

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "B" KOLKATA*

Before **Shri P.M.Jagtap, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.2731/Kol/2013
Assessment Year:2010-11

ACIT, Cricle-1, Office of JCIT, Range- 1, "Amarvati" Raja N.L. Khan Road, Keranitola, Midnapore- 721 101	<u>बनाम</u> / V/s.	Vidyasagar Central Co-Op. Bank Ltd., Chota Bazar, Midnapore, Dist. Paschim Medinipur-721 101 [PAN No.AAAAV 0691 B]
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Sallong Yaden, ACIT-SR-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Soumitra Choudhury, Advocate
सुनवाई की तारीख/Date of Hearing	04-01-2017
घोषणा की तारीख/Date of Pronouncement	25-01-2017

आदेश /O R D E R

PER S.S.Viswanethra Ravi, Judicial Member:-

This appeal by the Revenue against the order dated 26.09.2013 of Commissioner of Income Tax (Appeals)-XXXVI, Kolkata for assessment year 2010-11.

2. The Revenue questioned the order of CIT(A) in allowing the claim of assessee made under the head "provision for overdue interest amounting to ₹2,45,89,189/-." Therefore, the sole issue to be decided in this appeal is as to whether CIT(A) is justified in allowing claim of assessee in the facts and circumstances of the case.

3. It was submitted by Ld. AR for the assessee that the same issue squarely covered by the order of Co-ordinate Bench of Kolkata in assessee's own case for A.Y 2009-10 in ITA No.311/Kol/2013 dated 08.01.2016 which is placed on record.

4. Brief facts of the case are that assessee is a Co-operative Bank and made provision for overdue interest which is the amount doubtful of recovery and claimed the same as deduction. The Assessing Officer was of the view that the provision for overdue interest and provision for NPA are separate and distinct and such deduction is not includible in computation of income and added the same amount to the total income of assessee. Ld. CIT(A) deleted the addition by relying the judgment of Hon'ble Supreme Court in the case of *Southern Technology Ltd. vs. JCIT, Coimbatore* reported in 320 ITR 377 (SC). Ld. DR for the Revenue relied on the order of Assessing Officer.

5. Heard rival submissions and perused the materials available on record. We find that as rightly pointed by Ld. AR that said issue was decided by Co-ordinate Bench vide order dated 08.01.2016 wherein the Bench decided the issue by relying on in the case of *ACIT vs. Nadia District Cent. Cooperative Bank Ltd.* in **ITA No. 1851/Kol/2012** for A.Y. 2007-08. We further find that similar issue was raised by Revenue before the Hon'ble jurisdictional High Court of Calcutta in the case of *CIT vs. KICM Investment Ltd.* and the Hon'ble jurisdictional High Court was pleased to hold that interest on non-performing assets was not includible in the total income of assessee on accrual basis. The same was challenged by Revenue before Hon'ble Supreme Court and the said Special Leave Petition was dismissed on 12.01.2009 in CC No. 29 of 2009 affirming the view of Hon'ble jurisdictional High Court. In view of the same, we are of the view that the claim of assessee towards the creation of provision of overdue interest is admissible deduction and the relevant portion of order in assessee's own case (supra) is reproduced hereinbelow:-

“3.1 At the time of hearing before us, the ld. Counsel for the assessee submitted that this matter is covered by the decision of “A” bench, ITAT, Kolkata dated 1st August, 2014 in ITA No. 1851/Kol/2012 for the assessment year 2007-08 in the case of ACIT-vs- Nadia District Cent Cooperative Bank Ltd. in favour of the assessee, wherein it was held as under:-

‘4. We find that this issue squarely covered by the decision of the Hon'ble Calcutta High Court in the case of CIT Vs. KICM Investment Ltd. in ITA No. 391 of 2007, which was duly affirmed by the Hon'ble Supreme Court, we find no infirmity in the order of CIT. Moreover, it is seen from the grounds raised by revenue that only grouse of the revenue

was that there is violation of the provision of Rule 46 of the Rules. We find nothing and once specific query from the bench Ld. Sr. DR could not state what is the violation. In such circumstances, and factually the issue is covered in favour of the assessee by jurisdictional High Court in the case of KICM Investment Ltd., supra, we confirm the order of CIT and this appeal of Revenue is dismissed.”

Therefore, we find no infirmity in the order of CIT(A) in view of consistent view taken by the Coordinate Bench of Kolkata in assessee's own case for A.Y. 2009-10 and the order of CIT(A) is justified. Thus, ground raised in this regard by Revenue is dismissed.

6. In the result, Revenue's appeal stands dismissed.

Order pronounced in open court on 25/01/2017

Sd/-
(लेखा सदस्य)
(P.M.Jagtap)
Accountant Member

Sd/-
(न्यायिक सदस्य)
(S.S.Viswanethra Ravi)
Judicial Member

*Dkp-Sr.PS

दिनांक:- 25/01/2017 कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-ACIT Circle-1, Office of the JCIT, Range-1, Amarvati Raja
N.L. Khan Road, Keranitola, Midnapore-721 101
2. प्रत्यर्थी/Respondent-Vidyasagar Central Co-Op. Bank Ltd., Chota Bazar, Midnapore
Dist. Paschim Medinipur-721 101
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता