आयकर अपीलीय 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.No.75/Vizag/2016**

(निर्धारण वर्ष / Assessment Year: 2008-09)

ACIT, Circle-1(1) Guntur	M/s. The Guntur Co-operative Central Bank Tenali [PAN No.AAATT6101H]
(**अपीलार्थी** / Appellant)	(**प्रत्यार्थी** / Respondent)

C.O. No.36/Vizag/2016

आयकर अपील सं./I.T.A.No.75/Vizag/2016

(निर्धारण वर्ष / Assessment Year: 2008-09)

M/s. The Guntur Co-operative Central Bank Tenali	ACIT, Circle-1(1) Guntur
(**अपीलार्थी** / Appellant)	(**प्रत्यार्थी** / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Deba Kumar Sonowal, DR
प्रत्यार्थी की ओर से / Respondent by	:	Shri G.V.N. Hari, AR
सुनवाई की तारीख / Date of hearing	:	02.04.2018
घोषणा की तारीख / Date of Pronouncement	:	06.04.2018

आदेश / O R D E R

PER D.S. SUNDER SINGH, Accountant Member:

This appeal filed by the revenue is directed against order of the Commissioner of Income Tax (Appeals)-1, {CIT(A)}, Guntur vide ITA No.97/CIT(A)-1/GNT/2014-15 dated 30.9.2015 for the assessment year 2008-09. The cross objection filed by the assessee is in support of the order passed by the CIT(A).

2. First issue in this appeal is deletion of addition made by the A.O. on account of provision for overdue interest. In this case, the assessment was completed u/s 143(3) of the Income Tax Act, 1961 (hereinafter called as 'the Act') on 12.11.2002 determining the total income of ₹ 1,89,85,700/-. Subsequently, the Commissioner of Income Tax(CIT), Guntur has taken up the case for revision u/s 263 of the Act and set aside the order passed u/s 143(3) dated 18/11/2010 of the Act with a direction to examine the taxability of provision for overdue interest. The A.O. given effect to the order of the Ld. CIT(A) by order u/s 143(3) r.w.s. 263 of the Act by an order dated 27.3.2014 and in the cited order, the A.O. made the addition of ₹ 24,49,34,000/- relating to the provision for overdue interest.

3. The assessee debited a sum of ₹ 24,49,34,000/- towards provision for overdue interest. The overdue interest is related to the interest accrued on loans and advances given by the assessee bank which became Non performing Asset(NPA). The assessee credited the interest to profit & loss account as income and the reversed the same and debited to the profit & loss account as provision for overdue interest, as the interest was not realized from the debtors who became defaulters. In effect, the assessee has not offered the interest income accrued or Non-performance assets (NPA) in the year under consideration. The A.O. was of the view that as per the system of accounting followed by the assessee, it has rightly offered the overdue interest as income by crediting to the P&L account. The A.O. was of the view that it is incorrect to debit the provision for over due interest to profit and loss account and the same is not allowable within the scope of section 36 or 37 of the Act, hence, disallowed and added back to the income.

4. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld. CIT(A) allowed the appeal of the assessee following the real income theory and the decision of Hon'ble Supreme Court in the case of UCO bank Vs. CIT 237 ITR 889. The Ld. CIT(A) held that concept of real income is certainly applicable in judging whether there has been income or not, whether the income is really

accrued or arisen to the assessee must be in the light of the reality of situation. The tax must be on the real income but not on the notional income. Hence, mere making credit to the overdue interest to the P&L account as income on overdue interest based on debt waiver scheme announced by the Government of India and adding the overdue interest to the notional income is not at all justifiable because no income has been received on date and tax must be on the real income but not on the notional income. Accordingly, the Ld. CIT(A) deleted the addition made by the A.O., hence, the revenue filed appeal before this Tribunal.

5. During the appeal hearing, the Ld. A.R. argued that assessee is a Co-operative Bank following the prudential norms issued by the Reserve Bank of India (RBI) for recognizing the income. As per the prudential norms of RBI, the interest on NPA is recognised on actual receipt basis but not on accrual basis. The Ld. A.R. argued that it is the practice of the bank and approved by the RBI in the prudential norms to debit interest to the individual debtor and derecognize the income accordingly. The assessee further stated that it has accounted the interest subsequently on receipt basis and offered the same to the income. The Ld. A.R. also submitted that the assessee is following the same method of accounting for so many years, which has been accepted by the department. The Ld. A.R. relied on the orders of this Tribunal in the

case of District Co-operative Central Bank, Eluru Vs. ITO Ward-2, Eluru in ITA Nos.49 & 50/Vizag/2012, the coordinate bench of this Tribunal allowed the appeal of the assessee following the decision of Hon'ble High Court of Gujarat in the case of Principal Commissioner of Income Tax Vs. Mahila Seva Sahakari Bank Ltd. 140 DTR 113. Per contra the Ld.DR supported the order of the AO.

