

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

**BEFORE SHRI R. S. SYAL, ACCOUNTANT MEMBER
AND
SMT SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A .No. 2074/DEL/2012
(ASSESSMENT YEAR-2008-09)**

DCIT Circle-30 (1) New Delhi (APPELLANT)	Vs	Janta Co-Operative Bank Ltd. 32, Netaji Subhash Marg Darya Ganj New Delhi AAAAT8729N (RESPONDENT)
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Appellant by	Sh. Umesh Chand Dubey, SR. DR
Respondent by	Sh. Deepak Ostwal, CA

Date of Hearing	26.10.2016
Date of Pronouncement	06.12.2016

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed against the order dated 27/2/2012 passed by the CIT(A)-XXV, New Delhi for Assessment Year 2008-09.

2. The grounds of appeal are as follows:-

- “1. On the facts and in circumstances of the case, Ld.CIT(A) XXV, New Delhi has erred in deleting the addition of Rs.42,12,605/- following the judgment of CIT vs. Shoorji Vallabhdas & Co. 46 ITR 144 (SC)

(1962) which stands distinguished by the judgment in the case of Morvi Industries Ltd. Vs. CIT (1971) 82 ITR 835 of Supreme Court.”.

“On the facts and in circumstances of the case, Ld.CIT(A) has erred in deleting the addition of Rs.42,12,605/- made by A. On account of interest on NPAs ignoring the ratio of the case of State Bank of Travancore Vs. CIT reported in (1986) 158 ITR 102(SC).”

- (ii) *On the facts and in circumstances of the case, Ld.CIT (A) has erred in deleting the addition of Rs.91, 45,294/- following the judgment of CIT vs. Tosha International Ltd. 331 ITR 440 (Delhi) 2011 and Goodricke Group Ltd. Vs. CIT 338 ITR 116(Cal) 2011 whereas both the judgments are not applicable to the facts brought out in the present case by A.O that the impugned liability had become time barred.”*

3. The assessee is a Co-operative Bank and is engaged in banking business. The assessee claimed the interest income amount of Rs.42,12,605/- as interest income from the MPA (Non-performing assets) but since the loans have become bad the assessee has neither received the loan amount nor the interest income. The assessee treated the interest amount as “interest receivable” in the debit side of the balance sheet and as a liability under the head “Overdue interest reserve account” in the credit side of the balance sheet. The A.O treated the interest income as a normal business income on the ground that in the mercantile system of accounting the accrued income is to be treated as income of the assessee and accordingly made the addition of Rs.42,12,605/-.

4. Being aggrieved by the order of the Assessing Officer, the assessee filed appeal before the CIT(A). The assessee submitted before the CIT(A) that the A.O was not justified to make the addition as the loan became bad (NPA) and the assessee did not receive the interest income and as such no real income accrued to the assessee. Interest on NPAs was debited to the party account

and the interest account was credited in the P &L account. The interest was actually not received a reverse entry was passed at the year-end by which the P & L account was debited and the overdue interest account was credited. The assessee maintained the books of accounts on the NPA and its interest on the basis of the RBI guidelines and since the income was not received by the assessee, the A.O was not justified to treat the same as income of the assessee. When the interest income finally recovered in future the same was accounted for and offered as income of the assessee. Only the real income of the assessee has to be taxed and not the notional income. The assessee also submitted that no interest would be set to have accrued on the loans of doubtful recovery and relied on various case laws.

5. The CIT(A) held that since the assessee did not receive the income as the loan amount itself became bad and as such the A.O was not justified to treat the notional interest as income of the assessee. Only the real income was taxable and not the hypothetical income in view of the real income theory as no real income was received by the assessee. The CIT(A) further observed that the assessee is a Co-operative Bank and many of the customers come to the bank to buy pay orders and demand drafts which are issued to the customers. The payments for the pay order and the demand drafts are made when the same are presented to the bank for payments by the customers. In some of the cases some of the customers do not present their pay orders or demand drafts and as such the amount remains with the bank till the payment is made and as such the same amounts are shown as a liability in the balance sheet. The A.O made the addition for this amount of payable orders u/s 41(1) on the ground that since such payments was not made for a long time and such amounts were standing in the balance sheet for a long time and as such there was a cessation of liability u/s 41(1) vide the order of the A.O. Thus, allowed the appeal of the assessee.

6. Being aggrieved the Revenue is in appeal before us.

7. The Ld. DR submits that the Assessing Officer was right in making an addition on interest accrued on NPAs amounting to Rs. 42,12,605/-. The revenue/ interest on NPA must be recognize on accrual basis as per accounting standard 9. A deduction for the provisions made by the co-operative banks on bad and doubtful debts, is now available u/s. 36(1)(viia) of the Act. Thus any loan given by the bank does not become NPA at the time of giving the loan. Uncertainty, in relation to collectability of interest on NPA, arises subsequent to the time of sale (disbursement of loan, in the instant case). Interest must be originally recorded as prescribed in paragraph 8.2 of the AS 9. Paragraph 8.2 of AS 9 provides for recognition of interest on accrual basis. The Ld. DR relied upon the various judgments.

- a) Southern Technologies Ltd. Vs. JCIT (2010) 187 Taxman 346 (SC)
- b) CIT Vs. Shiv Prakash Janak Raj & Co. Pvt. Ltd. (1996) 222 ITR 583 (SC)
- c) Saraswati Insurance Co. Ltd. Vs. CIT (2001) 252 ITR 430 (Del)
- d) Benares State Bank Ltd. Vs. CIT (1989) 180 ITR 231 (All)
- e) Grindlays Bank P.L.C. Vs. CIT (1993) 201 ITR 148 (Cal)
- f) CIT Vs. Allahabad Bank (1991) 192 ITR 182 (Cal)

8. The Ld. AR relied upon the order of the CIT(A) and various case laws.

9. We have heard both the parties and perused the records. The assessee was holding the money of payable orders as trustee of the customers and the same amount has to be paid to the customers whenever the claim is made with the assessee. The assessee cannot appropriate the amount of payable orders or demand drafts as the same belongs to the customers. The assessee did not claimed any deduction for these amounts and at the same time there was no cessation of liability and as such the A.O was not justified to invoke the provisions of Section 41(1) of the Act as this section is not applicable in the case of the assessee and the assessee also relied on the various case laws on

the issue of remission of liability u/s 41(1) of the Act that of CIT Vs. Tosha International Ltd., 331 ITR 440 (Delhi) 2011 and Goodricke Group Ltd., vs. CIT 338 ITR 116 (Cal) 2011, where in it was held that the remission of the principal amount of loan did not amount to income under Section 41(1) nor under Section 28(iv) nor under Section 2(24) of the Income Tax Act, 1961. There is no cessation of liability u/s 41(1) of the Act as the liability of the assessee is not a trading liability and the liability of the assessee still remains and the assessee has also not claimed any deduction to attract the provisions u/s 41(1) of the Act. The reliance of the Apex court judgment and the jurisdictional High Court by the Ld. DR are different in factual aspect of the present case. These case laws though discussing about the interest part are not identical with the present case. Thus, the CIT(A) was right in holding that it is not possible to sustain this addition as there is no cessation of liability and at the same time facts of the case do not justify the application of provision of Section 41(1) of the Act. The CIT(A) rightly deleted the addition made by the A.O.

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

Order pronounced in the Open Court on 6th December, 2016.

Sd/-

(R. S. SYAL)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 06/12/2016
*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	26/10/2016	PS
2.	Draft placed before author	26/10/2016	PS
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5.	Approved Draft comes to the Sr.PS/PS	.12.2016	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	.12.2016	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		

