

आयकर अपीलिय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गाराव, न्यायिक सदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./**I.T.A.Nos.49 & 50/Vizag/2012**

(निर्धारण वर्ष / Assessment Years: 2007-08 & 2008-09)

The District Co-operative
Central Bank,
Eluru

[PAN No.AADFT3506D]

(अपीलार्थी / Appellant)

ITO, Ward-2,
Eluru

(प्रत्यार्थी / Respondent)

आयकर अपील सं./**I.T.A.No.78/Vizag/2012**

(निर्धारण वर्ष / Assessment Year: 2008-09)

ITO, Ward-2,
Eluru

(अपीलार्थी / Appellant)

The District Co-operative
Central Bank,
Eluru

(प्रत्यार्थी / Respondent)

आयकर अपील सं./**I.T.A.No.476/Vizag/2012**

(निर्धारण वर्ष / Assessment Year: 2009-10)

ACIT, Circle-1,
Eluru

(अपीलार्थी / Appellant)

The District Co-operative
Central Bank,
Eluru

(प्रत्यार्थी / Respondent)

C.O. No.33/Vizag/2013

(Arising out of I.T.A.No.476/Vizag/2012)

(निर्धारण वर्ष / Assessment Year: 2009-10)

The District Co-operative
Central Bank,
Eluru

ACIT, Circle-3(1),
Eluru

(अपीलार्थी / Appellant)

(प्रत्यार्थी / Respondent)

आयकर अपील सं./I.T.A.No.524/Vizag/2014

(निर्धारण वर्ष / Assessment Year: 2010-11)

The District Co-operative
Central Bank,
Eluru

ACIT, Circle-1,
Eluru

(अपीलार्थी / Appellant)

(प्रत्यार्थी / Respondent)

आयकर अपील सं./I.T.A.Nos.269/Vizag/2015

(निर्धारण वर्ष / Assessment Year: 2011-12)

ACIT, Circle-1,
Eluru

The District Co-operative
Central Bank,
Eluru

(अपीलार्थी / Appellant)

(प्रत्यार्थी / Respondent)

C.O. No.29/Vizag/2015

(Arising out of I.T.A.No.269/Vizag/2015)

(निर्धारण वर्ष / Assessment Years: 2011-12)

The District Co-operative
Central Bank,
Eluru

ACIT, Circle-1,
Eluru

(अपीलार्थी / Appellant)

(प्रत्यार्थी / Respondent)

आयकर अपील सं./I.T.A.No.515/Vizag/2014

(निर्धारण वर्ष / Assessment Year: 2007-08)

The District Co-operative
Central Bank,
Eluru

The ACIT, Circle-2(1),
Visakhapatnam

(अपीलार्थी / Appellant)

(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by

: Shri G.V.N. Hari, AR

प्रत्यार्थी की ओर से / Respondent by

: Shri T.S.N. Murthy, DR

सुनवाई की तारीख / Date of hearing

: 18.01.2018

घोषणा की तारीख / Date of Pronouncement

: 25.01.2018

आदेश / ORDER

PER D.S. Sunder Singh, Accountant Member:

These cross appeals filed by the assessee as well as the revenue are directed against orders of the Commissioner of Income Tax (Appeals) {CIT(A)}, Visakhapatnam vide ITA No.196&197/ITO,Ward-2/Eluru/10-11/11-12 dated 30.11.2011, ITA No.0059/13-14/1111/ACIT,C-1,Eluru/2014-15 dated 26.3.2015, ITA No.309/CIT(A)/GNT/11-12 dated 9.10.2012, ITA No.11/2009-10/ACIT,C-1 Elr/2014-15 dated.1.7.2014 & ITA No.0011/13-14/ACIT,C-1, Eluru/2014-15 dated 30.7.2014 for the assessment years 2007-08 to 2011-12. Since, the facts are identical and issues are common, they are

clubbed, heard together and disposed-off by way of this common order for the sake of convenience.

ITA No.49/Vizag/2012: (Assessee appeal):

2. Ground Nos.1 & 5 are general in nature, which do not require specific adjudication.

3. Ground No.2 is related to the issue of notice u/s 148 of the Income Tax Act, 1961 (hereinafter called as 'the Act'). In this case, a survey u/s 133A of the Act was conducted and during the course of survey, the A.O. has noticed that the assessee had claimed the deduction for premium payments to LIC Gratuity fund of its employees in violation of the provisions of section 36(1)(v) & section 40A(7)(b) of the Act. The A.O. observed that the gratuity fund/trust was not a recognized gratuity, fund hence the assessee is not entitled for deduction. Accordingly, the A.O. reopened the assessment by issue of notice u/s 148 of the Act.

3.1 This issue is involved for the assessment year 2007-08 and in appeal No.50/Vizag/2012 for the assessment year 2008-09 also.

3.2 On appeal the Ld. CIT(A) upheld the issue of reopening of assessment u/s 147, holding that the claim of deduction for gratuity in violation of the provisions of section 36(1)(v) and section 40A(7)(b) of the Act has come to the notice of the AO, only after conducting the survey u/s 133A of the Act. The assessment in this case was completed

u/s 143(1) of the Act and no scrutiny assessment has been made and there was no occasion to the A.O. to consider the issue of payment of gratuity. Hence, the Ld CIT(A) upheld the reopening of assessment and the issue of notice u/s 148 of the act. The Ld. CIT(A) relied on the decision of Raymond Woollen Mills Ltd. Vs. ITO 236 ITR 34, CIT Vs. Raman A. & Company 67 ITR 11 and Rajesh Jhaveri Stock Brokers Pvt. Ltd. 91 ITR 500 (SC) and Gangasharan & Sons Pvt. Ltd. Vs. ITO 130 ITR 1 of Hon'ble apex court.

3.3 We have heard both the parties and perused the materials available on record. In this case, the A.O. has reopened the assessment since the assessee has not taken the approval for gratuity fund/trust and the deduction is not allowable for contributions made to unapproved gratuity fund/trust, as per section 36(1)(v) of the Act and section 40A(7)(b) of the Act. During the appeal hearing, the Ld. A.R., reiterated the submissions made before the first appellate authority and did not bring any other decision supporting the assessee's case. The assessment has been reopened within four years, having material to show that the assessee has made incorrect claim leading to escapement of income. Therefore, we do not see any reason to interfere with the order of the Ld. CIT(A) and we uphold the order of the Ld. CIT(A) and dismiss the assessee's ground on reopening of assessment.

4. Ground No.3 is related to the disallowance made by the A.O. towards gratuity premium payable/paid to LIC of India Limited. This issue is common for all the assessment years 2007-08, 2008-09, 2009-10, 2010-11 & 2011-12. Since the issue is common for all the assessment years the facts are extracted from the assessment year 2007-08. During the assessment year 2007-08, the A.O. observed that the assessee has debited a sum of Rs.4,60,59,225/- to the Profit & Loss account towards the gratuity premium paid/payable to LIC. Out of which Rs.70 lakhs was paid to LIC of India and a sum of Rs.3,90,59,225/- was payable at the end of the year. The bank has paid the remaining premium during the financial year 2007-08 before the due date of filing the Return of Income. The A.O. was of the view that the assessee has not satisfied the conditions of section 36(1)(v) and also section 40A(7)(b) of the Act to be eligible for deduction. The fund is neither approved by the CIT nor the assessee maintained the separate books of accounts. The A.O. was of the view that as per section 40A(7) of the Act, unless the assessee makes the payment to the approved gratuity fund, the deduction is not allowable. The A.O. relied on the decision in the case of Shree Sajjan Mills Vs. CIT reported in 156 ITR 585 (SC), Sony India (P) Ltd. Vs.CIT, 285 ITR 123(Del) and the decision in the case of CIT.Vs Pradeshiya Industrial and Investment corporation

of U.P. Ltd,325 ITR 583 and disallowed the sum of Rs.4,60,59,225/- and brought to tax.

5. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld. CIT(A) observed that the gratuity funds/trust was not an approved fund/trust. Even though a separate trust was created for the purpose of gratuity, the assessee has been making the payments directly to LIC because of the reason the trust was not an approved trust. The assessee argued before the CIT(A) that since the payments were made directly to LIC, there is a constructive compliance of the provisions of law in view of the Hon'ble Madras High Court judgement in the case of CIT Vs. Textool Company Limited 257 ITR 39 and the liability was ascertained. The Ld. A.R further submitted before the Ld. CIT(A) that the assessee has been following the same practice for so many years and paying the gratuity to the employees immediately after retirement and the same is claimed from LIC. The company has not claimed any deduction separately towards the payment of gratuity from its expenditure. All such debits and credits relating to gratuity payment was routed through the bank accounts. The CIT(A) held that payment of gratuity is covered in section 36(1)(v) of the Act which states that any sum by the assessee by way of

contribution towards an approved gratuity fund under an irrevocable trust is an allowable deduction but any such contributions are subject to the restrictions placed in section 40A(7)(b) of the Act. Section 40A(7)(b) of the Act states that no deduction shall be allowed in respect of any provision made for payment of gratuity unless the gratuity fund is approved by the CIT. The Ld. CIT(A) further viewed that since the deduction is allowed specifically u/s 36(1)(v) of the Act, no deduction is allowable u/s 37(1) of the Act.

6. Aggrieved by the order of the CIT(A), the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld. A.R. argued that the assessee has created a Trust for employees gratuity but it was not approved. Pending receipt of approval from the Ld. CIT, the assessee has been contributing the sums to the LIC of India under Master proposal for group scheme. The assessee has ascertained the liability on actuarial basis and contributed the sums to the LIC of India. The assessee has enclosed copy of application made to the LIC of India in the scheme of Master proposal for group. The assessee has submitted the list of eligible employees as on the date of commencement of the scheme i.e. on 1.7.2003 to the LIC of India. The assessee also enclosed the Policy and the conditions of policy of Life

Insurance in Policy No.GGCA/5300797 and argued that the assessee has contributed the group gratuity premium to the LIC of India under Master proposal group scheme. The payments made towards the gratuity in the form of premiums to the LIC of India have no control to the assessee bank to utilize the same for its business purpose. The intention of the statute for obtaining the approval from Commissioner of Income Tax to the group gratuity fund is to prevent the mis-utilisation of the funds by the company or by the Directors of the company. Since the payment was made to the approved schemes of the LIC, the payment made to the LIC under gratuity scheme is completely under the control and management of the LIC of India and the assessee has no control on utilization of the funds. As held by Hon'ble Madras High Court in Textool Company Limited, there is a constructive compliance of the provisions of law and the requirements have been complied with by the assessee. The assessee relied on the decision of coordinate bench in the case of Capital IQ Information System (India) Pvt. Ltd. ITA No.84/Hyd/2013 dated 31.5.2013 for the assessment year 2008-09 of Hon'ble ITAT, Hyderabad 'A' Bench and the decision of ITAT Ahmedabad 'C' Bench in the case of DCIT Vs. Baroda Gujarat Grameen Bank in ITA No.1479/Ahd/2010 dated 6.8.2010 and the decision of ITAT 'A' Bench Chennai in the case of ACIT Vs. Verizon Data Services

India Pvt. Ltd. in ITA Nos.1654, 1703, 1704/Mds./2014 dated 4.9.2015 and argued that the issue is squarely covered by the decisions cited above and the decision of Textool Company Limited (supra) has been confirmed by the Hon'ble Supreme Court. Therefore, argued that the orders of the CIT(A) required to be set aside and allow the appeal of the assessee.

7. On the other hand, the Ld. D.R. argued that as per section 36(1)(v) r.w.s. section 40A(7) & 40A(9) of the Act, unless the payment is made to approved gratuity fund, the deduction is not available to the assessee. Section 40A(7) of the Act specifically prohibits the provision made in respect of the payment of gratuity to his employees on their retirement or termination of their employment for any reason unless the payment is made by way of contribution to an approved gratuity fund and further, sub section 9 of section 40A of the Act also places restriction in respect of any sum paid by the assessee as an employee towards the setting up of or confirmation of or contribution to any fund/trust company, association of persons, body of individuals or any other institution unless it is covered by section 36(1)(v) of the Act. In the instant case the assessee had made the gratuity payment directly to the LIC of India without routing the same through the approved gratuity

fund. Since the assessee has not made any contribution to the approved gratuity fund, the same is required to be disallowed and argued that the CIT(A) has rightly upheld the disallowance made by the A.O., which required to be upheld.

8. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The assessee is a cooperative bank and created the group gratuity fund/trust of the District Co-operative Central Bank Employees but the same was not yet approved by the CIT. Pending receipt of approval, the assessee had made application to LIC of India under pension and group schemes, and taken policy under Master proposal for group for payment of gratuity on 1.7.2003, and is contributing the sums to the LIC of India towards the group gratuity on actuarial basis. The assessee has not made any provision and made the payment before filing the return of income. On happening the event, the assessee bank is receiving the gratuity payment from the LIC which is being paid to the employee concerned and no further deduction is being claimed by the assessee as expenditure. Thus no double deduction is claimed. The expenditure claimed by the assessee under group gratuity scheme to LIC of India was allowed in the earlier years prior to 2007-08. During

the previous year relevant to the assessment year 2007-08, the A.O. disallowed the same since the payment made to LIC of India towards group gratuity scheme is not covered by section 36(1)(v), 40A(7)(b) & 40A(9) of the Act because the assessee has not satisfied the conditions. The argument of the assessee is that since the payments were made to LIC of India in Master policy scheme, the premiums contributed to the LIC of India is allowable deduction and relied on the decisions of coordinate bench of Hyderabad in the case of Capital IQ Information Systems (India) Pvt. Limited (supra). The Hon'ble ITAT Hyderabad Bench while deciding the issue on similar facts held as under:

8. *We have heard the arguments of the parties, perused the material on record and have gone through the orders of the authorities below. We find that the issue is squarely covered by the decision of the ITAT, Hyderabad in the case of M/s. Sri Krishna Drugs Ltd. Vs. Department of Income-tax in ITA No.2126/Hyd/2011 for AY 2007.08 dated 11.4.2012, where the JM was one of the party. The Tribunal in the said case held as follows:*

3. *The second ground raised by the Revenue is as under:*

"The learned CIT(A) erred in holding that unrecognised gratuity fund is allowable u/s. 37(1), when the case is hit by the provisions of section 40A(9) and especially when the assessee failed to comply with the provisions of section 36(1)(v)."