6. 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 District Central Co-operative Bank, which is governed by the RBI directions. As per the RBI prudential norms, the assessee is not recognizing the income relating to the NPA. NPA is a debt, in which there is no repayment of instalments for specified period of time. In this case, the recovery of principal also doubtful. Therefore, the RBI has issued directions as stated by the Ld. A.R. to debit the interest to the individual debtor and derecognize the income. The same practice is being followed by the Co-operative banks through out the country.

7. On the similar facts, this Tribunal has deleted the additions relating to the overdue interest in the case of District Co-operative Central Bank, Eluru Vs. ITO Ward-2, Eluru in the order cited (supra) following the decision of. Hon'ble High Court of Gujarat in the case of

Principal Commissioner of Income Tax Vs. Mahila Seva Sahakari Bank Ltd. 140 DTR 113. 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.*

8. Hon'ble Gujarat High Court has considered the decision of Hon'ble Supreme Court in the case of Southern Technologies and held that

section 45Q of the RBI Act shall have overriding effect over the income recognition. 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.

9. 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.***

10. 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."

11. 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 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."

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."

12. This Tribunal has deleted the additions relating to the overdue interest in the case of District Co-operative Central Bank, Eluru Vs. ITO Ward-2, Eluru in the order cited (supra) following the decision of. Hon'ble High Court of Gujarat in the case of Principal Commissioner of Income Tax Vs. Mahila Seva Sahakari Bank Ltd. 140 DTR 113 as under:

28. Since the facts are identical, respectfully following the view taken by the 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.

13. Since the facts are identical, respectfully following the view taken by this Tribunal, we hold that the addition cannot be made on overdue interest relating to the NPA. Accordingly, we uphold the order of the CIT(A) and allow the appeal of the assessee.

14. The second issue in this appeal is related to the addition u/s 40(a)(ia) of the Act. The CIT in the revision u/s 263 of the Act, found that the assessee has made the payment of ₹ 21,46,000/- to M/s. D.Y. Systems, Hyderabad and ₹ 3,79,000/- to M/s. Techno Demo Office Automation Systems, Guntur. Both the payments were made for computerization. But the assessee has not deducted the TDS, which required to be deducted u/s 194C of the Act. Therefore, the CIT has directed the A.O. to examine the issue with regard to the payment made for computerizing records. The A.O. while passing the order u/s 143(3) r.w.s. 263 of the Act made the addition u/s 40(a)(ia) of the Act.

15. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld. CIT(A) following the order of the special bench of this Tribunal, Visakhapatnam in M/s. Merilyn Shipping and

Transports and allowed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A), the revenue is in appeal before this Tribunal.

16. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. In this case, the assessee has made the payments for computerization to the extent of ₹ 21,46,000/- to M/s. D.Y. Systems, Hyderabad and ₹ 3,79,688/- to M/s. Techno Demo Office Automation Systems, Guntur. The assessee required to deduct the TDS u/s 194C of the Act but failed to deduct the tax at source. Therefore, the A.O. made addition u/s 40(a)(ia) of the Act and the Ld. CIT(A) deleted the addition following the decision of special bench in the case of M/s. Merilyn Shipping and Transports, Visakhapatnam Vs. Addl. CIT Range-1, Visakhapatnam. Now the issue is settled by by the Hon'ble Supreme Court in the case of Palam Gas Service *v.*Commissioner of Income-tax, [2017] 81 taxmann.com 43 (SC) and held that the Word 'payable' occurring in section 40(a)(ia) not only covers cases where amount is yet to be paid but also those cases where amount has actually been paid. Therefore, we set aside the order of the CIT(A) and allow the appeal of the revenue.

Cross Objection No.36/Vizag/2016:

17. Ground No.1 is with regard to the provision made for overdue interest. Since we have already dismissed the appeal of the revenue, the cross objection filed by the assessee is sustained.

18. The second issue is with regard to the addition made u/s 40(a)(ia) of the Act. Since we allowed the appeal of the revenue in the preceding paragraphs, the cross objection of the assessee on this issue is dismissed.

19. In the result, the appeal filed by the revenue is partly allowed and the cross objection filed by the assessee is also partly allowed.

The above order was pronounced in the open court on 6th Apr'18.

Sd/-	Sd/-
(वी. दुर्गाराव)	**(डि.एस. सुन्दर सिंह)**
(V. DURGA RAO)	**(D.S. SUNDER SINGH)**
न्यायिक सदस्य/JUDICIAL MEMBER	**लेखा सदस्य/ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam:
दिनांक /Dated : 06.04.2018
VG/SPS

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

1. अपीलार्थी / The Appellant – The ACIT, Circle-1(1), Guntur.
2. प्रत्यार्थी / The Respondent – M/s. The Guntur District Co-operative Central Bank Limited, Central Office, Bose Road, Tenali-522 002.
3. आयकर आयुक्त / The Pr. CIT, Guntur
4. आयकर आयुक्त (अपील) / The CIT (A)-1, Guntur
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम **/**
   DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM