

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.384/Viz/2018 (निर्धारण वर्ष / AY:2010-11)

Asst. Commissioner of Income Tax, Circle-1, Eluru.	Vs.	The Eluru Cooperative Urban Bank Limited, Eluru. PAN: AAABT 0168 L
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

C.O. No.108/Viz/2019

(In आयकर अपील सं./ I.T.A. No.384/Viz/2018) (निर्धारण वर्ष / AY :2010-11)

The Eluru Cooperative Urban Bank Limited, Eluru. PAN: AAABT 0168 L	Vs.	Asst. Commissioner of Income Tax, Circle-1, Eluru.
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Sri C. Subrahmanyam
प्रत्यर्थी की ओर से / Respondent by	:	Sri SPG Mudaliar, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	28/04/2022
घोषणा की तारीख/Date of Pronouncement	:	11/05/2022

ORDER

PER S. BALAKRISHNAN, Accountant Member :

The captioned appeal filed by the Revenue against the order of the Ld. CIT(A)-11, Hyderabad in appeal No. 241/2017-18, ACIT, C-1,

Eluru/CIT(A)-11/Hyd, dated 2/2/2018 passed U/s. 143(3) r.w.s 147 and U/s. 250(6) of the Act for the AY 2010-11. The Cross Objection No.108/Viz/2019 is filed by the assessee in support of the decision of the Ld. CIT(A).

2. There is a delay of 27 days in filing the Revenue's appeal before the Tribunal. In this regard, the Revenue has filed an affidavit of ACIT, Circle-1, Eluru wherein it was stated as under:

“.....

It is humbly submitted that this delay has occurred inadvertently, as the grounds of appeal filed by the assessee before the CIT(A) are not readily available in this office and the same were obtained from CIT(A)-11, Hyderabad. Thus, the delay of 27 days in filing the appeal has occurred which is neither deliberate nor intentional and it was due to the circumstances beyond the control of the appellant.....

.....”

3. On perusal of the contents of the affidavit (supra), we are of the considered opinion that the delay of 27 days in filing appeal before the Tribunal is neither deliberate nor intentional and therefore we hereby condone the delay and proceed to adjudicate the appeal on merits.

4. The Revenue has raised the following grounds of appeal before the Tribunal.

“1. The order of the Ld. CIT(A) is erroneous on facts and in law.

2. *The Ld. CIT(A) erred in deleting the addition of Rs. 2,93,452/- made by the AO on account of disallowance of provision in excess of seven and one half percent of the income as provided in section 36(1)(viii).*
3. *The Ld. CIT(A) erred in not appreciating the fact that the assessee has not submitted any evidence whatsoever to show that the claim of the assessee is as per the RBI guidelines either during the re-assessment or before the CIT(A) during the appellate proceedings.*
4. *The Ld. CIT(A) ought to have further appreciated that the provisions was made against standard asset and not for bad and doubtful debts and therefore the same is not an admissible deduction as held by Hon'ble ITAT, Visakhapatnam in ITA No.449/Viz/2012 dated 30/09/2016 in the case of Visakhapatnam Coop Bank Ltd for AY 2008-09.*
5. *The CIT(A) erred in deleting the addition of Rs. 5,66,869/- made by the AO on account of loss on sale of Govt. Securities.*
6. *The CIT(A) ought to have appreciated the fact that the transactions pertaining to purchase and sale of government securities were not passed through the profit and loss account and as such, the said loss is not an allowable deduction.*
7. *The CIT(A) ought to have considered that, the motive of the assessee in purchase and sale of government securities was not to earn profit, but to derive income by way of dividends/capital gains and as such, the loss on sale of Government securities is not business loss, but capital loss.*
8. *Though the tax effect is below monetary limit prescribed by CBDT for filing Revenue Appeal, the case is covered by exception 8(c) of CBDT Circular No.21/2015, dated 10/12/2015.*
9. *The appellant craves leave to add or amend or alter or delete any ground at the time of hearing of the appeal.*
10. *For these grounds an any other ground that may be urged at the time of appeal hearing before the ITAT, it is prayed that the additions made by the AO on the aforesaid issues be restored."*

5. The brief facts of the case are that the assessee is a Co-operative Urban Bank Limited filed its return of income for the AY 2010-11 on

30/09/2010 declaring total income of Rs. 8,72,100/-. Subsequently, the case was selected for scrutiny. In response to the statutory notices u/s. 143(2) and 142(1) of the Act, the assessee's Representative furnished various details called for by the Ld. AO. After examining the books and the information furnished by the Assessee's Representative, the Ld. AO completed the assessment as follows:

- (i) Disallowance towards provisions for standard asset/NPA Reserve as per section 36(1)(viia) of the Act Rs. 2,93,452/-.
- (ii) Loss on sale of Government Securities Rs. 5,66,869/-.

6. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the CIT(A)-11, Hyderabad. The Ld. CIT(A) considering the submissions made by the assessee's Representative allowed the claim for provisions of bad and doubtful debts as per First proviso to sub-clause (a) of section 36(1)(viia) of the Act. The Ld. CIT(A) also allowed the loss on sale of Government securities in accordance with the guidelines issued by the RBI. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

7. The Ld. DR supporting the order of the Ld. AO argued that as per the provisions of section 36(1)(viia)(a) of the Act as claimed by the assessee is in excess of 7½ % of the income claimed and reported, and

hence the excess deduction claimed should be disallowed. The Ld. DR also argued that the applicability of first proviso to sub-clause (a) of section 36(1)(viia) was not raised before the Assessing Officer. The Ld. DR also submitted that the assessee has not disclosed the sale and purchase of government securities in the P & L Account and hence the loss incurred under the sale of Government securities held as investments should be considered as a capital loss only and not as business loss. The Ld. DR also referred to para 4.2 of the order of the Ld. CIT(A) stating that the trading in securities is not reflected in the P & L Account.

8. Per contra, the Ld. AR argued that the provision for bad and doubtful debts is in accordance with RBI guidelines. The Ld. AR referred to section 36(1)(viia) of the Act which is reproduced below for convenience:

36(1)(viia) in respect of any provision for bad and doubtful debts made by—

(a) a scheduled bank [not being a bank incorporated by or under the laws of a country outside India or a non-scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank], an amount not exceeding ⁴²[eight and one-half per cent] of the total income (computed before making any deduction under this clause and Chapter VIA) and an amount not exceeding ten per cent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner :

Provided that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed in any of the relevant assessment years, deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance

with the guidelines issued by it in this behalf, for an amount not exceeding five per cent of the amount of such assets shown in the books of account of the bank on the last day of the previous year:

Provided further that for the relevant assessment years commencing on or after the 1st day of April, 2003 and ending before the 1st day of April, 2005, the provisions of the first proviso shall have effect as if for the words "five per cent", the words "ten per cent" had been substituted :

Provided also that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed a further deduction in excess of the limits specified in the foregoing provisions, for an amount not exceeding the income derived from redemption of securities in accordance with a scheme framed by the Central Government:

Provided also that no deduction shall be allowed under the third proviso unless such income has been disclosed in the return of income under the head "Profits and gains of business or profession."

Explanation.—For the purposes of this sub-clause, "relevant assessment years" means the five consecutive assessment years commencing on or after the 1st day of April, 2000 and ending before the 1st day of April, 2005;

8.1. The Ld. AR argued that as per section 5 of the Banking Regulations Act, an Urban Cooperative Bank is also a non-Scheduled Bank and hence the First proviso is applicable for the assessee. The Ld. AR relied on the judgment in the case of ACIT vs. Chanasma Nagrik Sahakari Bank Ltd reported in (2018) 167 ITD 0151 (Ahmedabad) as well as the following the decisions:

- (i) The Kannur Dist. Coop. Bank Ltd vs. ACIT (ITA Nos.323 & 423/Coch/2010).
- (ii) ACIT vs. Jaipur Central Cooperative Bank Ltd (ITA No. 817/JP/2011).
- (iii) CIT vs. The Lord Krishna Bank Ltd reported in (2011) 339 ITR 0606 (Kerala High Court).
- (iv) M/s. Nagaur Urban Coop. Bank Limited vs. ACIT (240/Jodh/2013)

(v) Karnataka Bank Ltd vs. ACIT reported in (2013) 356 ITR 0549) Karn.)

9. The Ld. AR also submitted a statement as below:

Assessee claimed NPA at	Rs.3,58,600
Towards Standard Assets	- Rs.1,99,041
Balance Figure NPA	- Rs.1,59,559
Total provision in P & L	- Rs.3,58,600
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5% of 56,42,827	= Rs.2,82,141
Claim to be restricted	= Rs.1,59,559
AO Allowed	= Rs. 65,138
Net Amount in dispute now	= Rs. 94,421

10. The Ld. AR conceded that the provision towards standard assets is not liable for deduction under the Income Tax Act, 1961. The Ld. AR also submitted that the Government Securities were held under the category of "Available For Sale" and hence the loss after adjustment of the reserves already created in the earlier years is being debited to the P & L Account of the current year.

