

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD - BENCH 'A'**

**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT  
AND  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**आयकर अपील सं./ ITA No.895/Ahd/2019  
Asstt.Year 2014-15**

ACIT, Sabarkantha Cir. Himatnagar.	Vs.	The Himatnagar Nagrik Sahkari Bank Ltd. Tower Road, Himatnagar Dist: Sabarkantha 383 001. PAN : AAAAH 0519 E
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अपीलार्थी (Appellant)	प्रत्यर्थी (Respondent)
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Revenue by :	Shri S.S. Shukla, Sr.DR
Assessee by :	Shri S.N. Divetia, AR

सुनवाई की तारीख/Date of Hearing : 11/08/2021  
घोषणा की तारीख/Date of Pronouncement: 24/08/2021

**आदेश O R D E R**

**PER RAJPAL YADAV, VICE-PRESIDENT**

Revenue is in appeal before the Tribunal against order of the Id.CIT(A)-10, Ahmedabad dated 19.3.2019 passed for Asstt.Year 2014-15.

2. In the grounds of appeal of the Revenue, sole issue raised for our adjudication is that the Id.CIT(A) has erred in deleting disallowance of Rs.2,69,68,337/- by ignoring the fact that provisions of section 36(1)(vii) is applicable to the facts of the assessee's case.

3. Brief facts of the case are that the assessee is a cooperative bank and engaged in banking activities. It has e-filed its return of income on 3.7.2014 declaring total loss of Rs.1,06,74,970/-. The case of the assessee was selected for scrutiny assessment by issuance of notice under section 143(2) and 142(1) of the Income Tax Act, 1961. During the assessment proceedings, it was noticed by the AO that in the computation of income for the year under consideration, the assessee-bank has deducted Rs.2,69,68,337/- on account of transfer from MMC Bank Investment Fund. According to the AO, since the deduction is not allowable under section 36(1)(vii) of the Act, the assessee was show-caused as to why this transfer from MMC Bank Investment Fund should not be disallowed and added to the total income of the assessee. It was explained by the assessee that the assessee-bank had parked surplus money with Madhupura Merc.Co-op. Bank, which was gone into liquidation, the amount of Rs.2,69,68,337/- deposited with that bank could not be recovered by the assessee-bank. The assessee has written off Rs.2,69,68,337/- as irrecoverable in the accounts by debiting P&L account as the same represented the amount lent in the ordinary course of business. Both the conditions of section 36(1)(vii) of the Act are satisfied, viz. the amount requires to be written off as irrecoverable in the accounts of the assessee, and the outstanding amount represented money lent in the ordinary course of business. The assessee has also submitted that in Investment Depreciation Fund and MMC Bank FD depreciation fund, requisite entries were made for writing of the same from the FD account. However, the Id.AO did not accept the claim of the assessee. He observed that the amount advanced could not be claimed as bad debts, because the assessee's parking of the money with the MMC Bank was in the nature investment, and the interest earned therefrom was being offered as income. The Id.AO accordingly made addition of Rs.2,69,68,337/- representing the amount of bad debts. Matter went before the Id.first appellate authority. The Id.CIT(A) after considering submissions of the assessee and the circular

of the RBI issued in this behalf allowed the claim of the assessee and deleted the impugned addition. Aggrieved by order of the Id.CIT(A), the Revenue is now before the Tribunal.

4. Before us, the Id.DR supported the assessment order and submitted the deposits written off could not be allowed as bad debts under section 36(1)(vii) of the Act, because the transaction carried out by the assessee was an isolated, and in the nature of investment, and the same did not form part of regular course of business.

5. On the other hand, the Id.counsel for the assessee submitted that the transaction carried out by the assessee was in the ordinary course of business, and as per guidelines of Reserve Bank of India, which stated that non-scheduled UCB has to place deposits with scheduled UCB subject to some conditions. As per the bye-laws of the assessee-bank, depreciation fund has been created out of profit & loss account from 2001-02, and as per RBI circular the provision has been made for the MMC Bank FD Depreciation fund, and it has been written off as irrecoverable. Therefore, the claim of the assessee is within scope of section 36(1)(vii) and therefore is an allowable expenditure. The Id.counsel for the assessee has also filed a chart showing "Investment Depreciation" fund and "MMC Bank FD Depreciation Fund", in order to demonstrate how the profit & loss appropriate account has been debited and credited "MMC Bank FD Depreciation Fund". He further submitted that as per the bye-laws of the assessee-bank, the Investment Depreciation Fund was created since year 2002 debiting P&L appropriate Account, and the same was added back in the statement of income for the preparation of statement of income-tax purpose. Thereafter, "MMC Bank FD Deprecation Fund" has been created from the "Investment Depreciation Fund". This was only adjustment and did not affect profit of the assessee-bank in a particular year. To further support his case, the Id.counsel for the assessee also relied upon two