4. *After hearing both the sides, we find this issue is covered in favour of the assessee and against the Revenue in I.T.A. No. 198/Hyd/2011 in assessee's own case for A.Y. 2006-07 order dated 16.12.2011 wherein this Tribunal held as follows:*

"3. After hearing both the parties, we are of the opinion that similar issue came up for consideration in assessee's own case for assessment year 2002-03 in I.T.A. No. 349/Hyd/2006. The Tribunal decided the issue in favour of the assessee vide its order dated :15.2.2008 by holding as follows:

"4. We have considered rival submissions on either side and also perused the material available on record. Admittedly, the Group Gratuity Scheme was not recognised by the Commissioner of Income-tax. This fact is not in dispute. We have carefully gone through the provisions of sec. 36(1)(v) of the Income-tax Ac. Sec. 36(1)(v) reads as follows:

"36. (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28 -

(v) any sum paid by the assessee as an employer by way of contribution towards an approved gratuity fund created by him for the exclusive benefit of his employees under an irrevocable trust".

We have also carefully gone through the provisions of sec. 37 of the Income-tax Act. Sec. 37 provides for deduction of expenditure not being in the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenditure of the assessee, but laid out and expended wholly and exclusively for the purposes of the business or profession, while computing income chargeable to tax. The main contention of the Revenue is that under sec. 36(1)(v), the payment made by the assessee as employer could be allowed only in respect of approved gratuity fund. Since the Group Gratuity Scheme is not approved by the CIT, according to the Revenue, it cannot be allowed. However, the contention of the assessee is that in view of the judgement of the Madras High Court in the case of Premier Spinning Mills Ltd. (supra) and the judgement of the jurisdictional High Court in the case of Warner Hindustan Ltd. (supra), it has to be allowed.

5. We have carefully gone through the judgement of the jurisdictional High Court in the case of Warner Hindustan Ltd. (supra). In the case before the jurisdictional High Court, the Provident Fund was not approved by the CIT. The Andhra Pradesh High Court after referring to the judgement of the Bombay High Court in Tata Iron & Steel Co. Ltd. v. D. V. Bapat, ITO (1975) 101 ITR 292, and the judgement of the Supreme Court in Metal Box Company of India Ltd. vs. The Workmen (1969) 73 ITR 53, held that the amount paid towards an unapproved gratuity fund can be deducted under sec. 37 of the I.T. Act, though not under sec. 36(1)(v). In view of this judgment of the jurisdictional High Court, in our opinion, even if any payment is made to an unapproved gratuity fund, it has to be allowed under sec. 37. By respectfully following the binding judgement of Andhra

Pradesh High Court in the case of Warner Hindustan Ltd. (supra), we uphold the order of the CIT(A).

In view of the above discussion, we dismiss the ground taken by the Revenue."

5. In view of the above decision of this Tribunal, the ground raised by the Revenue is dismissed."

9. Since the issue under consideration is materially identical to the one decided by the ITAT in the case of M/s. Sri Krishna Drugs Ltd. (supra), respectfully following the same, we set aside the order of the CIT(A) and allow the ground of appeal of the assessee."

9. Similarly, ITAT Ahmedabad Bench in the case of Baroda Gujarat Grameen Bank cited (supra) held that the payment made to LIC of India is not a provision but it is actual expenditure claimed under the gratuity contribution. Hon'ble ITAT Ahmedabad Bench held that since assessee has not claimed the provision and claimed on actual basis, the expenditure is allowable deduction. For ready reference, we reproduce para Nos.4 & 5 of the order of the Hon'ble ITAT Ahmedabad Bench which reads as under:

*"4. We have considered the rival submissions and material available on record. Section 40A (7) of the IT Act provides that subject to provision of clause (b), no deduction shall be allowed in respect of any provision made by the assessee for payment of gratuity to his employer on their retirement or on termination of their employment for any reason. It is clear from the above provision that section 40A (7) of the IT Act would apply in respect of the provision only. However, in the case of the assessee, the assessee claimed deduction of the expenditure on account of actual expenses claimed under the head gratuity contribution. ITAT Ahmedabad Bench in the case of New Bharat Engineering Works (Jam) Ltd. (supra) held **"Disallowance under s. 40A(7) - Gratuity – Actual payment of funds to LIC and not mere provision - Not hit by s. 40A(7) - CIT vs Gujarat Machine Tools (ITA 666/A***

hd/1985) followed". Hon'ble Punjab & Haryana High Court in the case of CIT Vs Bitoni Lamps Ltd. 144 Taxman 33 held that "Section 40A(7) of the Income-tax Act, 1961 - Business disallowance - Gratuity - Assessment year 1979-80 - Assessee-company claimed deduction under section 40A(7) (b) (i) on account of gratuity actually deposited in fund created by it - Whether such a claim could only have been disallowed if it had been proved that gratuity, in respect of which said payment had been made, had not become payable during previous year - Held, yes - Whether in absence of such a case made out by revenue, Tribunal was right in holding that grant of approval of gratuity fund was not relevant for purpose of instant case as said deduction was not being claimed on account of any provision and amount of gratuity was an allowable deduction - Held, yes".

5. Considering the above aspects, we do not find any infirmity in the order of the learned CIT(A) in deleting the addition. There is no merit in the departmental appeal. Same is accordingly dismissed."

10. In the case of Verizon Data Services India Pvt. Ltd. (supra) the coordinate bench of Madras held that payment made to gratuity fund maintained with LIC has no control over the irrevocable trust created exclusively for the benefit of employees and deduction shall be allowed. The coordinate bench of Madras while deciding the appeal relied on the decision of Hon'ble Madras High court in the case of Textool India Pvt. Limited (supra) (civil appeal No.447 of 2003). In the instant case the assessee has made the payments to the LIC towards group gratuity scheme directly in approved schemes. The assessee has also obtained the policy in favour of the bank. The assessee has no control over the funds contributed to LIC towards the gratuity. The assessee is receiving

the gratuity payment directly from the LIC of India as per the scheme which is paid to the employee on happening of the event i.e. retirement or death or resignation. Therefore, the facts of the assessee's case are squarely covered by the decisions cited supra. The coordinate bench of Hyderabad while delivering the ruling relied on the decision of jurisdictional High Court in the case of Warner Hindustan Ltd. Since the facts are identical, respectfully following the view taken by the coordinate benches, we hold that the assessee is entitled for the deduction for payment of gratuity to LIC and accordingly, we set aside the order of the lower authorities and allow the appeal of the assessee.

11. This issue is involved for the assessment year 2007-08, 2008-09, 2009-10, 2010-11 & 2011-12 on identical facts. The appeal of the assessee on this ground for all the said assessment years stands allowed.

12. Ground No.4 is related to charging of interest u/s 234B & C of the Act. Charging of interest u/s 234B&C is mandatory and consequential in nature. No arguments are advanced by the Ld. A.R on this issue, therefore, this ground is dismissed.

13. In the result, appeal filed by the assessee for the assessment year 2007-08 is partly allowed.

ITA No.50/Vizag/2012 (Assessee appeal):

14. Ground Nos.1 & 8 are general in nature, which does not require specific adjudication.

15. Ground No.2 is related to the issue of notice u/s 148 of the Act. In this case assessment was completed u/s 143(3) of the Act on 15.9.2009. Subsequently, a survey u/s 133A of the Act was conducted in this case on 18.3.2010 and during the course of survey, the A.O. found that premium payments to LIC towards group gratuity for its employees was claimed as deduction. Since the group gratuity fund of the trust was not an approved fund or trust as required under section 40A(7)(b) of the Act the A.O., reopened the assessment and issued notice u/s 148 of the Act, which is challenged by the assessee. The Ld. CIT (A) upheld the issue of notice u/s 148 of the Act. The facts of the assessee's case are similar to that of in appeal No.49 of 2012 for A.Y. 2007-08 decided in this order against the assessee, except in the instant case the original assessment was completed u/s 143(3) of the Act. However, the assessment is reopened within 4 years after having received the information that the assessee had made the incorrect claim leading to escapement of income. The Ld. AR of the assessee has reiterated the submissions made in the earlier order. As per the detailed discussion

made in order No.49/Vizag/2012 discussed above, we uphold the issue of notice u/s 148 of the Act and assessee's appeal on this ground is dismissed.

16. Ground No.3 is related to disallowance made by the A.O. in respect of the gratuity premium paid or payable to LIC of India. This issue is discussed in detail and decided in favour of the assessee in appeal No.49 of 2012 for the A.Y. 2007-08 in this order. Accordingly, we hold that the group gratuity premium paid to LIC of India is an allowable deduction and allow the appeal of the assessee.

17. Ground No.4 is related to the disallowance u/s 40(a)(ia) of the Act made by the A.O. for a sum of ₹ 6,58,091/-. During the assessment proceedings, the A.O. found that the assessee had made the payment of ₹ 2,63,123/- for the purpose of advertisement expenses for which the assessee required to deduct the tax at source u/s 194C of the Act. Similarly, the assessee had made the payments of ₹ 3,96,568/- for which the assessee required to deduct TDS u/s 194J of the Act aggregating the payment of ₹ 6,58,691/-. Since the assessee failed to deduct the tax at source u/s 194C & 194J of the Act, the A.O. disallowed the said sums u/s 40(a)(ia) of the Act and added back to the income.

18. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Id. CIT(A) upheld the addition.

19. Aggrieved by the order of the CIT(A), the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld. A.R. relied on the grounds of appeal raised by the assessee. However, the A.R. did not establish that the payments in question, does not attract TDS.

20. On the other hand, the Id. A.R. relied on the orders of the lower authorities.

21. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. In this case, it is an undisputed fact that the payments made by the assessee towards advertisement and professional charges attract the TDS and assessee failed to deduct the tax at source. Therefore, we do not have any hesitation to uphold the order of the Ld. CIT(A) and the assessee's appeal on this ground is dismissed.

22. Ground Nos.5 & 6 are related to the addition of ₹ 12,52,25,946/- relating overdue interest on Non performing assets. This issue is involved for the assessment year 2008-09 & 2009-10. During the assessment

proceedings, the A.O. found that the assessee has debited a sum of ₹ 12,52,25,946/- towards overdue interest to P&L account in the balance sheet. On scrutiny of the details, the A.O. found that the said sum was related to the interest charged on non performing assets. The assessee has debited the interest to the debtors and credited to the P&L account. Subsequently, the assessee has reversed the income credited to the P&L account. The prudential norms of the RBI prescribe that the interest on NPA has to be accounted on realization basis. Since the assessee is following the mercantile system of accounting and the interest required to be charged on the basis of the accounting practice followed by the assessee, the A.O. viewed that the interest on NPA required to be taken as income and relied on the decisions of Hon'ble Supreme Court/High Court in the following cases and brought to tax:

1. Tuticorin Alkali Chemicals and Fertilizers Ltd. Vs. CIT 227 ITR 172 (SC)
2. 37 ITR 66 (SC) Indian Molaysis Company Private Ltd.
3. Shree Sajjan Mills Private Limited 156 ITR 585
4. Mysore Lamps 185 ITR 96 (KR)

23. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld. CIT(A) confirmed the addition made by the A.O. While confirming the addition of the A.O., the Ld. CIT(A) held that the debt in question for which the overdue interest is claimed, is not

the debt in which the recovery is doubtful and non recovery case. The CIT(A) further observed that out of the total interest credited to the P&L account, the Lions share of debts are standard assets but not the doubtful debts which require to be considered as a bad loan. The assessee had claimed the 24% of interest as overdue interest and as per the information furnished by the assessee, sub standard, doubtful and lost asset accounts for ₹ 1870.95 lakhs against the total debts of ₹ 62,888.20 lakhs which works out to 2.97% of which indicates that the claim made by the assessee for NPA interest is not commensurating with sub standard and doubtful assets. According to the CIT(A), the interest on NPA is not allowable deduction and the claim made by the assessee is excessive. According to the Ld. CIT(A) the section 45Q of RBI Act is not applicable to the assessee bank and it was in relation to NBFCs. The Ld. CIT(A) held that the assessee has to recognize the income on mercantile basis. The Ld.CIT(A) discussed the issue at length in his order and relied on catena of decisions and the same is summed up in para No.7.39 to 9 which reads as under:

7.39 In The light of analysis of the above three Supreme Court decisions it can be observed that the Hon'ble court was of the consistent view that benevolent circulars issued by the Board are not in contravention of the provisions of the act and hence are binding on the department. It can further be inferred that the court was of the consistent view that the circular dtd 06.10.1952 is binding on the Income Tax Authorities upto A.Y.1973-79 as the said circular could have only been withdrawn prospectively. Circular dated 09.10.1984 is binding on the Income Tax authorities from A.Yr.1979-80 onwards and the method stated in the circular should be followed in recognizing the interest on sticky loans. As already discussed, interest on sticky loans which are doubtful of recovery accrues to the assessee and the same has to be taxed as income on the assessee on accrual basis for three

years though there is non- payment of interest/principle. It is only from the 4th year that charging of interest on such loans can be done on receipt basis. This coupled with the stand of Hon'ble Supreme Court in the case of Southern Technologies that RBI guidelines are not binding on the department settles the issue with regard to accounting of interest on sticky advances.

From the above discussion it can be summed up that

(a) The loans given by the assessee in the present case have not become bad as the assessee itself classified the assets as standard assets;

(b) The assessee is reasonably certain of recovery of these loans and interest thereon and hence it debited the interest amount to the individual accounts and credited to the same to the P&L account;

(c) It is not the case of the assessee that the Interest did not accrue to it on these loans. The only contention is that the deferment/reversal of this interest portion is in accordance with the RBI norms /cooperative audit principles;

(d) Assessee could not establish that the loans have become bad and/or are not backed by sufficient assets to say that the interest on these loans did not accrue to the assessee;

(e) Assessee's reversal of interest income/deferement of interest income Is not an expenditure which is allowable either under 36(1)(vii)/36(i)(viiia)/37(1) of Income-tax Act, 1961;

(f) The ratio laid down by the Hon'ble Supreme Court in the case of Southern Technologies with regards to the theory of real income which states that computation of real Income is subject to the provisions of that act squarely applies to the assessee's case;

(g) RBI norms are not binding on Income-tax Department as per the unambiguous decision of Hon'ble Supreme Court in the case of Southern Technologies and also as held by the Hon'ble Delhi Special Bench in the case of New India Industries Limited Vs. ACIT 18 SOT 51.

(h) Overriding nature of section 45Q of RBI Act, it is restricted to the Non Banking Finance Companies only and It is not applicable to the cooperative banks.

(i) The Hon'ble Delhi High Court decision in the case of Vasisth Chay Vyapar Limited is distinguishable on facts as the matter on hand before the Hon'ble court was regarding a single debtor whose loan account has become bad. Further the Hon'ble High Court depended on the overriding nature of section 45Q of RBI act which is only specific to Non Banking Finance Companies (NBFCs) and hence would not applicable to the case on hand;

(j) Accounting standard AS-9 cannot be uniformly applied to each and every loan account without ascertaining as to whether the loan has become bad or not as such uniform application would render the mercantile system of accounting redundant.