11. We have heard both the sides and perused the materials available on record and the orders of the authorities below. We find that the issue of eligible deduction under the First proviso was not raised before the Ld. AO. We have also noted that this option of claiming deduction under the first proviso was exercised by the assessee only before the Ld. CIT(A). The

relevant sub-clause (a) to section 36(1)(viia) is extracted herein below for reference:

36(1)(viia) in respect of any provision for bad and doubtful debts made by—

(a) a scheduled bank [not being a bank incorporated by or under the laws of a country outside India or a non-scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank], an amount not exceeding ⁴²[eight and one-half per cent] of the total income (computed before making any deduction under this clause and Chapter VIA) and an amount not exceeding ten per cent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner :

Provided that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed in any of the relevant assessment years, deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf, for an amount not exceeding five per cent of the amount of such assets shown in the books of account of the bank on the last day of the previous year:

12. From the above, we note that the Cooperative Bank is basically mentioned in sub clause (a) of section 36(1)(viia) of the Act whereas in the first proviso only a scheduled and non-scheduled bank is being referred in the Act. We therefore note that the term “Cooperative Bank” is specifically excluded in the first proviso to sub clause (a) of section 36(1)(viia) of the Act. Accordingly, the Ld. AO has rightly computed the deduction eligible U/s. 36(1)(viia) of the Act. We therefore uphold the order of the Ld. AO on this ground.

13. With respect to Grounds No. 5 to 7 on the loss incurred by the sale of Government Securities, we find merit in the arguments of the Ld. AR

that such investments were classified as “Available for Sale” category. RBI categorises investments into three categories for both SLR and non-SLR categories as follows:

- (i) Held To Maturity (HTM)
- (ii) Available For Sale (AFS)
- (iii) Held For Trading (HFT)

14. Investments classified under HTM category need not be marked to market and are carried at acquisition cost unless there are more than the face value, in which case the premium should be amortized over the period remaining to maturity. In the case of HFT and AFS securities forcing stock-in-trade of the bank, the depreciation/appreciation is to be aggregated scrip wise and only net depreciation, if any, is required to be provided for in the accounts. The above Instruction was issued by CBDT vide Instruction No.17/2008 dated 26/11/2008. The Hon’ble Mumbai High Court in the case of GIT vs. Bank of Baroda (2003) 262 ITR 334 held that the banks are required as per RBI’s guidelines to show these in the balance sheet as investments would not affect the nature of the asset. The banks by the very nature of the business may have to park surplus trading funds in securities and although intended to be trading assets may have to keep them for longer periods if funds are not required. The treatment of securities of AFS categories has to be seen in

contradiction and contrast with securities of HTM category which are purchased and held for the purpose of investment only. The Circular and Instruction of the CBDT being squarely applicable, leaves no doubt on the allowability of the assessee's claim.

15. In the instant case, the impugned loss arose on sale of Government securities emanated from the investments which were classified under AFS category. In view of that, we find merit in the claim of the assessee that the loss arising out of sale of Government Securities is of trading loss notwithstanding the securities are grouped under the head investment owing to the prescribed format of the RBI. We find that the order of the Ld. CIT(A) is in consonance with the CBDT instructions as well as the facts of the case and does not require any interference. Accordingly, grounds raised by the Revenue on this aspect are dismissed.

16. In the result, appeal of the Revenue is partly allowed.

C.O. No.108/Viz/2019 (By Assessee)

17. The assessee has raised the following grounds in its cross objection:

(1) The Ld. CIT(A) rightly deleted the addition made by the AO with regard to disallowance of provision towards standard assets / NPA reserve of Rs. 2,93,452/- and towards loss on sale of Government securities of Rs. 5,66,869.

(2) *The Ld. CIT(A) is legally and factually correct in giving relief to the appellant with regards to the additions of Rs. 2,93,452/- and Rs. 5,66,869/-.*

18. While dealing with the Revenue's appeal, the grounds related to the addition made by the AO with regard to loss on sale of Government securities, we have upheld the decision of the Ld. CIT(A) and dismissed the Grounds raised by the Revenue. Therefore, to this extent, the cross objection raised by the assessee is treated as allowed.

19. With regard to disallowance of provision towards standard assets / NPA reserve of Rs. 2,93,452/-, we have upheld the decision of the Ld. AO and therefore, to this extent the cross objection raised by the assessee is dismissed.

20. In the result, cross objection filed by the assessee is partly allowed.

21. *Ex-consequenti*, the appeal of the Revenue and the Cross Objection filed by the assessee are partly allowed.

Pronounced in the open Court on the 11th May, 2022.

Sd/-

(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)
(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 11.05.2022

OKK - SPS

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

1. निर्धारिती/ The Assessee – M/s. The Eluru Cooperative Urban Bank Ltd, 4-1-4, Canal Road, Agraharam, Eluru, west Godavari District.
2. राजस्व/The Revenue – Asst. Commissioner of Income Tax, KKS Towers, R.R. Pet, Eluru-534002.
3. The Principal Commissioner of Income Tax, Rajahmundry.
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals)- 11, Hyderabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam