

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER  
[Through Video Conferencing]**

**ITA No.5017/Del/2018  
Assessment Year: 2014-15**

<b>Mahamedha Urban Co-operative, Bank Ltd. 36, Nai Basti, Ghaziabad PAN No. AAAAM4437E</b>	<b>Vs.</b>	<b>DCIT Circle-1 Ghaziabad</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Ms. Shruti Dang, Advocate
<b>Respondent by</b>	Sh. Gaurav Pundir, Sr DR

Date of hearing	05.10.2021
Date of pronouncement	21.10.2021

**ORDER**

**PER O.P. KANT, AM:**

This appeal by the assessee is directed against order dated 14/12/2017 passed by the Ld. Commissioner of Income-Tax

(Appeals)-Ghaziabad [in short the Ld. CIT(A)] for assessment year 2014-15, raising following grounds:

*“1. That the learned CIT(Appeals), Ghaziabad is in erred in law by confirming the order of Dy. Commissioner of Income Tax, Circle-1, Ghaziabad and on facts in confirming the addition of Rs 3,02,27,000/- u/s 68 of Income Tax Act,1961 for addition in Share Capital only by confirming the reference of RBI Inspection report.*

*2. That the learned CIT(Appeals), Ghaziabad is in erred in law by confirming the order of Dy. Commissioner of Income Tax, Circle-1, Ghaziabad in addition of Rs 44,7,618/- for disallowing the expenditure u/s 37 on proportionate basis on diversion of fund on the basis of RBI inspection report and misunderstanding of concept of NPA.*

*3. That the learned CIT(Appeals), Ghaziabad is in erred in law by confirming the order of Dy. Commissioner of Income Tax, Circle-1, Ghaziabad and on facts in confirming the addition of Rs. 87,74,000/- by disallowing the expenditure without rejecting the accounts, only on the basis of by making the reference of last year's assessment order and RBI Inspection Report, despite and ignoring the facts that the assessee has provided the books of account and complete vouchers with support and bills and explained the genuiness of the related expenditure.*

2. Briefly stated facts of the case are that assessee is a cooperative bank, registered under the Cooperative Society Act, 1965 and possesses a license for functioning as bank from the Reserve Bank of India (RBI). The assessee carried out activity of accepting deposits from the members/public, granting loans and bills/cheque discounting etc. For the year under consideration, the assessee filed return of income on 30/11/2014 declaring loss of Rs.25,75,330/-. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Income-tax Act, 1961 (in short the Act) were issued and complied with. During the course of assessment proceeding, the Assessing Officer noticed that Reserve Bank of India had carried out inspection of the assessee bank for the financial year ending on 31/03/2012, 31/03/2013 and 31/03/2014. Based on the finding of the RBI regarding introduction of the paid-up share capital, regarding diversion of funds through bad loans and non genuiness of expenses, the Assessing Officer issued shows notice to the assessee asking to explain the discrepancies. The assessee in his reply denied of any discrepancies and submitted that the assessee has complied all the provisions of the Income-tax Act as well as RBI. For verification of introduction of the shares capital, the Assessing Officer issued notice under section 133(6) of the Act and thereafter issued summons to four

persons, however summons could not be served on two persons and other two persons denied of investing in share capital of the assessee. Accordingly, the Assessing Officer made addition for the entire share capital of Rs.3,02,27,000/-received during the year under consideration in terms of section 68 of the Act. On the issue of the diversion of the fund towards bad loans, the assessee submitted that these are non-performing assets (NPAs) flagged by the RBI in normal course of the business and therefore there was no illegality in said loans. However the Assessing Officer following the finding of his predecessor rejected the contention of the assessee and disallowed proportionate expenses amounting to Rs.44,71,618/-. The Assessing Officer also disallowed expenses of Rs.58.07 Lakhs, which was noted by the RBI team as over invoiced on repair of office buildings, Rs.27.60 lakhs, which were based on the discrepancy in voucher and cash expenses pointed out by the RBI on Generator, travelling and conveyance and food and beverages; Rs.3.07 lakhs due to discrepancies by the RBI in respect of professional charges. In this manner total income of the assessee was assessed at Rs.4,61,47,948/-in assessment order dated 27/12/2016 passed under section 143(3) of the Act.

3. The assessee preferred appeal against the assessment order before the Ld. CIT(A), who dismissed the ground of the

assessee in relation to share capital and diversion of the funds, but allowed part relief in respect of disallowance of expenses.

4. Aggrieved with the finding of the Ld. CIT(A), the assessee is before the Tribunal raising the grounds as reproduced above.