(k) Even if it is considered that the loans have become bad, accounting of Interest thereon has to be done In accordance with circular No.201 dtd.06.10.1984 which clearly states that the interest on sticky loans has to be brought to tax on receipt basis only from 4th year of non-payment of these loans. This circular is presently in vogue and is binding on the departmental authorities as held b the Hon'ble Supreme Court in the case of Mercantile Bank and UCO Banks.

(l) Hon'ble Supreme Court in the case of UCO Bank Ltd (Supra) held that the Assessing Officer is right In taxing the interest on sticky loans as per Circular no.201dated 09.10.1984.

(m) In the case on hand there are no loans on which interest/principle is not realized for last three years and hence In view of Board circular dated 09.10.1984 the interest on these loans needs to be brought to tax in the year of its accrual and cannot be deferred to the year of actual realization.

In view of the above observations and in view of the binding decisions of Hon'ble Apex court in Southern Technologies, UCO Bank, State Bank of Travancore and Mercantile Bank I hold that the judgments of the Hon'ble Delhi High Court in the case of Vasisth Chay Vyapas Limited and the Hon'ble Jurisdictional Tribunal in the case of Durga Cooperative Urban Bank Limited are distinguishable on facts. Thus following the Board circular in this regard and Hon'ble Apex Court's decisions I hold that the AO is correct in bringing to tax the overdue interest and in disallowing the debit of overdue interest reserve. Hence I uphold the disallowance made by the AO.

9. Having held that interest on sticky loans is taxable, there are two consequential issues which are required to be adjudicated viz (i) credit for the interest income shown on receipt

basis from the earlier overdue interest and (ii) the credit for the overdue interest which will be received in the future years pertaining to the disallowance made during the rear. Regarding the first issue I hold that no separate set-off of the interest received from the earlier years needs to be given as there is no disallowance of overdue interest made in earlier assessment years. With regard to the second issue I direct the AO to give set-off in the subsequent assessment years to the income of overdue interest offered by the assessee on receipt basis as the said interest is already being taxed in the current year on accrual basis.

24. The CIT(A) distinguished the decision in the case of DCIT Vs. Durga Cooperative Urban Bank Limited in ITA No.511/Vizag/2010 decided by this Tribunal and held that the assessee has to prove that the interest is not recognizable due to uncertainty in collection of income and it is for the A.O. to accept the claim or not even in real income theory.

25. The CIT(A) held that the interest on loans which are doubtful of recovery accrues to the assessee and the same has to be taxed as income of the assessee on accrual basis for 3 years though there is non-payment of interest or principle. It is only from 4th year that the interest on such loans can be on receipt basis. Accordingly, the Ld. CIT(A) held that the disallowance made by the A.O. relating to overdue interest is upheld and dismissed the appeal of the assessee.

26. Aggrieved by the order of the CIT(A), the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld. A.R. argued that the assessee is a cooperative bank and it is following the prudential norms issued by the RBI for recognizing the income. As per the prudential norms of RBI, the interest on non-performing assets is

recognized on actual receipt basis but not on accrual basis. It is also argued by the Ld. A.R. that it is a practice of the bank approved by the RBI in the prudential norms to debit the interest to individual debtor and de-recognise the income accordingly. The assessee has accounted the interest subsequently on receipt basis and offered the same to income. The Ld AR further submitted that he assessee is following the same system of accounting for the last so many years which has been accepted by the department. The Ld. A.R. relied on the orders of the Hon'ble Gujarat High Court in the case of Principal Commissioner of Income Tax Vs. Sri Mahila Sewa Sahakari Bank Ltd. (2016) 140 DTR (Guj) 113, the head note of the above case reads as under:

26.1 We have heard both the parties and perused the materials available on record. In the case of Sri Mahila Sewa Sahakari Bank Ltd. (supra), Hon'ble High Court of Gujarat held the issue in favour of the assessee. The head note of the above case reads as under:

Income-Accrual – Interest on non-performing assets of co-operative bank- In so far as the computation of taxability is concerned, the same is solely governed by the provisions of the IT Act and the accounting principles have no role to play – However, recognition of income stands on a different footing-Inssofar as income recognition is concerned, it would be the RBI Directions which would prevail in view of the provisions of s. 45Q of the RBI Act and s. 145 would have no role to play-Hence, the AO has to follow the RBI Directions-In view of the mandate of the RBI Guidelines the assessee cannot recognise income from non-performing assets on accrual basis but can book such income only when it is actually received – Until a circular is revoked, the same continues to be in force and the Circular F.No.201/21/84-ITA-II, dt.9th Oct.1984 having been issued to mitigate the hardships caused to the class of assesseees covered by the circular, such assesseees would be entitled to the benefit thereof-Merely because by virtue of the provisions of s. 43D, a certain class of assesseees is given benefit under the provisions of the Act would not mean that the same would override the circular-Tribunal was therefore right in laws and on facts in holding that interest on non performing assets is not taxable on accrual basis looking to the guidelines of the RBI.

Hon'ble High court with regard to recognition of income in para No.19 to 23 held as under:

19. Section 45Q of the RBI Act, which is relevant for the present purpose, reads thus:

"45-Q. Chapter III-B to override other laws.—The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

20. Section 45Q finds place in Chapter IIIB of the RBI Act. Thus, the provisions of Chapter IIIB of the RBI Act have an overriding effect qua other enactments to the extent the same are inconsistent with the provisions contained therein. In order to reflect a bank's actual financial health in its balance sheet, the Reserve Bank has introduced prudential norms for income recognition, asset classification and provisioning for advances portfolio of the co-operative banks. The guidelines provided thereunder are mandatory and it is incumbent upon all co-operative banks to follow the same. Insofar as income recognition is concerned, clause 4.1.1 of the circular provides that the policy of income recognition has to be objective and based on the record of recovery. Income from non-performing assets (NPA) is not recognised on accrual basis but is booked as income only when it is actually received. Therefore, banks should not take to income account interest on non-performing assets on accrual basis. Thus, in view of the mandate of the RBI Guidelines the assessee cannot recognise income from non-performing assets on accrual basis but can book such income only when it is actually received. Thus, this is a case where at the threshold, the assessee, in view of the RBI Guidelines, cannot recognise income from NPA on accrual basis. This is, therefore, a case pertaining to recognition of income and not computation of the income of the assessee.