decisions of Tribunal in the cases of The Kalupur Commercial Co-op. Bank Ltd. Vs. DCIT in ITA No.770/Ahd/2017 and others order dated 14.10.2019 of ITAT, Ahmedabad Benches and the decision of Mumbai Benches in the case of DCIT Vs. The Kapol Co-op. Bank Ltd., in ITA No.487/Mum/2015 order dated 10.7.2019. He placed on record copies both the decisions on record. He accordingly prayed for upholding of order of the Id.CIT(A) and dismissal of appeal of the Revenue.

6. We have considered rival submissions and gone through the orders of the Revenue authorities. We have also perused the orders of the ITAT, Ahmedabad Benches and Mumbai Benches passed on similar issue. The issue before us is that whether the loss on account of FDR's maintained with MMCBL, which was under liquidation, and written off of the same is eligible for deduction under the head business and profession. It is pertinent to observe that the MMC Bank was sick bank and the amount of FDs deposited by the assessee-bank with MMC Bank has not received by the assessee-bank. We also note that activities of the assessee-bank in parking surplus fund in the scheduled banks were in accordance with the guidelines of the RBI in this behalf. It was also not in dispute that Reserve Bank of India vide letter dated 12.2.2010 has advised all UCBS having exposure to MMC Bank to have full provisions against their exposure to the said bank as on 31.3.2011. In the instant case, the entries made in the assessee's books of account in that behalf were strictly in accordance with the guidelines issued by the RBI. Consequently, the assessee bank has written off the loss on account of FDR deposited with the MMC Bank. It is demonstrated by the assessee that as per the bye-laws of the assessee-bank from the Profit & loss Appropriation account, Depreciation Investment fund has been created. The Investment Depreciation has been debited by Rs.2,69,68,337/- in P&L account, which has been claimed as bad

debt. The decisions relied upon by the Id.counsel for the assessee that similar issue has been considered by the Tribunal in favour of the assessee, which are cited (supra). We therefore pertinent to take relevant part of the cited decision in the cases of other assessee viz. in the case of Kalupur Commercial Co-op. Bank Ltd. Vs. DCIT in ITA No.770/Ahd/2017 order dated 14.10.2019, which reads as under:

*"5. Ground No.1: The deletion of disallowance of deposits with the Madhavpura Mercantile Co. Op, Bank Ltd. of Rs.23,88,83,704/- has been challenged before us.*

*6. The assessee has debited on account of Madhavpura Mercantile Co. Op. Bank Ltd. deposit written off amounting to Rs.23,88,83,704/-. The assessee filed the copy of the letter dated 02.12.2010 issued by the Reserve Bank of India whereby and whereunder the bank has directed the assessee to make full provision against exposure to Madhavpura Mercantile Co. Op. Bank Ltd. as on 31.03.2011. Another letter issued by the Ministry of the Agriculture Department of Agriculture Land Corporation, Krishi Bhawan New Delhi dated 05.08.2010 submitted by the assessee indicates that the RBI is in favour of revival of MMC Bank. It is the case of the Revenue that since this letter does not speaks of written off its fixed deposit made with MMC Bank, the assessee's claim cannot be exceeded too. Since, the assessee has not filed any corroborative evidence or justification regarding such write off amounting to Rs.23,88,83,704/-, the same has been added on account of fixed deposit write off debited in the Profit and Loss account and added to the total income of the assessee, which was, in turn, confirmed by the Learned CIT(A). Hence, the instant appeal before us.*

*7. Heard the respective parties, perused the relevant materials available on record. It appears that on 13.01.2016 the assessee submitted as follows:*

*With reference to assessment proceeding for A.Y.20J3-14, and in compliance to your above referred notices we are submitting the details as under*