5. Before us, the parties appeared through videoconferencing facility. The written submission was filed on behalf of the assessee through email. The learned Consul of the assessee submitted that the liquidator has been appointed by the appropriate authority on 31/08/2017 and the assessee society is under liquidation process. The learned Counsel informed that she has been appointed by the liquidator.

6. With reference to ground No.1 of the appeal, the learned Counsel of the assessee submitted that share capital has been obtained by way of proper banking channel and therefore genuineness of the same cannot be doubted. She further submitted that no cross examination has been provided to the assessee and therefore matter maybe restored back to the file of the Assessing Officer for providing opportunity of cross-examination of the persons, those who denied of investing in share capital of the society.

7. On the contrary, the Ld. DR submitted that the onus was on the assessee to produce those alleged shareholders for confirmation of introduction of the share capital during the

year under consideration and the assessee cannot shift this burden of cross-examination on the Department. The Ld. DR submitted that assessee did not seek cross-examination before the AO and seeking now after a time period of passing of five years from passing of the assessment order.

8. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record.

9. Facts in brief qua the issue in dispute are that RBI, in its inspection noted that during the year under consideration, share capital money was received from following four persons:

1	Mr. Kawal Singh Vill. Nalgadha (Naya Dallu Pura Noida)	25,00,000	
2.	Mr. Ashok Kr. Yadav R-11/71, Raj Nagar, Ghaziabad	90,00,000	
3.	Ms. Rakesh Kumar. Home no.40, Village Salarpur Khadar P.S. 39, Noida	25,00,000	CJEPK6727P
4.	Mr. Jagveer H. No.123, Khanpur, Kasana Noida	160,00,000	

10. The assessee submitted that alleged shareholders deposited the fund out of compensation received from Government Authorities for acquisition of the land. The Assessing Officer deputed inspector of his office to serve summons on above four persons, in order to ascertain their identity and creditworthiness. The summons could not be served on Sh. Rakesh Kumar and Sh. Jagveer, however other two persons appeared before the Assessing Officer and stated on the oath that they were not aware of being shareholders of the assessee society and they were just asked to sign the form on the ground that they should get higher interest on the money deposited. The Assessing Officer brought these observations in the knowledge of the assessee by way of order sheet entry dated 22/12/2016. A copy of the said order set has been reproduced by the Assessing Officer in the impugned assessment order. In view of the failure on the part of the assessee to discharge the onus under section 68 of the Act of establishing, identity, creditworthiness and genuineness of the transaction, the Assessing Officer made addition of Rs.3,02, 27,000/-observing as under:

*“Hence, keeping in of the above facts, identity, genuiness of transaction and creditworthiness of individual contributor could not ascertained in respect*

of Mr. Kawal Singh (Rs.25,00,000/-), Mr. Ashok Kumar Yadav (Rs.90,00,000/-) Mr. Rakesh Kumar (Rs. 25,00,000/- and Mr. Jagveer (Rs. 160,00,000). The pleas that the amount was received from land compensation is also not supported as the cheques bear name of Shri Hukum Singh S/o Hayat & Shri Ulki S/o Anuchand, which are not the parties from whom share capital has been claimed have been received. This points to serious fraud committed by bank by not only misguiding the investors but also by misguiding the department as the parties have specifically stated on oath that they have not purchased any shares from the Bank and the Bank has misguided them and allotted shares in their name. Simultaneously it is seen that there other names are also appearing as per RBI's report and the total share capital received from them is Rs.2,27,00,000/- Since, the other amount as per RBI report states that a sum total of Rs.2,27,00,000/- has been received from the relatives of chairman and the source of funds is not ascertainable, this amount is also being added back as per the capital introduced out of books and not shown in the balance sheet. Hence, the alleged share capital received of Rs.300,00,000/- and Rs.2,27,000/- is being added in the income of the assessee U/s 68 of the Income-tax Act, 1961 as the genuineness and creditworthiness is not explained. Initiate penalty preceding separately 271(l)(c) for



*furnishing inaccurate particulars of income and concealment of income.”*

11. On further appeal the Ld. CIT(A), upheld the addition observing as under:

*“5.1.1 Examination of facts reveals that RBI conducted inspection of the bank and noted that share capital money from above four said parties as detailed above has been received by the appellant during the year. During the course of assessment proceedings the AO conducted enquiries in respect of above four persons. During the course of enquiry the addresses given in respect of Shri Rakesh Kumar and Shri Jagvir were found to be incomplete as the summons could not be served upon them at the address given by the appellant. Shri Ashok Kumar Yadav and Shri Kawal Singh appeared before AO in response to summons u/s 131 and stated that they are not the share holders of the bank. However they had given the money for making fixed deposit. The appellant was specifically confronted with the facts that the summons were issued to the four share holders at the address given by the appellant and the fact that the statement was recorded on oath which belied the contention of the appellant regarding share application money. The AO noted that the contention of the appellant that the above*

