

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER**

ITA No. 1595/Bang/2016
Assessment year : 2012-13

Asst. Commissioner of Income Tax, Circle-1, Vijayapur.	Vs.	M/s. The Deccan Urban Co-op Bank Ltd., M. G. Road, Vijayapur. PAN : AAAAT 8050 A
APPELLANT		RESPONDENT

Revenue by	:	Dr. P. V. Pradeep Kumar, Addl. CIT
Assessee by	:	None

Date of hearing	:	20.02.2018
Date of Pronouncement	:	28.02.2018

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the Revenue against the order of the CIT(A), *inter alia*, on following grounds:

(1) The CIT(A) erred in law and on facts, in deleting the addition of Rs.53,23,125/- 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 TaxCorp (DT) 49593*, ignoring the provisions of section 43D of the I.T. Act, 1961?

(2) On the facts and in law the CIT(A) erred 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's but do not provide such benefit to the assessee bank and as such, the provisions of section 43D amended w.e.f. 1.4.2000 overruled the Court decisions/ Circulars?

2. This appeal came up for hearing on 28.02.2018 but none appeared on behalf of the assessee. We however examined the order of the CIT(A) on the grounds of appeal raised before us and we find that the appeal can be disposed even in the absence of the assessee as the impugned issue is squarely covered by the judgment of the Hon'ble High Court in the case of Canfin Homes Ltd (2011) 5 TaxCorp (DT) 49593. Accordingly, the Revenue was heard and the learned DR placed the reliance upon the order of the AO.

3. Having carefully examined the orders of the lower authorities in the light of Revenue's contentions, we find that the impugned issue relate to the disallowance of interest of Rs.53,23,125/- on non performing assets, which is squarely covered by the judgment of the Hon'ble High Court in the case of Canfin Homes Ltd (supra). While adjudicating the issue, the CIT(A) followed the aforesaid judgment. The relevant observation of the CIT(A) is extracted hereunder for the sake of reference:

"9.3. The substantial question of law on the issue to be decided in this appeal is "Whether the Assessing Officer was right in law and on facts in making the additions on account of accrued interest on loans which are classified as Nonperforming Assets?"

*9.4. The Hon'ble jurisdictional High Court of Karnataka in the case of **Canfin Homes Ltd., (2011) 201 Taxman 273/13 taxmann.com 43**, mentioned supra, following the judgment of the Apex Court in the case of UCO Bank Vs CIT, 237 ITR 889 (1999) has held as under:*

"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.”

9.5 In the recent decision dtd:16/12/2015 the Hon’ble High Court of Karnataka, Dharwad Bench in the case of *The Bilagi sahakari Bank Niyamit, Bilagi Vide ITA No.100090 of 2015 dismissed the appeal of the revenue following its earlier judgment in the case of Commissioner of Income-tax, Central Circle, Bangalore Vs Canfin Homes Ltd., (2011) 201 TAXMAN 273/13 taxmann.com 43(Karnataka). The substantial question of law put before the High Court was:*

“Whether the Tribunal is right in law and on facts in deleting the Additions on account of accrued interest on loans which are classified as “Nonperforming Assets” relying on the Karnataka High Court decision in Canfin Homes Ltd., (2011) 5 Tax Corp (DT) 49593, ignoring the provisions of section 43D of the I.T. Act, 1961 amended w.e.f. 01.04.2000?”

9.6 *The Hon’ble High Court of Karnataka has answered the substantial question of law in favour of the appellant while dismissing the appeal filed by the revenue.*

9.7 *The facts of the appellant Co-operative Bank are similar to the facts of the cases discussed above before the Hon’ble High Court of Karnataka and the issue is identical. Hence, following the decision of jurisdictional High Court, the addition of Rs.53,23,125/- made on this account is deleted as the contention of the Assessing Officer that the interest on Non-performing assets, is to be treated an income of the appellant Co-operative Bank as it adopted a mercantile system of accounting and the Co-operative Bank is not a prescribed entity under section 43D, is unsustainable.”*

4. Since the impugned issue is squarely covered by the aforesaid judgment of Hon’ble jurisdictional High Court, we find no merit in the Revenue’s appeal. Accordingly, we dismiss the same.

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

Pronounced in the open court on 28th February, 2018.

Sd/-
(JASON P BOAZ)
Accountant Member

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Bangalore.

Dated: 28th February, 2018.

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Copy to:

1. Appellants
2. Respondent
3. CIT
4. Guard file

By order

Sr. Private Secretary,
ITAT, Bangalore.