

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.499/PUN/2023
निर्धारण वर्ष / Assessment Year : 2017-18

RBL Bank Limited,
179-E, Shree Shahu Market Yard,
Kolhapur – 416005

PAN : AABCT3335M

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle – 1,
Kolhapur

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.509 & 510/PUN/2023
निर्धारण वर्ष / Assessment Years : 2017-18 & 2018-19

Jt. Commissioner of Income Tax (OSD),
Circle – 1, Kolhapur

.....अपीलार्थी / Appellant

बनाम / V/s.

RBL Bank Limited,
1st Lane, Shahupuri,
Kolhapur – 416001

PAN : AABCT3335M

.....प्रत्यर्थी / Respondent

Assessee by : S/Shri Ravi Sawana & Dinesh Kukreja
Revenue by : Shri Ajay Kumar Kesari

सुनवाई की तारीख / Date of Hearing : 31-07-2023

घोषणा की तारीख / Date of Pronouncement : 03-08-2023

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

These three appeals by the assessee and Revenue against the common order dated 02-03-2023 passed by the National Faceless Appeal Centre ("NFAC"), Delhi for assessment years 2017-18 and 2018-19.

2. Since, the issues raised in these three appeals are similar basing on the same identical facts, we proceed to hear these three appeals together and to pass a consolidated order for the sake of convenience.

3. First, we shall take up appeal of the assessee in ITA No. 499/PUN/2013 for A.Y. 2017-18.

4. Ground No. 1 raised by the assessee challenging the action of CIT(A) in confirming the order of AO in levying interest for delayed payment of TDS to Central Government account in the facts and circumstances of the case.

5. We note that the said issue was discussed by the AO in para No. 11 of the assessment order dated 31-12-2019 passed u/s. 143(3) of the Act. On perusal of the same, it is observed that the assessee treated interest paid for delayed payment of TDS as business expenditure and claimed deduction thereon. According to the AO, the assessee is well aware that the said expenditure is not allowable as deduction and referred to disallowance made by the assessee on its own in the original return of income and claimed the same as business expenditure in the revised return of income. By holding so, the AO disallowed an amount of

Rs.24,18,553/- by denying assessee's claim, added to the total income of the assessee. The CIT(A) confirmed the order of AO in denying the claim of assessee as deduction. We note that the CIT(A) in order to come to such conclusion placed reliance on the decision of Hon'ble High Court of Madras in the case of Chennai Properties & Investment Ltd. reported in (1999) 239 ITR 435 (Mad.) which held the interest paid u/s. 201(1A) of the Act by the assessee does not assume the character of business expenditure and also cannot be regarded as compensatory payment. The Id. AR did not dispute the same. Therefore, we hold the interest paid on delayed payment of TDS to Central Government account is not eligible for allowance as business expenditure, consequently, the deduction claimed by the assessee is liable to be denied. Thus, we find no infirmity in the order of CIT(A) in holding the same. Thus, the order of CIT(A) is justified and ground No. 1 raised by the assessee is dismissed.

6. Ground No. 2 raised by the assessee challenging the action of CIT(A) in confirming the order of AO in making addition of Rs.1,00,00,000/- on account of penalty imposed by the RBI in the facts and circumstances of the case.

7. We note that the assessee claimed Rs.1,00,00,000/- paid on account of penalty levied by the RBI for non adherence to certain directives issued by the RBI. According to the AO, no provision in the statute allows the claim of payment as fine/penalty as business expenditure. The assessee explained the said payment on account of penalty is a nominal payment but does not lead to criminal prosecution as it was imposed on account of non adherence of certain directives in relation to operation of banks. The AO disallowed the above said amount and added to the total income of the

assessee by denying the claim of assessee as business expenditure. The CIT(A) discussed the issue in detail regarding the allowability of penalty paid to RBI, but however, remanded the issue to the file of AO to consider and allow the penal interest if the payment relates to first default, if not but deny the claim vide para 20 of the impugned order. We note that the CIT(A) has no jurisdiction to remand the issue to the file of AO as provided under the provisions of section 251 of the Act. We note that it is settled principle that the CIT(A) has to dispose off an appeal against the order of assessment either he may confirm, reduce, enhance or annul the assessment, but however, no jurisdiction is conferred by the statute in remanding the issue to the file of AO. As there was no finding by the CIT(A), in our opinion, the issue requires adjudication by the CIT(A) and pass an order, in accordance with law. Therefore, we deem it proper to remand the issue to the file of CIT(A) for its fresh adjudication for deciding the issue, in accordance with requirement as provided under the provisions of section 251 of the Act. Thus, ground No. 2 raised by the assessee is allowed for statistical purpose.