*said four investor received land compensation, was found to be factually unsupported by the documents such as cheques which were issued in the name of a different person rather than the above said applicants. Considering above facts it is held that the genuineness of transaction of share money by the appellant bank could not be proved by the appellant. The appellant failed to discharge the primary burden of proof and shifted onus, after AO having issued' summons u/s 131 to the alleged applicants, u/s 68. This is clubbed by the fact that RBI has also reported violation of RBI guidelines in this regard. Considering these facts and provisions of section 68 this ground of appeal is not maintainable and accordingly dismissed.”*

12. We noticed that addition has been made by the Assessing Officer not merely on the basis of the statement of the alleged shareholders but in view of failure on the part of the assessee in substantiating the ingredient of section 68 of the Act. The assessee has failed to provide complete address and produce the two alleged shareholders namely Rakesh Kumar and Jagveer. The claim of source of fund in the hands of alleged share holders is also not been found correct as the assessee has not supported any documents in respect of the land compensation received by those alleged shareholders. Further,

the Assessing Officer duly confronted the statement of two alleged shareholders during the course of the assessment proceeding. We noticed that no cross-examination was sought by the assessee during the assessment proceeding and for the first time the assessee asked cross-examination before the Ld. CIT(A). Those persons have been claimed by the assessee as shareholders and thus onus was on the assessee to produce before the Assessing Officers. It is only when the assessee failed to produce those persons, the Assessing officers issued summons requesting them to appear before him. When summons were issued to them on the request of the Assessee, the onus was on the assessee to be present during recording of their statement but assessee ignored to present before the AO. The assessee did not ask cross examination even after confronting the statement to the Authorised representative. Thereafter asking cross examination before the Ld First Appellate Authority is not justified. At all if the assessee is of the view that those person are real share holder, the assessee should have produced them or produce any affidavit from them to discharge his onus but nothing has been done on behalf of the assessee except seeking cross examination of the persons. We also notice from record that in AY 2012-13, also the share capital has been assessed u/s 68 as unexplained cash credit, which has been upheld by the Ld. CIT(A) and ITAT (ITA

No.4213/D/2017), though exparte. There is no information of request for recalling the order of ITAT by the assessee. In AY 2013-14, the assessee has withdrawn its appeal (ITA No.5016/D/2018) filed on the issue of addition for share capital of Rs. 62,00,000/-, disallowance of expenses of Rs.1,22,65,000/- related to loan disbursed in violation of RBI guidelines, disallowance of expenses of Rs.1,42,56,000/-. The grounds raised in the year under consideration are identical to ground raised in assessment year 2013-14, except change of amount. Thus it is evident that in preceding year, the assessee itself has admitted the addition made by the Assessing Officer on identical ground, then in view of rule of consistency, the assessee is not justified in raising the grounds without any valid reasons.

13. In view of the above facts and circumstances of the case and the discussion above, we uphold the finding of the Ld. CIT(A) on the issue in dispute and dismiss the ground No.1 of the appeal.

14. The ground No.2 of the appeal relates to disallowance of expenditure of Rs.44,70,618/-in terms of section 37 of the Act on proportionate basis for diversion of the fund.

15. According to the Assessing Officer, loans were issued in violation of the norms and hence proportionate cost cannot be allowed because of the illegality involved. The Assessing Officer relied on the finding of his predecessor in assessment year 2013-14 and accordingly disallowed proportionate expenses amounting to Rs.44,71,618/-. The Ld. CIT(A) upheld the disallowance observing as under:

*5.2 Ground no. 2: The appellant has challenged the disallowance of expenditure u/s 37 of Rs. 44,71,618/- . During the course of appellate proceedings it has been submitted that AO has wrongly interpreted the word 'diversions'. As per RBI Inspector's report the instance of Non Performing Assets diversions were noted i.e. that NPA has been classified deviating from the standards and norms prescribed by RBI. According to the appellant disallowance of expenditure by making a reference to RBI's inspection report without even rejecting the books of accounts is not tenable in the eyes of law. It has been further argued that there is no direct and indirect link of expenditure incurred for banking activities and classification of NPA. However it is noted that AO has observed that an amount of Rs. 12.91 lac advance to Ex. Director Smt. Meenakshi Goel*

*was classified as NPA by the bank. Similarly, AO noted that credit has been extended to sister concerns violating RBI's guidelines. Considering above facts, AO estimated expenditure not for wholly and exclusively business purpose. During the course of appellate proceedings AR has admitted that expenditure claimed is incurred on granting of loans and advances. The submission of AR is reproduced as under:*

- e. **It is also worthwhile to mention here that the expenditure incurred by the Bank is not only for taking deposit its also relates to granting and Loans and advances and other activities.***

*5.2.1 Considering above facts it is held that appellant failed to substantiate that the expenditure claimed was used wholly and exclusively for the business purposes as admittedly expenditure is incurred on disbursement of loan and advances, which has been made to the Directors of the bank also. Keeping in view the above facts the addition made by the AO is confirmed. Thus this ground of appeal is dismissed.*

16. Before us the Ld. Counsel of the assessee submitted that RBI reported only that bank has divergence in classification of the assets and not diversion of the fund. She submitted that bank has not properly classified the loan assets according to the RBI norms. According to her there is no Nexus of disallowing Rs.44.74 lakhs as cost of the diverted fund. She submitted that expenditure incurred by the bank is not only for taking deposit but it is also related to granting loans and advances and other activities. She further submitted that RBI has no way reported that books of accounts maintained by the assessee bank was not proper and therefore all the expenses incurred by the bank are business-related and should be allowed fully.

17. The Ld. DR on the other hand relied on the order of the lower authorities and submitted that in immediately preceding year, the assessee itself has withdrawn identical grounds of appeal and thus assessee has admitted the addition/disallowance of expenses corresponding to loan disbursed in violation of RBI rules.

18. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We observed that in assessment year 2013 -14, identical grounds were raised before the Tribunal, which is reproduced as under:

*2. That the learned CIT(Appeals), Ghaziabad is in error in law by confirming the order of Dy. Commissioner of Income Tax, Circle-1, Ghaziabad and on fact in confirming the addition of Rs. 1,22,65,050/- for disallowing the expenditure u/s 37 by making the reference of RBI Inspection Report, despite and ignoring the facts that the assessee maintained its books of accounts properly and got them audited, even the Ld Assessing Officer did not reject the books of accounts.*

*It is also worthwhile to mention here that the Ld Assessing Officer misunderstood the remarks of RBI Inspector for non declaring of loans of Rs. 1366.51 lacs as NPA and wrongly took the interest of Rs. 69.17 lacs as NPA as income. The Ld Assessing Officer erred in law as if we did not take the income of Rs. 69.17 lacs in the books of accounts, the loss of the assessee would be increased by the same amount.*

19. The appeal for AY 2013-14 has been dismissed by the Tribunal as withdrawn. The finding of the Tribunal is reproduced as under:

*“None is present on behalf of the assessee. However, an application on behalf of the assessee dated 27.01.2020 is placed on record, stating that the assessee does not wish to press this appeal and seeks*



*permission to withdraw the same. The Id. DR reports no objection on this request of the assessee.*

*Therefore, the appeal is liable to be dismissed as withdrawn.”*

20. Thus assessee has admitted the disallowance in immediately preceding assessment year. In the year under consideration the Assessing Officer made addition relying on his finding in the preceding assessment year. Once the assessee has admitted addition in immediately preceding assessment year, preferring appeal on same issue in the year under consideration is not justified and against the rule of consistency.

21. Further, when the loans have been disbursed in violation of the rules of RBI to give benefit to a few, than expenses corresponding to such loans are not wholly and exclusively for the purpose of the business of the assessee and therefore also such expenses are not allowable as deduction.

22. In view of the above, we uphold the finding of the Leonard CIT(A) on the issue in dispute and dismiss the ground of the appeal of the assessee.

23. The ground No.3 (three) of the appeal relates to addition of Rs.87,74,000 related to disallowance of expenditure on various heads. The Assessing Officer made disallowance following the

finding of his predecessor in the earlier year. The detailed of disallowance made in the year under consideration is as under:

*This issue was also present last year and addition was made in this regard. This year also issue persists. The findings of the RBI and the reply of the assessee were considered and are being discussed below:*

*1. The comment on the non repair of office building by the RBI is based on physical verification and if it is read with deficiency of vouchers and expenses made in cash, it is clear that the assessee has indulged in over booking of expenses on repair. However, the assessee has clarified that the repair includes other than building repair, repair of Electricity and maintenance, Computer repair and maintenance, vehicle repair and maintenance, AMC and other maintenance and other repair and, -maintenance also. Considering these facts, it is prudent and reasonable to disallow/ 30% of the repair expense out of Rs. 193.58 Lakh which gives a figure of Rs.58.07 Lakh. Initiate penalty proceedings separately U/s 271(l)(c) for furnishing inaccurate particulars of income and concealment of income.*

*(Addition of Rs.58.07Lakh)*

*2. Based on the observation of the RBI and reply of the assessee along with discrepancies in voucher and cash expenses pointed out by the RBI, 30% of expenses on generator (Rs.39.09 Lakh), traveling and conveyance (Rs.41.83' lakh) and food and beverages Rs.11.08 Lakh) are being disallowed. This gives a total disallowance of Rs.27.60 lakh. Initiate penalty proceedings separately U/s 27i(l)(c) for furnishing inaccurate particulars of income and concealment of income.*

*(Addition of Rs.27.60 Lakh)*

*3. Regarding water and electricity charges, the reply of the assessee is acceptable as these are billed by public utilities. And regarding professional charges, 10% of the same is being disallowed on account of observation made by the RBI regarding discrepancy in vouchers and narration. Initiated' penalty proceeding separately U/s 271 (l)(c) for furnishing inaccurate particulars of income and concealment of income.*

*(Addition of Rs.3.07Lakh)*

*4. The RBI team has questioned the 10.09 lakh of telephone expense in view of all employees being*

*provided with mobile phones. In this respect the assessee has clarified that this includes phone bills includes internet charges and the cost of the mobile phones to employees also. Hence, it is accepted that despite providing mobile phones, Bank needs other lines as well. No adverse view is being taken.*

***Thus the total expenses disallowed as discussed above is Rs.88.74 Lakh (Rs.88,74,,000/-)***

24. The Ld. CIT(A) allowed part relief on repair maintenance and travelling and conveyance and restricted the disallowance to 20% instead of 30% made by the Assessing Officer. Accordingly, the Ld. CIT(A) sustained addition of Rs.85.67 lakhs observing as under:

*5.3 Ground no. 3: The appellant has challenged the addition of Rs. 88.74 Sacs being 30% disallowance of repair expenses of Rs.193.58 lacs (Rs.58.07 lacs), - 30% of generator travelling, and conveyance expenses and food expenses of Rs 39.09 + Rs. 41.83 + Rs. 11.08 = Rs. 92 lacs) i.e. Rs. 27.6 Sac and 10% o professional charges i.e. Rs. 3.07 lac. Examination of facts reveals that disallowance has been made on the basis of irregularities found by RE inspection team*

*wherein it has been observed that above said expenditure has been excessive. AO after duly confronting the observation of the RBI inspection officials made the above said disallowance. Considering the facts given by the RBI inspection team disallowance of 30% of repair and maintenance and generator, travelling and conveyance and food and beverages is found to be excessive. Hence same is restricted to 20% i.e. disallowance of Rs.57.11 lacs out of Rs.85.67 lacs is confirmed alongwith 10% of professional charges. Thus this ground of appeal is partly allowed.*

25. We have heard rival submission of the parties and perused the material on record. We find that disallowance has been made relying on the audit report of the RBI, where specific defects or deficiency of vouchers have been raised. Further, in immediately preceding assessment year 2013-14, the assessee has admitted the disallowance in respect of the identical expenses based on the audit report of the RBI. In our opinion following the rule of consistency, the assessee is not justified in preferring the appeal on same issue in the year under consideration without any valid reasons. The assessee has not submitted any rebuttal of the observation by the RBI in respect

of deficiency of vouchers of the expenses. In the circumstances, the finding of the Ld. CIT(A) on the issue in dispute is upheld. The ground No. three of the appeal is accordingly dismissed.

26. In the result, the appeal of the assessee is dismissed.

**Order pronounced in the open court on 21.10.2021.**

Sd/-  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

Sd/-  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 21.10.2021

\*Neha\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

<b>Sl. No.</b>	<b>Particulars</b>	<b>Date</b>
1.	Date of dictation:	21.10.2021
2.	Date on which the draft of order is placed before the Dictating Member:	21.10.2021
3.	Date on which the draft of order is placed before the other Member:	21.10.2021
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	21.10.2021
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	21.10.2021
6.	Date on which the final order received after having been singed/pronounced by the Members:	21.10.2021
7.	Date on which the final order is uploaded on the website of ITAT:	21.10.2021
8.	Date on which the file goes to the Bench Clerk	21.10.2021
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	