*(I) Kindly refer to Para two of your show cause notice wherein your good self have conveyed that*

*^ Assessee has not filed any corroboratory evidence regarding the claim.*

*^ RBI is in favor of revival of said bank.*

*^ RBI has not stated for writing off.*

*It is respectfully clarified that content are not correct and out of context.*

*Towards the corroboratory evidence regarding the claim of write off, in addition to earlier submission enclose please find following. - Annexure I (Page 01 to 06)*

*(a) A copy of Press Release: 2011-121 1949 dated June 7, 2012 made by Reserve Bank of India.*

*(b) Documents relating to revival are appended.*

*As regard to revival scheme, certainly scheme of reconstruction was made applicable from the close of business of August 23, 2001 for a period often*

years. But no progress is made in ten years due to non fulfillment of commitments for contribution by UCB and poor track record of recovery lead to expiry of scheme on August 23, 2011.

Thus your goodself has refer to revival scheme which was recommended long back and upon its failure it closed down also.

Finally for writing of debts /deposits the Reserve Bank of India will prepare the rules the norms a prior permission is not necessary for write off.

It is well settled proposition that, to be a permissible deduction there must be direct & intimate Connection between the payment and the business of the assessee. Payment should have been for the purpose of carrying on the business. On the facts of the assessee's case assessee has placed deposits with the Madhavpura Mercantile Co-Op bank Ltd In its ordinary course of business. The details of such deposits placed with other bank since last 5 years are annexed herewith. The details of outstanding balance of deposits placed by bank (along with those banks who gets amalgamated with the assessee bank)with MNCB and amount still due and payable to Your assessee is as under.

Rs. 22,98,61,862 : The Kalupur Comm. Co-op Bank Ltd.  
 Rs. 79,42,847 : The Standard Co-op Bank Ltd. Merged With  
 Kalupur  
 Rs. 10,78,995 : The Tapi Co-op Bank Ltd. J Bank Your  
 Assessee

Accepting of Deposits and giving of loans and advances, making investments, deposits etc. form part of core activity of banking business. Thus the deposits placed with MNCB were certainly, exclusively & wholly in the course of and for the purpose of business. This is also evident form - Annexure II (Page No. 7 to 12}

As per the corrigendum of the meeting held on 26.5.20 JO and notice of the department of Agriculture & Co-operation, Krishi bhavan, New Delhi the prospects of the revival of the MNCB were remote moreover the bank has make the provision for doubtful debt as per the letter of RBI,UBD(AH)TAFUCB.NO. 3367/12.33.01/2010-11. Thus as per the resolution of Board of Directors passed in the meeting dated 29!/' march.2013 same has been written off. Copy of RBI letter, circular of the Department and copy of resolution was appended in our previous submission therefore the same has not been repeated.

Moreover Reserve Bank of India has cancelled the license of The Madhavpura Mercantile Cooperative bank Ltd. by giving a press release on 07TH June,2012.

In its press release it observed that:

- The MNCB itself has admitted about its precocious financial position
- The MNCB accepted that the Reconstruction scheme failed due to nonfulfillment of commitment ofUCB
- The MNCB accepted all its irregularities/ deficiency observed in the SCN issued for cancellation of licence
- The deposits of bank has been eroded fully.

The RBI then concluded that,

From the facts and circumstances mentioned above it is observed that:

- i) The co-operative bank is not complying with the provision of Sections 11(1) and

22(3) (a) & (b) of the Act. There is no revival plan or merger proposal pending with RBI.

ii) There is no likelihood of the co-operative bank being able to resume normal functioning in the foreseeable future.

iii) The co-operative bank is not in a position to pay its present and future depositors in full as and when their claims accrue.

iv) The affairs of the co-operative bank are being conducted in a manner detrimental to the Interests of its depositors.

v) The financial position of the co-operative bank is so precarious that there is no scope for its revival.

vi) The public interest would be adversely affected if the co-operative bank is allowed to carry on its business any further.

Therefore, Reserve Bank of India took the extreme measure of cancelling the licence of the cooperative bank in the interest of co-operative bank's depositors. Consequent to the cancellation of licence, The Madhavpura Mercantile Co-operative Bank Ltd., Ahmedabad (Gujarat) is prohibited from carrying on the business of 'banking' as defined in Section 5(b) of the Banking Regulation Act, 1949 (AA CS). As stated in the same RBI has given that MNCB ceased to be solvent and which indicates that there is no chances of receiving the deposits back from the MNCB your assessee has written off the same from its books of accounts.