8. In the result, the appeal of assessee is partly allowed for statistical purpose.

Now, we shall take the appeal of Revenue in ITA No. 509/PUN/2023 for A.Y. 2017-18.

9. Ground Nos. A and B raised by the Revenue challenging the action of CIT(A) in holding the Employees Stock Expenses (ESOP) is an allowable expense u/s. 37(1) of the Act.

10. We note that the AO discussed the issue in para No. 7 of the assessment order dated 31-12-2019. We note that the assessee bank issued equity shares to its employees under ESOP Scheme at discount amounting to Rs.147,63,91,803/-. The assessee explained the said discount as business expenditure. The assessee claimed the said discount is nothing but employee stock option compensation expenses allowable u/s. 37(1) of the Act. According to the AO, no sufficient documentary evidences furnished by the assessee in support of the claim as business expenditure. Further, he observed the disallowances were made on the same issue in earlier years and attained no finality as were pending before the Hon'ble High Court of Bombay. By following the assessment order of earlier years he denied the deduction in respect of discount on equity shares under ESOP and added the same to the total income of the assessee vide para Nos. 7 to 7.8 of the assessment order. The assessee placed reliance on the order of Special Bench of Bangalore, ITAT in the case of Biocon Ltd. and the decision of Hon'ble High Court of Madras in the case of SSI Capital Ltd. Vs. DCIT reported in 85 TTJ 104 before the CIT(A). The CIT(A) considering the said decisions and also many other decisions which are reproduced in para Nos. 11 and 12 of the impugned order, held the issue of employees stock option is an allowable deduction in computing the income under the head profits and gains of business and profession. The ld. DR did not bring on record any contrary to the finding of the CIT(A) in placing reliance on the order of Special Bench of Bangalore, ITAT in the case of Biocon Ltd. and the decision of Hon'ble High Court of Madras in the case of SSI Capital Ltd. (supra). Therefore, we find no infirmity in the order of CIT(A) and it is justified. Thus, ground Nos. A and B raised by the Revenue are dismissed.

11. Ground Nos. C and D raised by the Revenue challenging the action of CIT(A) in holding the broken period interest paid on Held to Maturity (HTM) as an allowable deduction in the facts and circumstances of the case.

12. We note that the AO discussed the issue in para No. 8 of the assessment order. On perusal of the same, the AO opined that the interest levied between the time gap of actual disbursement of the first installment of the loan and the time of the commencement of EMIs is broken period interest, is not allowable as expenditure. The AO disallowed an amount of Rs.7,54,88,125/- on account of broken period interest levied by the assessee and added the same to the total income of the assessee. The CIT(A) by placing reliance in the case of Prathamik Shikshan Sahara Bank Ltd. in ITA No. 491/PUN/2015 of ITAT Pune Benches held that the assessee is entitled to claim same as business expenditure. We note that on perusal of the impugned order that Pune ITAT Benches in order to come to such conclusion in the case of Prathamik Shikshan Sahara Bank Ltd. (supra) placed reliance in the case of HDFC Bank Ltd. reported in 366 ITR 505 (Bom.) and American Express International Banking Corporation reported in 258 ITR 601 (Bom.). The ld. AR placed the decision of Hon'ble High Court of Bombay in the case of HDFC Bank Ltd. and American Express International Banking Corporation (supra) at pages 52 to 71 of the paper book and careful consideration of the same, we find no infirmity in the order of CIT(A) in following the order of Pune Benches of ITAT in the case of Prathamik Shikshan Sahara Bank Ltd. (supra) in holding the assessee is entitled to claim broken period interest as deduction. Thus, ground Nos. C and D raised by the Revenue are dismissed.

13. In the result, the appeal of Revenue is dismissed.

ITA No. 510/PUN/2023, A.Y. 2018-19

14. We find that the issues raised in the appeal and the facts in ITA No. 510/PUN/2023 are identical to ITA No. 509/PUN/2023 except the variance in amount. Since, the facts in ITA No. 510/PUN/2023 are similar to ITA No. 509/PUN/2023, the findings given by us while deciding the appeal of Revenue in ITA No. 509/PUN/2023 would *mutatis mutandis* apply to ITA No. 510/PUN/2023, as well. Accordingly, the appeal of Revenue is dismissed.

15. To sum up, the appeal of assessee is partly allowed for statistical purpose and both the appeals by the Revenue are dismissed.

Order pronounced in the open court on 03rd August, 2023.

Sd/-
(R.S. Syal)
VICE PRESIDENT

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 03rd August, 2023.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The concerned CIT, Pune.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune