and no any provision to meet such future liability, accordingly, the Assessing Officer disallowed the claim of Rs. 15,00,000/- lacs and added to the income of the assessee.

4. The assessee challenged the action of the Assessing Officer before the Id. CIT(A), however, the Id. CIT(A) confirmed the disallowance made by the Assessing Officer on similar grounds.

5. Before us, the Id AR of the assessee has submitted that the assessee is a district level cooperative bank and revised the wages and salary of the staffs in accordance with the Ranawat Award given in 1965 under the provisions of Industrial Disputes Act, effective for five years. Since the revision of wages is approved by the State Government and therefore after the expiry of earlier agreement, the assessee has to make the provision for the revised salary and wages till the final approval from the Finance Department of State Government is granted and then the Registrar of Cooperative Banks to implement the same. The Id AR has

submitted that the approval comes subsequently but with effect from the earlier date and therefore the liability is a certain liability, though, crystallized only on approval granted by the government. He has submitted that the identical issue was considered by this Tribunal in assessee's own for the A.Y. 2008-09 and 2009-10. Hence, the issue is now covered by the decision of this Tribunal as well as the decisions of Hon'ble High Court.

6. On the other hand, the Id DR has relied upon the orders of the authorities below and submitted that since the assessee has made a provision on account of salary and wages and the claim is not based on actual payment.

7. We have considered the rival submissions as well as relevant material on record. The assessee has duly explained that the last wage revision was done for the period 01/01/2009 to 31/12/2013 and thereafter the wages revision was due from 01/01/2014 till 31/3/2015, thus the assessee had made provisions of revised wages for the period from 01/01/2014 to 31/3/2014 i.e. 3 months of the financial year relevant to assessment year under consideration. The provision has been made by the assessee for three months of revised wages which finally to be approved by the government w.e.f. 01/01/2014. Once the revision of

wages has to be w.e.f. 01/01/2014 and there cannot be any gap between expiry of the last revision and the new revised wages then the said liability to pay the revised wages is an actual and ascertain liability for the period 01/01/2014 to 31/3/2014 though, the quantification and crystallization of the amount comes later on when the revision is approved by the State Government. The Tribunal in assessee's own case for the A.Y. 2008-09 in ITA No. 1032/JP/2011 vide order dated 14/08/2014 has considered and held in para 17 as under:

*"17. We have heard the rival contentions of both the parties and perused the material available on the record. We proceed to decide the grounds raised by the assessee as under:-*

*Apropos ground No 2 in respect of group gratuity scheme policy from time to time thereof was paid to LIC. The disallowance has been made by lower authorities holding that the necessary registration of scheme was not obtained by the assessee, in our considered view, the controversy stands squarely covered in favour of the assessee by the Hon'ble Supreme Court judgment in the case of CIT Vs. Textool Co. Ltd. 263 CTR 257 (SC) wherein the similar payment made by the assessee directly to LIC for group gratuity fund was held to be allowable deduction U/s 36(1)(v) of the Act. This decision has been followed by the Delhi Bench of ITAT in the case of Keihin Penalfa Ltd. vs. ACIT vide ITA No. 4309/Del./2011 (supra), to which one of us (learned J.M.) is a party. In view thereof, we are inclined to hold that the assessee is entitled to deduction of payment of gratuity to the LIC. Accordingly, ground No. 2 of the assessee is allowed.*

*Apropos ground No. 3, there is no dispute on the facts that the amount of payment of arrears of salary in question was made consequent to the 13<sup>th</sup> wage settlement with all the stake holders. The genuineness of the payment is not challenged. The assessee is governed by regulatory laws of Rajasthan Cooperative Societies Act. The assessee's liabilities towards wage revision having accrued and crystallised by way of agreed settlement, the same is an allowable business expenditure as per Income Tax Act. The AS-I and II further supports the accounting done by the assessee in this behalf. Our views are fortified by the above referred judicial pronouncements cited by the learned counsel and mentioned at para above. Respectfully following the Hon'ble Supreme Court and various other Hon'ble High Courts judgments, we hold that the assessee is eligible for deduction of provision of wage settlement of Rs. 20.00 lacs. In view of the above, ground No. 3 of the assessee is allowed.*

*Apropos ground No. 4, the reasons for the payment have been narrated above, which have not been controverted by the learned D.R.. This emphasizes the fact that the assessee being a Central Cooperative Bank is bound by rules framed by the Registrar of Cooperative Societies, Rajasthan from time to time in respect of its banking and staff activities. Liability for PACS was fostered by the statutory rules. The Assessing Officer disputed the calculation thereof. The learned CIT(A) considered it to be a bad debt for which no reasons are given. In our considered view the PACS payment cannot be held to be a bad debt, therefore, what is relevant for us is the Assessing Officer's order. The liabilities have been created by statutory rule which assessee is bound to follow. This provision has been created for amicability with the employees and is for the commercial benefit of the assessee bank and is to be held as wholly and exclusively for the purpose of business. In this eventuality, the payment is even otherwise allowable U/s 37 of the Act. Any perceived*

*method of calculation by the Assessing Officer cannot be held as a tool to disallow the assessee's claim. The revenue's interest is safeguarded by a fact that if at all there is any mistake in the calculation, the excess or short calculation will be given suitable treatment in books of account in subsequent years. This being so in our considered view, the assessee is eligible for claim of PACS Manager Fund payment as expenditure. Our views are fortified by the Hon'ble Supreme Court judgment in the case of Shri Venkata Satyanarayana Rice Mill Contractors Co. Vs. CIT (supra). In view thereof, this ground of assessee is also allowed."*

This issue was again considered by the Tribunal for the A.Y. 2009-10 vide order dated 24/05/2016 in ITA No. 515/JP/2013 in para 6.3 as under:

*"6.3 We have heard the rival contentions of both the parties and perused the material available on the record. This issue has been considered by the Coordinate Bench in a assessee's own case for A.Y. 2008-09, which is squarely applicable on the facts and circumstances of the case for the year under consideration. Therefore, by respectfully following the order of the Coordinate Bench, we allow the assessee's appeal on this ground."*

Thus, the Tribunal has consistently decided this issue in favour of the assessee. Accordingly following the decisions of this Tribunal, we allow the claim of the assessee and delete the addition by the Assessing Officer on this account.

8. Now we take revenue's appeal, wherein the revenue has taken following grounds of appeal:

*“On the facts and in the circumstances of the case, the Id CIT(A) has erred in:*

- (i) On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 5,37,000/- made by the A.O. U/s 14A r.w. Rule 8D.*
- (ii) The appellate craves liberty to raise additional ground and to modify/amend the ground of appeal at the time of hearing.*

*The issue falls under exception as mentioned in para 8(b) of Board’s Circular No. 21/2015.”*

9. We have heard the Id DR as well as the Id AR of the assessee and considered relevant material on record. At the outset, we note that the Id. CIT(A) has considered and decided this issue as under:

*“As regards Ground of appeal no 4, I have gone through assessee’s submission and AO’s findings. There is no mention in the assessment order of the assessee having earned any exempted income on his investments, and in fact the Assessee is a cooperative Bank, carrying the financing/banking activities and according the rules and regulations of the Bank business, the Assessee bank has made the investment in shares of the Apex Bank and loan was taken from Apex Bank. Similarly the Assessee bank also issued the share capital of Rs. 17, 74, 60,000/- to Govt. and Societies and loans & advances were given to the societies. As per cooperative provisions, loan is to be given to the person, who is having share holding of the bank.*

*It means bank has not made the investment in shares out of loans and borrowing on which interest have been paid. It was the compulsory investment for taking the loans and borrowings from the Apex body and the said investment was made out of share capital issued to the various societies, not from the loans taken by the Assessee Bank, what the appellant has in exempted investments with its principal*

bank is much lesser than what it has as unsecured loans which are interest free from the co-operatives attached with it.

The reference to the clarificatory circular is made but the A.O has not identified the nexus between interest free funds and interest bearing funds being utilized for the investments made.

