

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “B”, BANGALORE**

**Before Shri George George K, JM & Shri Jason P.Boaz, AM**

ITA No.822/Bang/2017 : Asst.Year 2012-2013

Asst.Commissioner of Income-tax, Circle 1 Vijayapur.	Vs.	M/s.Ilkal Co-op Bank Ltd. Near Basavan Gudi Market, Ilkal Dist : Bagalkot <b>PAN : AAAAP0212P.</b>
(Appellant)		(Respondent)

Appellant by : Smt.Padmameenakshi, JCIT  
Respondent by : Shri Ramasubramanian, CA

<b>Date of Hearing : 26.10.2017</b>	<b>Date of Pronouncement : 03.11.2017</b>
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**ORDER**

**Per George George K, JM**

This appeal at the instance of the Revenue is directed against CIT(A)'s order dated 25.01.2017. The relevant assessment year is 2012-2013.

2. The corrected grounds raised by the Revenue read as follows:

*“1. Whether the ld.CIT(A), is right in law and on facts in deleting the additions on account of accrued interest on loans which are classified as “Non-performing Assets” relying on the Karnataka High Court decision in Canfin Homes Ltd. (2011) 5 Tax Crop (DT) 49593, ignoring the provisions of section 43D of the I.T.Act, 1961?”*

*2. On the facts and in law whether the ld.CIT(A) is right in holding that income accrued to the assessee cannot be taken as income in the year ignoring the amended provisions of section 43D of the I.T.Act, 1961, which*

*provides certain benefit to the certain class of assessee but does not provide such benefit to the assessee bank.*

*3. The ld.CIT(A) did not appreciate the fact that the decision of the Hon'ble Karnataka High Court in the case of the Bilagi Pattan Sahakari Bank Niyamit, Bilagi in ITA No.100090 of 2015 and Canfin Homes has not been accepted by the Department and SLP has been filed before the Hon'ble Supreme Court, which is pending.”*

3. Briefly stated the facts of the case are as follow:-

3.1 The assessee is a Co-operative Bank, engaged in the business of banking. For the assessment year 2012-2013, the return of income was filed on 29.09.2012 declaring an income of Rs.2,63,83,610. The assessment was completed u/s 143(3) of the Act, by order dated 16.03.2015. In the assessment completed for assessment year 2012-2013, the Assessing Officer had made an addition of Rs.33,30,234 being interest accrued on Non-Performing Assets (NPA). The assessee had not accounted the same since the interest accrued was on a Non-Performing Asset and based on the Reserve Bank of India guidelines, same was not credited to the Profit & Loss Account. The Assessing Officer held that since the assessee was following mercantile system of accounting, the interest which had accrued on Non-Performing Assets also needs to be taken as income for the relevant assessment year. It was further held by the Assessing Officer that section 43D of the Income-tax Act is not applicable to the assessee since the assessee is not an entity mentioned in the said section.

3.2 Aggrieved by the addition of Rs.33,30,234, being interest on Non-Performing Assets, the assessee carried the matter in appeal before the first appellate authority.

3.3 The CIT(A) following the judgment of the Hon'ble jurisdictional High Court in the case of *CIT v. Canfin Homes Ltd.* [(2012) 347 ITR 282 (Kar.)] and *The Bilagi Pttan Sahakari Bank Niyamit* [ITA No.100090 of 2015], decided the issue in favour of the assessee.

3.4 The Revenue being aggrieved by the order of CIT(A), has preferred this present appeal before the Tribunal.

3.5 The learned Departmental Representative relied on the assessment order.

3.6 The learned Counsel for the assessee, on the other hand, submitted that the issue in question is squarely covered by the judgment of the Hon'ble jurisdictional High Court in the case of *Canfin Homes Ltd. (supra)*.

4. We have heard the rival submissions and perused the material on record. The assessee is a non-schedule cooperative bank, carrying on the business of banking. The assessee, following the prudential norms of Reserve Bank of India, did not account for interest which had accrued on Non-Performing Assets (NPA). The Assessing Officer was of the opinion that even such interest in relation to the concerned assessment year is to be disclosed in the Profit & Loss

Account since the assessee was following mercantile system of accounting and the provisions of section 43D of the Act does have any application to the assessee. The Hon'ble jurisdictional High Court in the case of *Canfin Homes Ltd. (supra)* had held that once the assets has been classified as Non-Performing Assets and any interest that is accruing on the same, cannot be deemed to be income. The relevant finding of the Hon'ble jurisdictional High Court reads as follow:-

*“Therefore..... Non-performing asset is an asset in respect of which interest has remained unpaid and has become past due. Once a particular asset is shown to be a non-performing asset then the assumption is it is not yielding any revenue. When it is not yielding any revenue, the question of showing that revenue and paying tax would not arise. As is clear from the policy guidelines issued by the National Housing Bank, the income from non-performing asset should be recognized only when it is actually received. That is what the Tribunal held in the instant case. Therefore, the contention of the revenue that in respect of non-performing assets even though it does not yield any income as the assessee has adopted a mercantile system of accounting, he has to pay tax on the revenue which has accrued notionally is without any basis. In that view of the matter, ..... The substantial question framed is answered against the revenue and in favour of the assessee.”*

5. Since the facts considered by the Hon'ble jurisdictional High Court and the facts of the instant case are identical, we uphold the order of the CIT(A) and dismiss the appeal filed by the Revenue.

6. In the result, the appeal by the Revenue is dismissed.

Order pronounced on this 03<sup>rd</sup> day of November, 2017.

Sd/-  
**(Jason P.Boaz)**  
**Accountant Member**

Sd/-  
**(George George K.)**  
**JUDICIAL MEMBER**

Bangalore ; Dated : 03<sup>rd</sup> November, 2017.  
Devdas\*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT, Belagavi.
4. CIT(A), Belagavi
5. DR, ITAT, Bangalore
6. Guard file.

True copy  
BY ORDER,

(Asstt. Registrar)  
**ITAT, Bangalore**