21. The Supreme Court in Southern Technologies Ltd. (supra) has held that the 1998 Directions are only disclosure norms and have nothing to do with computation of total income under the IT Act or with the accounting treatment. The 1998 Directions only lay down the manner of presentation of NPA provision in the balance sheet of an NBFC. The court has referred to the deviations between the RBI Directions and the Companies Act as follows:

'42. Broadly, there are three deviations:

- (i) in the matter of presentation of financial statements under Schedule VI to the Companies Act;*
- (ii) in not recognising the "income" under the mercantile system of accounting and its insistence to follow cash system with respect to assets classified as NPA as per its norms;*
- (iii) in creating a provision for all NPAs summarily as against creating a provision only when the debt is doubtful of recovery under the norms of the accounting standards issued by the Institute of Chartered Accountants of India.*

These deviations prevail over certain provisions of the Companies Act, 1956 to protect the depositors in the context of income recognition and presentation of the assets and provisions created against them. Thus, the P&L account prepared by NBFC in terms of the RBI Directions, 1998 does not recognise "income from NPA" and, therefore, directs a provision to be made in that regard and hence an "add back". It is important to note that "add back" is there only in the case of provisions." [Emphasis supplied]

22. Therefore, in terms of the above decision, where an assessee makes provision for NPA and seeks deduction of such amount under section 36(1)(vii) or section 37 of the Act, then in the computation of income, the RBI Guidelines would have no role to play, and hence, an add back. Insofar as income recognition is concerned, the Supreme Court has held thus:

"Applicability of Section 145

57. At the outset, we may state that in essence the RBI Directions, 1998 are prudential/provisioning norms issued by RBI under Chapter III-B of the RBI Act, 1934. These norms deal essentially with income recognition. They force the NBFCs to disclose the amount of NPA in their financial accounts. They force the NBFCs to reflect "true and correct" profits. By virtue of Section 45-Q, an overriding effect is given to the RBI Directions, 1998 vis-à-vis "income recognition" principles in the Companies Act, 1956. These Directions constitute a code by itself. However, these RBI Directions, 1998 and the IT Act operate in different areas. These RBI Directions, 1998 have nothing to do with computation of taxable income. These Directions cannot overrule the "permissible deductions" or "their exclusion" under the IT Act. The inconsistency between these Directions and the Companies Act is only in the matter of income recognition and presentation of financial statements. The accounting policies adopted by an NBFC cannot determine the taxable income. It is well settled that the accounting policies followed by a company can be changed unless the AO comes to the conclusion that such change would result in understatement of profits. However, here is the case where the AO has to follow the RBI Directions, 1998 in view of Section 45-Q of the RBI Act. Hence, as far as income recognition is concerned, Section 145 of the IT Act has no role to play in the present dispute."

Thus, insofar as income recognition is concerned, the court has held that even the Assessing Officer has to follow the RBI Directions, 1998 in view of section 45Q of the RBI Act and that as far as income recognition is concerned, section 145 of the Income-tax Act, has not role to play.

23. In the light of the above discussion what emerges is that while determining the tax liability of an assessee, two factors would come into play. Firstly, the recognition of income in terms of the recognised accounting principles and after such income is recognised, the computation thereof, in terms of the provisions of the Income-tax Act, 1961. Insofar as the computation of taxability is concerned, the same is solely governed by the provisions of the Income-tax Act and the accounting principles have no role to play. However, recognition of income stands on a different footing. Insofar as income recognition is concerned, it would be the RBI Directions which would prevail in view of the provisions of section 45Q of the RBI Act and section 145 would have no role to play. Hence, the Assessing Officer has to follow the RBI Directions.

Hon'ble Gujarat High Court has considered the decision of Hon'ble Supreme Court in the case of Southern Technologies which was relied by the Ld. CIT(A) and held that since section 45Q of the RBI Act shall have overriding effect over the income recognition, followed by the

cooperative banks also the A.O. has to follow the RBI directions. In para No.14, the Hon'ble High Court has considered the issue with regard to the method of accounting applied for recognizing the income and held that the method of accounting followed by the assessee is in accordance with the accounting practice. The assessee also relied on the decision of Hon'ble High Court of Bombay in the case of CIT Vs. Deogiri Nagari Sahakari Bank Ltd. (2015) 128 DTR (Bom) 0209 head notes, which reads as under:

*Income-Accrual-Interest on sticky advances-Assessee being a co-operative bank also governed by the RBI and thus the directions with regard to the prudential norms issued by the RBI are equally applicable to the co-operative banks-Tribunal was therefore justified in deleting addition on account of interest on sticky advances – UCO Bank Vs. CIT(1999) 154 CTR (SC) 88:(1999)4SCC 599 and Mercantile Bank Ltd. Vs. CIT (2006) 202 CTR (SC) 457 : (2006) 5 SCC 221 **followed.***

27. This Tribunal in the case of Gandhi Co-operative Urban Bank Limited in ITA No.469/Vizag/2012 dated 30.11.2015 has considered the similar issue and allowed the interest on non-performing assets. The relevant extract of this Tribunal in para No.7 to 10 is extracted as under:

7. We have gone through the reason given by the CIT(A) as well as the case laws relied upon by the assessee. The A.R. of the assessee at the time of hearing submitted that the issue is squarely covered by the decision of ITAT Visakhapatnam bench in the case of DCIT Vs. Durga Co-operative Urban Bank Ltd. (supra). We have examined the case law referred by the A.R. in the light of the facts of the present case and find that the ITAT, Visakhapatnam bench in the above mentioned case on similar facts held the issue in favour of the assessee. The relevant portion is reproduced as under:

"10. Turning to the facts of the case before us, the assessee herein is a

cooperative bank and it is not in dispute that it is also governed by the Reserve Bank of India. Hence the directions with regard to the prudential norms issued by the Reserve Bank of India are equally applicable to the assessee as it is applicable to the companies registered under the Companies Act. The Hon'ble Supreme Court has held in the case of Southern Technologies Ltd (Supra), that the provision of 45Q of Reserve Bank of India Act has an overriding effect vis-à-vis income recognition principle under the Companies Act. Hence Sec.45 Q of the RBI Act shall have overriding effect over the income recognition principle followed by cooperative banks also. Hence the Assessing Officer has to follow the Reserve Bank of India directions 1998, as held by the Hon'ble Supreme Court.

10.1 Based on the prudential norms, the assessee herein did not admit the interest relatable to NPA advances in its total income. The Hon'ble Delhi High Court in the case of Vasisth Chay Vyapar Ltd. (Supra) has held that the interest on NPA assets cannot be said to have accrued to the assessee. In this regard, the following observations of Hon'ble Delhi High Court in the above cited case are relevant:

"What to talk of interest, even the principle amount itself had become doubtful to recover. In this scenario it was legitimate move to infer that interest income thereupon has not "accrued".

The said decision of the Hon'ble Delhi High Court is equally applicable to the issue in our hands. Accordingly we do not find any infirmity with the decision of the learned CIT (A) in holding that the interest income relatable on NPA advances did not accrue to the assessee. Accordingly we uphold his order."

8. An identical issue came up for consideration before the ITAT Pune Bench in the case of Vaidyanath Urban Co-op. Bank Ltd. Vs. CIT in ITA No.413/PN/2014 dated 31.3.2015, wherein the ITAT under similar set of facts held as under:

"10. Turning to the facts of the case before us, the assessee herein is a cooperative bank and it is not in dispute that it is also governed by the Reserve Bank of India. Hence the directions with regard to the prudential norms issued by the Reserve Bank of India are equally applicable to the assessee as it is applicable to the companies registered under the Companies Act. The Hon'ble Supreme Court has held in the case of Southern Technologies Ltd (Supra), that the provision of 45Q of Reserve Bank of India Act has an overriding effect vis-à-vis income recognition principle under the Companies Act. Hence Sec.45 Q of the RBI Act shall have overriding effect over the income recognition principle followed by cooperative banks also. Hence the Assessing Officer has to follow the Reserve Bank of India directions 1998, as held by the Hon'ble Supreme Court.

Based on the prudential norms, the assessee herein did not admit the interest relatable to NPA advances in its total income. The Hon'ble Delhi High Court in the case of Vasisht Chay Vyapar Ltd (Supra) has held that the interest on NPA assets cannot be said to have accrued to the assessee. In this regard, the following observations of Hon'ble Delhi High Court in the above cited case are relevant:

What to talk of interest, even the principle amount itself had become doubtful to recover. In this scenario it was legitimate move to infer that interest income thereupon has not "accrued".

The said decision of the Hon'ble Delhi High Court is equally applicable to the issue in our hands. Accordingly we do not find any infirmity with the decision of the learned CIT (A) in holding that the interest income relatable on NPA advances did not accrue to the assessee. Accordingly we uphold his order."

Following the aforesaid discussion, which has been rendered on an identical issue under similar circumstances, we find no reasons to interfere with the ultimate conclusion of the CIT(A) in deleting the impugned addition relating to interest income in respect of NPAs."

9. *The Hon'ble Supreme Court of India, in the case of UCO Bank Vs. CIT had an occasion to consider the issue. The Hon'ble Supreme Court, while dealing with similar issue held as under:*

"The method of accounting which is followed by the assessee-bank is mercantile system of accounting. However, the assessee considers income by way of interest pertaining to doubtful loans as not real income in the year in which it accrues, but only when it is realised. A mixed method of accounting is thus followed by the assessee-bank. This method of accounting adopted by the assessee is in accordance with accounting practice. Up to the asst. yr. 1978-79, the CBDT's circular of 6th Oct., 1952 would be applicable; while from the asst. yr. 1979-80, the CBDT's circular of 9th Oct., 1984 is made applicable. In the present case, the assessment was made on the basis of the CBDT's circular of 9th Oct., 1984, since the assessment pertains to asst. yr. 1981-82 to which the circular of 9th Oct., 1984, is

applicable. Under sub-s. (2) of s. 119, without prejudice to the generality of the Board's power set out in sub-s. (1), a specific power is given to the Board for the purpose of proper and efficient management of the work of assessment and collection of revenue to issue from time to time general or special orders in respect of any class of incomes or class of cases setting forth directions or instructions, not being prejudicial to assessees, as the guidelines, principles or procedures to be followed in the work relating to assessment. Such instructions may be by way of relaxation of any of the provisions of the sections specified there or otherwise. The Board thus has power, inter al/a, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under s. 119 which are binding on the authorities in the administration of the Act. Under s. 119(2)(a), however, the circulars as contemplated therein cannot be adverse to the assessee. Thus, the authority which wields the power for its own advantage under the Act is given the right to forego the advantage when required to wield it in a manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in s. 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorised as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities. If the Board has considered it necessary to lay down a general test for deciding what is a doubtful debt, and directed that all ITOs should treat such amounts as not forming part of the income of the assessee until realized, this direction by way of a circular cannot be considered as travelling beyond the powers of the Board under s. 119. Such a circular is binding under s. 119. The circular of 9th Oct., 1984, therefore, provides a test for recognising whether a claim for interest can be treated as a doubtful claim unlikely to be recovered or not."

10. *Considering the facts and circumstances of the case and also applying the ratios of the judgements discussed above, we are of the view that interest on a loan whose recovery is doubtful and which has not been recovered by the assessee-bank, but has been kept in a suspense account and has not been brought to the P&L a/c of the assessee, could not be included in the income of the assessee. The CIT(A) rightly deleted the additions towards interest on NPAs. There is no error or infirmity in the order of CIT(A). Accordingly, we direct the A.O. to delete the additions made towards interest on NPAs.*

28. Since the facts are identical, respectfully following the view taken by the decision of Hon'ble Gujarat High Court in the case of Sri Mahila Sewa Sahakari Bank Limited (supra) and the other decisions cited supra, we hold that the interest on NPA is to be recognized on actual receipt basis but not on accrual basis. Accordingly, we set aside the orders of the lower authorities and delete the addition. The appeal of the assessee on this ground is allowed.

29. Ground No.7 is with regard to the charging interest u/s 234B&C which is mandatory in nature and the Ld. A.R. has not made any argument in this regard Accordingly, the assessee's appeal on this ground is dismissed.

30. In the result, the appeal of the assessee for the A.Y. 2008-09 is partly allowed.

ITA No.78/Vizag/2012 (Revenue appeal):

31. When this appeal is taken up for hearing, the Ld. Counsel for the assessee has submitted that the tax effect involved in this appeal is below Rs.10 lakhs. As per the circular No.21/2015 dated 10.12.2015 of CBDT being retrospective in nature, the appeal filed by the revenue is not maintainable. The Ld. D.R. has not raised any objection. In view of

the above, the appeal filed by the revenue is not maintainable. Hence, the same is dismissed.

32. In the result, the appeal filed by the revenue in ITA No.78/Vizag/2012 is dismissed.

ITA No.476/Vizag/2012: (Revenue appeal)

33. Ground Nos.1 & 9 are general in nature, which do not require specific adjudication.

34. Ground No.2 is related to the additional evidence placed by the assessee before the CIT(A). The revenue has filed an appeal stating that the assessee has filed additional evidence before the CIT(A) and the Ld. CIT(A) has neither called for any remand report nor given any opportunity to the assessing officer to make his submissions. However, during the appeal hearing, the Ld. D.R. did not furnish the details of additional evidence furnished by the assessee before the first appellate authority. Therefore, this ground of appeal is dismissed.

35. Ground Nos.3 & 4 are related to the payments made to LIC of India towards the gratuity. This issue has been decided by us in appeal Nos.49/Vizag/2012 for the assessment year 2007-08 in favour of

the assessee in this order. Since the facts of the case are the same, this ground of the revenue is dismissed.

36. Ground Nos.5, 6 & 7 are related to the realization of overdue interest of ₹ 2,76,82,103/- and the overdue interest of ₹ 1,20,00,975/-. The Ld CIT(A) has directed the A.O. to exempt an amount of ₹ 1,56,81,135/- out of the OD interest realized at ₹ 2,76,82,110/-. While deciding the assessee's appeal for assessment year 2009-10 of the assessee we have held that OD interest relating to NPA is to be recognized on actual receipt basis. Since the income is to be recognized on actual receipt basis the interest realized on NPA required to be taxed in the year under consideration. Accordingly, we direct the A.O. to allow the NPA interest as a deduction following prudential norms of the RBI and tax the interest realized on NPA on actual basis. The A.O. is directed to verify and allow the deduction. Ground Nos.5 to 7 are allowed for statistical purposes.

37. Ground No.8 is related to the prior period expenses of ₹ 31,95,707/-. During the assessment proceedings, the A.O. found from the audit report that the assessee has claimed a sum of ₹ 31,95,707/- towards the prior period expenses. Out of which a sum of ₹ 10,39,506/-

was related to the assessment year 2006-07 and Rs.21,56,201/- related to the assessment year 2007-08. The A.O. disallowed above sum as not allowable expenditure in the year under consideration.

38. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Id. CIT(A) deleted the addition observing that the actual payment was made during the year 2010-11 and the assessee has not claimed the above sum as expenditure in the year under consideration. For ready reference, we reproduce the relevant extract of the CIT(A) order in para Nos.7.1 to 7.2 as under:

7.1 With regard to third ground on disallowance of prior period expenses amounting to Rs.31,95,707/- the appellant had submitted its explanation as under:-

"The appellant contends that the entire amount of ₹ 31,95,707/- was actually paid on 21.8.2009 (relevant for A.Y. 2010-11) and was therefore not a prior period item for the current year. In fact the appellant had not at all debited the said amount to the profit and loss account during the year under dispute. It was debited during the financial year 2009-10 and was claimed in the next year only. However, the statutory auditors have inadvertently mentioned about the same in their Tax Audit report in Form no 3 CD and the Assessing Officer has disallowed the same basing on such observation in Form 3CD. In fact it was not claimed during the year under reference. It is, therefore, prayed that the same may kindly be directed to be allowed."

7.2. I have considered the submissions made by the appellant. The actual payment was made during the financial year relevant for the A.Y.2010-11 as per the vouchers produced by the assessee. It was claimed that there was no claim of expenditure during the year under dispute and the disallowance was made based on the observations in form No. 3CD report, which is stated to be an inadvertent mistake. Accordingly, I direct the Assessing Officer to delete the addition made in this regard.

Since the expenditure was not debited in the year under consideration, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue on this ground.

39. In the result, the appeal filed by the revenue is partly allowed for statistical purposes.

Cross Objection No.33/Vizag/2013 (476/Vizag/2012)

40. The assessee has filed the cross objection against the appeal of the revenue in ITA No.476/Vizag/2012 for the A.Y. 2009-10 raising five grounds covering two issues. First issue is addition of Rs.31,95,707/- and the second issue is Overdue interest of Rs.1,20,00,975/-. Both the issues are adjudicated by us in revenue's appeal in this order. Hence we consider it is not necessary to adjudicate the CO separately. Accordingly the cross objections of the assessee are partly allowed.

ITA 524/Vizag/2014 (Assessee appeal):

41. This appeal is filed by the assessee on the addition of ₹ 1,25,65,587/- relating to the disallowance of premium payments made to LIC Group Gratuity Scheme. This issue has already been adjudicated above in ITA No.49/Vizag/2012 in favour of the assessee in this order. In view of the above findings, the appeal of the assessee is allowed.

ITA 269/Vizag/2015: (Revenue appeal)

42. This appeal raised by the revenue is on deletion addition of ₹ 1,55,00,000/- by the Ld.CIT(A) relating to the premium paid in respect of gratuity to the employees of the bank for not satisfying the conditions laid down u/s 36(1)(v) and 40A(7)(b) of the Act. This issue has already been adjudicated in this order in ITA No.49/Vizag/2012 in favour of the assessee. Hence, the appeal of the revenue on this ground is dismissed.

Cross Objection No.29/Vizag/2015 (ITA 269/Vizag/2015)

43. This ground of appeal raised by the assessee is in support of Ld. CIT(A)'s order in directing the assessing officer to allow the payments of ₹ 1,55,00,000/- made by the assessee towards the LIC staff gratuity fund. This issue has been adjudicated by us in revenue's appeal in this order in favour of the assessee. Hence we consider it is not necessary to adjudicate the CO separately. In view of the above findings, the appeal of the assessee on this ground stands allowed.

44. Ground No.2 is related to the disallowance of amortization expenditure. The A.O. disallowed a sum of ₹ 2,82,989/- the expenditure debited to P&L account holding that the sum as capital expenditure.

45. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld.CIT(A) upheld the same. During the appeal hearing, the Ld. A.R. argued that the expenditure was relatable to the internal furnishings in the leased premises and the A.O. has neither allowed depreciation nor allowed the amortization of expenditure. Therefore, requested to allow the amortization of expenditure or the depreciation. However no details were furnished either before the A.O. or before the CIT(A). During the appeal hearing also, the assessee has not furnished any details. Therefore, we set aside this issue to the file of the A.O. to examine the issue with regard to the nature of expenditure and allow the depreciation as per law.

46. Ground No.3 is related to the addition u/s 40(a)(ia) of the Act. During the appeal hearing, the A.O. found that the assessee had paid interest of ₹ 13,50,831/- to the Income Tax Department for different defaults. Therefore, the A.O. disallowed the interest claimed by the assessee paid to the Income tax department. The assessee went on appeal before the CIT(A) and the CIT(A) upheld the addition made by the A.O.

47. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities

below. On verification, the disallowance made by the A.O., the payment is related to the Income Tax payment relating to interest on income tax, which is not allowable expenditure. Therefore, we do not find any infirmity in the order of the CIT(A) and the same is upheld.

48. In the result, the C.O. filed by the assessee is partly allowed.

ITA No.515/Vizag/2014 (Assessee appeal):

49. This appeal is related to levy of surcharge on fringe benefit tax liability for the assessment year 2007-08. The A.O. levied surcharge on fringe benefit tax payable by the assessee.

50. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and CIT(A) confirmed the order of the A.O. and dismissed the appeal of the assessee.

51. Aggrieved by the order of the CIT(A), the assessee is in appeal before us. During the appeal hearing, the Ld. A.R. argued that the surcharge on fringe benefit is not leviable in the case of cooperative societies. The assessee being a cooperative society as per circular no.3 of 2008 dated 12.3.2008 no surcharge is leviable as per para 3.3.7 of the said circular and the Ld. A.R. has taken our attention to said paragraph of the circular which reads as under:

3.3-7Co-operative societies – In the case of every co-operative society, the rates of Income-tax have been specified in Paragraph B of Part III of the First Schedule to the Act. The rates are as follows:

<i>Income chargeable to tax</i>	<i>Rate</i>
<i>Up to Rs.10,000</i>	<i>10%</i>
<i>Rs.10,0001 – Rs.20,000</i>	<i>20%</i>
<i>Exceeding Rs.20,000</i>	<i>30%</i>

No surcharge shall be levied. Education Cess on Income-tax and Secondary and Higher Education Cess on Income-tax shall be levied at the rate of two per cent and one per cent, respectively of the amount of tax computed. No marginal relief shall be available in respect of Education Cess.

52. Ld. D.R. could not bring any other material to controvert the submissions made by the Ld. A.R. Therefore, we hold that the surcharge is not leviable on fringe benefit tax. Accordingly, we set aside the order of the lower authorities and allow the appeal of the assessee.

53. In the result, the appeals filed by the assessee in ITA No.49 & 50/Vizag/2012 for the A.Ys. 2007-08 & 2008-09 are partly allowed. The cross objection filed by the assessee in C.O. No.33/Vizag/2013 for the A.Y. 2009-10 is partly allowed. The assessee's appeal in ITA No.524/Vizag/2014 for the A.Y. 2010-11 is allowed. The cross objection filed by the assessee in C.O. No.29/Vizag/2015 for the A.Y. 2011-12 is partly allowed. Assessee's appeal in ITA No.515/Vizag/2014 for the A.Y. 2007-08 is allowed. The appeals filed by the revenue in ITA No.78/Vizag/2012 for the A.Y. 2008-09 is dismissed, ITA

No.476/Vizag/2012 for the A.Y. 2009-10 is partly allowed for statistical purposes and ITA No.269/Vizag/2015 for the A.Y. 2011-12 is dismissed.

The above order was pronounced in the open court on 25th Jan'18.

Sd/-

(वी. दुर्गाराव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 25.01.2018

VG/SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – The District Co-Operative Central Bank Ltd., Near Over Bridge, N.R. Pet, Eluru
2. प्रत्यार्थी / The Respondent (1) – The ITO, Ward-2, Eluru.
3. प्रत्यार्थी / The Respondent (2) – The ACIT, Circle-2(1), Visakhapatnam
4. प्रत्यार्थी / The Respondent (3) – The ACIT, Circle-(1), Eluru
5. प्रत्यार्थी / The Respondent (4) – The ACIT, Circle-3(1), Eluru
6. आयकर आयुक्त / The CIT, Rajahmundry
7. आयकर आयुक्त (अपील) / The CIT (A), Visakhapatnam
8. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
9. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM