

Court No. - 35

1. Case :- INCOME TAX APPEAL No. - 581 of 2011

Appellant :- Fatehpur Kshetriya Gramin Bank Fatehpur(Now Baroda U.P. Gramin Bank having its Head Office at Civil Lines, Raebareli)

Respondent :- Addl. Commissioner Income Tax Asst. Spl. Range

Counsel for Appellant :- Shakeel Ahmad

Counsel for Respondent :- B.Agrawal,CSC,Manu Ghildyal

2. Case :- INCOME TAX APPEAL No. - 580 of 2011

Appellant :- Fatehpur Kshetriya Gramin Bank Fatehpur

Respondent :- Addl. Commissioner Income Tax Asst. Spl. Range

Counsel for Appellant :- Shakeel Ahmad

Counsel for Respondent :- C.S.C.,B.Agrawal,Manu Ghildyal

3. Case :- INCOME TAX APPEAL No. - 582 of 2011

Appellant :- Fatehpur Kshetriya Gramin Bank Fatehpur

Respondent :- Addl. Commissioner Income Tax Asst. Spl. Range

Counsel for Appellant :- Shakeel Ahmad

Counsel for Respondent :- B.Agrawal,CSC,Manu Ghildyal,S.S.C.
I.T.

4. Case :- INCOME TAX APPEAL No. - 583 of 2011

Appellant :- Fatehpur Kshetriya Gramin Bank Fatehpur

Respondent :- Addl. Commissioner Income Tax Asst. Spl. Range

Counsel for Appellant :- Shakeel Ahmad

Counsel for Respondent :- B.Agrawal,CSC,Manu Ghildyal,S.S.C.
I.T.

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5.Case :- INCOME TAX APPEAL No. - 574 of 2011

Appellant :- Fatehpur Kshetriya Gramin Bank Fatehpur

Respondent :- Addl. Commissioner Income Tax Asst. Spl. Range

Counsel for Appellant :- Shakeel Ahmad

Counsel for Respondent :- B.Agrawal,CSC,Manu Ghildyal

Hon'ble Bharati Sapru,J.

Hon'ble Dinesh Kumar Singh,J.

1. Heard learned counsel for the parties as the controversy involved in these appeals is identical, the same is being decided by a common judgment treating the Income Tax Appeal No.581 of 2011, as the leading case.

2. The Income Tax Appeal No.581 of 2011 has been filed under Section 260-A of the Income Tax Act (hereinafter referred to as 'the Act'). The following questions of law have been framed for determination by this Court:-

“A. Whether upon the facts and circumstances of the case the Tribunal was justified in holding that entitlement of the assessee for deduction 80P of the Act is not relevant for charging addition Tax u/s 143(1A) of the Act?

B. Whether upon the facts and circumstances of the case the Tribunal was justified in upholding the adjustments made by the Assessing Officer u/s 143(1) (a) of the Act for the provisions made for payment of gratuity and bonus which were made unilaterally and without opportunity to assessee to prove its payment before the due date within the meaning of Second proviso to Section 43B of the Act.

C. Whether upon the facts and circumstances of the case the Tribunal was justified in upholding the adjustment made u/s 143(1)(a), for the provisions for payment of gratuity & bonus, without considering that there not being any positive income of the assessee in the previous year and no adjustment in the loss declared by the assessee has been made upon the facts and in the circumstances of the case?

D. Whether debitable issues can be disallowed and adjusted by the assessing officer u/s 143(1) (a) of the Act?”

3. The appellant is a co-operative society, incorporated under the Regional Rural Bank Act, 1976. It is said that it has been carrying out the business of banking under the said Act and Banking Regulations Act, 1949. Therefore, it is entitled to deduction of whole of amount of profit and gains of business attributable to the banking activity within the meaning of Section 80P(2)(i) of the Act. The Assessment Years involved in these appeals are 1990-91, 1994-95 and 1995-96. All these

five appeals are arising out of common judgment and order dated 31.08.2004 passed by the Income Tax Appellate Tribunal, Allahabad Bench, Allahabad.

4. The appellant-assessee filed return of its income for the Assessment Year 1990-91 declaring loss of Rs.2,77,10,970/-. The Assessing Officer while processing the return of income, made certain adjustments to the total income and charged additional tax of Rs.65,378/-. The Assessing Officer noticed that provisions for payment for gratuity amount to Rs.6,34,486/- was made by the assessee. The Assessing Officer held that the provisions for gratuity were not admissible deduction out of total income under Section 43-B of the Act. Similarly, the Assessing Officer made adjustments of entertainment expenses not admissible under Section 37(2) of the Act. The Assessing Officer also charged additional tax under Section 143(1A) of the Act.

5. The assessee filed an application under Section 154 of the Act and requested the Assessing Officer to rectify the mistake and delete the aforesaid adjustments made under Section 143(1A) of the Act. As there was no mistake apparent on the face of record, the application under Section 154 of the Act was rejected by the Assessing Officer vide order dated 11.12.1996.

6. The CIT (Appeal) on an appeal filed by the assessee confirmed the order of Assessing Officer under Section 154 of the Act as well as additions made by the Assessing Officer.

7. Heard Sri Shakeel Ahmad, learned counsel for the assessee and Sri Manu Ghildyal, learned counsel for the Revenue.

8. Section 143(1A) of the Act as it existed at the relevant time is reproduced hereunder:-

“S.143(1A) (a) where as a result of the adjustments made under the first proviso to clause (a) of sub-section (1),-

(I) the income declared by any person in the return is increased; or

(ii) the loss declared by such person in the return is reduced or is converted into income, the Assessing Officer shall,- (A) in a case where the increase in income under sub-clause (I) of this clause has increased the amount of tax payable under Sub-section (1) by an additional income-tax calculated at the rate of twenty per cent on the difference between the tax on the total income so increased and the tax that would have been chargeable had such total income been reduced by the amount of adjustment and specify the additional income-tax in the intimation to be sent under sub-clause(1) of clause (a) of sub-section(1)”

9. It was admitted by the counsel for the assessee before the Tribunal that no evidence was furnished by the assessee regarding payment of gratuity and bonus to its employees.

10. From the perusal of provisions of Section 143(1A), it is clear that the additional income tax is chargeable if the loss declaration by the assessee is reduced as a result of adjustments. Whether assessee is entitled for reduction under Section 80P or not is not a relevant factor for the purposes of charging additional tax under Section 143(1A) of the Act. When the assessee did not produce any evidence that it had made payment of gratuity and bonus which are statutory dues, the Assessing Officer was justified in making adjustment of such amounts

not paid.

11. Having heard learned counsel for the parties and having perused the material on record, we do not find any error in the impugned judgment and order passed by the Income Tax Appellate Tribunal and the same is affirmed by this Court. The appeals are thus, dismissed. The questions of law as framed are answered against the assessee and in favour of the Revenue. No costs.

Order Date:- 23.07.2018/prateek