As the Claim of deduction is rightly, made under the Provision of the Act. u/s 28 & 37 of the IT Act, it may kindly be allowed and oblige. "

The Learned AO, however, was not convinced with such submissions furnished by the assessee and he, therefore, observed as follows while making addition :

"7. I have carefully perused the submission of the assessee. However the contention of the assessee is not acceptable on the following facts.

i) The assessee has not filed any Corroboratory evidence or justification regarding the write off amounting to Rs.23,88,83,704/-. The assessee has furnished a letter dated 05/08/2010 issued by the, Director, Ministry of agriculture. Department of Agriculture & Co-operation, Krishi Bhavan, New Delhi regarding the Gist of discussions taken in the meeting held on 26/05/2010 to discuss the possibilities of the revival of The Madhupura Mercantile Co-operative Bank Ltd. Ahmedabad. The letter clearly indicates that the Reserve Bank of India is in favour of Revival of Madhupura Mercantile Co-operative Bank. Further letter of Reserve Bank of India dated 02/12/2010 produced by the assessee is a letter to all Urban Cooperative banks to make full provision against their exposure to Madhupura Mercantile Bank as on 31/03/2010. However the assessee has not produced any other evidence or justification regarding write off or any other directions issued by the Reserve Bank of India.

ii) It is also noticed on verification of the Return of income filed by the Madhupura Mercantile Co-operative Bank for the Assessment Year 2013-14 that the bank is having Cash and Bank Balances amounting to Rs.654.89Cr. The assessee has not produced any evidence regarding any correspondence made with the Madhupura Mercantile Co-operative Bank or any legal action taken against the bank before the write off.

8. In view of the above discussion the reply given by the assessee is not acceptable and additions on account of fixed deposit write off amounting to Rs.238883704/- debited in the profit and loss account is disallowed and

*added back to the total income of the assessee. The penalty proceedings under section 271 (l)(c) of the I. T. Act are being initiated for furnishing inaccurate particulars of income and concealment of particulars of income."*

8. *The Learned CIT(A) in appeal, took into consideration this particular aspect of the matter that the RBI has conducted statutory inspection of the Co-operative Bank u/s 35 of the Act in regard to the financial position as on 31.03.2011. It is further mentioned that the net worth of the said bank was assessed at Rs.(-) J 316,50 crores and the Bank was not having adequate assets to meet its liabilities. The entire capital and reserves of the cooperative bank has eroded as also observed by the RBI and NPA where Rs. 1126.55 crores i.e. almost 99.99% to its gross advances and the bank has accumulated loss of Rs. 1357.41 Crores and deposit erosion was 100%. In that view of the matter, the Learned CIT(A) was of the opinion that the justification made by the Learned AO upon verification of the written off income filed by the MMC Bank for A.Y. 2013-14 that the said bank is having cash and the Bank balance amounting to Rs.654.89 crores, cannot be the basis of disallowance of claim of the assessee, particularly, when the RBI has issued order cancelling the license of MMC Bank; such finding was given by the RBI after statutory instruction of the co-operative bank u/s 35 of the Act with reference to the financial position as on 31.03.2011. The appellant has further been able to prove that nothing has been recovered till date since 2001. Neither anything is likely to recover in near future also. In our considered opinion, such clarification given by the Learned CIT(A) while deleting the addition is without any ambiguity so as to warrant interference. Hence, we confirm the same. In the result, department's appeal fails."*

7. On consideration of above decision of the Tribunal, we find that the issue raised in the instant case is also similar. The Id.DR has not pointed out any disparity of facts so as to take a different view in the present case. Therefore, following the decision of Co-ordinate Bench of ITAT, Ahmedabad Benches, we reject the ground of appeal of the Revenue and confirm the order of Id.CIT(A) on this issue.

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

Pronounced in the Court on 24<sup>th</sup> August, 2021 at Ahmedabad.

Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER

Sd/-  
(RAJPAL YADAV)  
VICE-PRESIDENT

Ahmedabad; Dated 24/08/2021