

IN THE OFFICE OF THE COMMISSIONER OF INCOME-TAX(APPEALS), MYSORE

Date of order : 13.11.2013  
Appeal No. : ITA.No. 43/MNG/CIT(A)MNG/09-10  
1 Date of institution of appeal : 11.01.2010  
2 Name & Designation of the Officer : Sri. Ramesha G.  
Asst. Commissioner of Income-tax  
Circle-1(1), Mangalore  
3 Assessment Year(s) : 2007-08  
4 Name of the appellant : The Karwar Urban Co-operative Bank Ltd  
R.K. Temple Road  
Karwar  
5 Permanent Account Number : AAALTO112A  
6 Income assessed : Rs. 30,62,974/-  
7 Tax/Penalty/Fine/Interest demanded : Rs. 5,17,488/-  
8 Section under which the order appealed against was made & date of such order : 143(3) dated 24.12.2009  
9 Date(s) of hearing : 12.11.13 & 13.11.13  
10 Present for the Appellant : Sri. Ganapathi Hegde - C.A  
11 Present for the Department : None



The present appeal is directed against the order u/s 143(3) dated 24.12.2009 passed by The ACIT, Circle-1(1), Mangalore for the AY 2007-08.

2. Sri. Ganapathi Hegde - C.A - appeared and he has been heard. The submissions filed by the appellant have been considered.

3. The various issues on which additions are made on assessment order which are contented in appeal are discussed as under:

3.1. Disallowance u/s 40(a)(ia): It is noticed by the AO that the appellant paid pigmy commission of Rs. 8,60,751/- and when asked about TDS made if any, it is pleaded before the AO that the pigmy commission is paid to the pigmy collectors at 2.5% on their collection. As per High Court order, pigmy agents are treated at par with salaried employees and hence TDS provisions of sec 194 are not attracted. The AO asked for details of pigmy commission and the judgment of Hon'ble High Court relied on, which was not furnished. Hence the AO held that the pigmy commission is attracted by the provisions of sec 194H and since no TDS is made and the same is disallowable u/s. 40(a)(ia) . Accordingly, the AO made an addition of Rs. 8,60,751/-.

In appeal, it is argued by the appellant that pigmy agents are workmen and they are treated as salaried employees for the purpose of TDS provisions as per the clarification given by CBDT to the Pigmy Agency Association and Indian Banks Associations. Hence, provisions of Sec 194H is not applicable to the appellant. The pigmy commission paid to the agents



is less than taxable income and hence TDS is not made on the pigmy commission paid.

I have considered the issue and the arguments. In view of the argument of the appellant, I am of the view that the pigmy commission is not liable for TDS and accordingly direct the AO to delete the addition.

3.2 **Addition of Rs. 1,52,049/- on account of provision of standard assets and provisions for investment depreciation:**

It is explained before the AO that the provisions for investment depreciation fund of Rs. 77,409/- is basically amortization of premium amount paid on mandatory acquisition of government securities as per RBI guidelines. The provision for standard assets of Rs. 75,000/- is done on standard loans as per RBI rules governing the NPA concepts and both these are charged to P & L account.

I have carefully considered the facts of the case and the submissions of the AR. The contention of the appellant is that the amortization is based on the face value and the book value. If the appellant purchases a security at X value while the face value is Y the difference between X & Y is amortized for the remaining period till maturity. The face value as well as the purchase price are already crystallized and hence the difference between the both are also crystallized, either loss or profit. The same is taken to the profit & loss account. Hence, I direct the AO to allow amortization. Even provisions for nonperforming assets is to be allowed u/s 36(1)(vi) / 36(1)(viiA). Hence, AO is directed to allow the same.



3.3 **Disallowance of gratuity fund of Rs 2,00,000/-** : Before the AO it was contended by the appellant that it is an allowable expenditure and was calculated according to Gratuity Act. It is observed by the AO that the same is allowable only, if contribution is made to approved gratuity fund. The appellant failed to produce detail of approval. Hence the AO made the addition. Relying on various case laws, that it is for the appellant to prove the claim of any expenditure, the AO made the addition.

In appeal; the appellant argued that the contribution is made towards approved gratuity fund created by him for exclusive benefit of their employees under an irrevocable trust. However, even in appeal the appellant could not produce proof that the contribution is made to approved gratuity fund. Hence, the addition is confirmed.

3.4 **Addition of Rs. 1,32,000 towards as staff gratuity:**

As seen from the order, AO asked the appellant to furnish the details of the same along with substantiation for allowability of the expenditure. It is explained to the AO that it is 'staff bonus payable'. However, the appellant did not file details of payments and date of payments of the bonus. If the expenditure is bonus, then, provisions of section 36(1)(ii) and 43B are applicable. In the absence of supporting details AO made the additions.

In appeal, It is argued by the appellant that they are following mercantile system of accounting. As per provisions of sec 36(1)(ii) and 43B, if the payment is made after the end of relevant previous year (i.e. the year in which the liability is incurred) but on or before the due of submission of income for that year and the proof of deposit is submitted along with the return of income then the payment is deductible on accrual basis in the



relevant previous year (i.e. the year in which the liability is incurred). In the case of the appellant, the bonus is credited to the employers account. However as admitted by the appellant himself, the appellant should have paid the amount on or before the due date of submissions of returns and **proof of deposits** should be enclosed along with the return which is not done. When this was pointed out, the appellant pleaded that he should be allowed the expenditure on payment basis in next year which is anyway the scheme of the Act. Hence for the current year, this expenditure needs to be disallowed and deserves to be considered next year on payment basis. Accordingly the addition is confirmed.

4. In effect, the appeal is partly allowed.

  
(G.R. Reddy)

Commissioner of Income-tax (Appeals)  
Mysore

To:

✓ The Appellant with original demand notice ✓

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The ACIT, Circle-1(1), Mangalore. *Udupi.*  
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(G.R. Reddy)

Commissioner of Income-tax (Appeals)  
Mysore