The Income Tax Appellate Tribunal , 'B' Bench, Chennai in the case of **Assistant Commissioner of Income Tax, Company Circle-I(2), Chennai Vs Mr. M. Baskaran** I.T.A. No. 1717/Mds/2013 (Assessment Year: 2009-10) held as under-

No doubt in Cheminvest Ltd vs. ITO 121 ITD 318 (SB) the Special Bench of the Tribunal has held that disallowance u/s 14 A can be made even in the year in which no exempt income has been earned or received by the assessee. This decision of Special Bench of the Tribunal has been impliedly overruled by the decisions of High Courts in Shivam Motors P Ltd (All HC), CIT vs. Corrttech Energy Pvt. Ltd. (Guj HC), CIT vs. Delite Enterprises (Bom HC), CIT vs. Lakhani Marketing (P&H HC), **CIT vs. Winsome Textiles Industries Ltd.** 319 ITR 204 (P&H) where it has been held that when there is no exempt income and no claim for exemption, s 14A and Rule 8D have no application and no disallowance can be made.

In the following cases, the latest judicial opinion on this issue is more than amply clarified even after considering the CBDT circular-

**Income Tax Appellate Tribunal - Mumbai** in the case of **Tata Industries Ltd, Mumbai vs The Income Tax Officer, Ward-2 (3) (3)**, In ITA No.4894/Mum/2008 order dated 20 July, 2016 referred to Hon'ble Delhi High Court in the case of "M/s Cheminvest Ltd. vs. CIT" (2015) 61 taxman.com 118, wherein also the assessee had made strategic investments in subsidiaries/Group Companies for retaining control over them but has not received any dividend income from such investments;

held that section 14A will not apply if no exempt income is received or receivable during the relevant previous year and that the expression 'does not form part of

*the total income', in section 14A of the Act envisages that there should be an actual receipt of income which is not included in the total income during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income.*

*Almost identical issue has been taken by the **Hon'ble Allahabad High Court in the case of "CIT Kanyur vs. M/s. Shivam Motors Pvt. Ltd. "** in ITA No. 88 of 2014 vide order dated 05.05.2014; by the **Hon'ble Gujarat High Court in the case of "CIT vs. Corrtecth Energy Pvt. Ltd."** in ITA No.239 of 2014 vide order dated 24.03.2014 and by the **Hon'ble Bombay High Court in the case of "CIT v . M/s Delite Enterprises"** in ITA No. 110 of 2009 vide order dated 26.02.09.*

*In the light of the facts available and the legal position in the matter, I am not inclined to uphold the disallowance of Rs. 5, 37,000/- made in this regard. The disallowance made u/s 14A by the A O is directed to be deleted.*

*This ground of appeal is treated as allowed."*

The Id. CIT(A) has noted the fact that the assessee has not received any exempt income during the year under consideration. Further, the assessee has made investments in the shares of Apex bank and has not used any borrowed fund for the purpose of investment. This fact has not been disputed by the revenue before us that the investment was made from the assessee's own interest free funds and further when no exempt income was earned or received by the assessee during the year under consideration then in view of the various decisions as referred and relied upon by the Id. CIT(A) including the decision of Hon'ble Delhi High Court in the case of Chemninvest Ltd. Vs. CIT-IV 378 ITR 33, no disallowance is

called for U/s 14A of the Act. Accordingly, we do not find any error or illegality in the order of the Id. CIT(A) qua this issue. Hence, this ground of revenue's appeal is dismissed.

10. In the result, appeal of the assessee is partly allowed and the appeal of the revenue is dismissed.

Order pronounced in the open court on 07/09/2018.

Sd/-  
(विक्रम सिंह यादव)  
(VIKRAM SINGH YADAV)  
लेखा सदस्य / Accountant Member

Sd/-  
(विजय पाल राव)  
(VIJAY PAL RAO)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:- 07<sup>th</sup> September 2018

\*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Jhalawar Kendriya Sahakari Bank Ltd., Jhalawar.
2. प्रत्यर्थी / The Respondent- The A.C.I.T., Circle-1, Kota.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 349 & 341/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar