

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SHRI D. MANMOHAN, VICE PRESIDENT
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 1336/Hyd/2015
Assessment Year: 2012-13**

Adarsh Coopertative Urban Bank Ltd., Hyderabad	vs.	Asst. Commissioner of Income-tax, Circle – 11(1), Hyderabad.
--	-----	--

PAN – ACUPP 7381F

(Appellant)

(Respondent)

Assessee by	:	Shri Dheeraj
Revenue by	:	Shri P. Mohan Reddy

Date of hearing	01/03/2018
Date of pronouncement	28/03/2018

ORDER

PER S. RIFAUR RAHMAN, A.M.:

This appeal filed by the assessee is directed against the order dated 30/09/2015 of CIT(A) – 5, Hyderabad for AY 2012-13

2. Briefly the facts of the case are, assessee, a cooperative society engaged in the business of banking, file its return of income declaring total income of Rs. 3,56,74,420/-. The AO completed the assessment determining the taxable income at Rs. 4,06,49,359/- by making various additions. When the assessee preferred an appeal before the CIT(A) against the order of AO, the CIT(A) partly allowed the appeal of the assessee.

3. Against the order of CIT(A), the assessee is in appeal before us raising the following grounds of appeal:

"1. The Commissioner erred in confirming partly the additions and disallowances to returned income which is contrary to facts of the case, contrary to the evidence on record and unsustainable in law.

2. The Commissioner erred in confirming the disallowance of Depreciation claimed on UPS, Cash Dispenser and ATM Switch in determining the total income.

3. The Commissioner erred in confirming the disallowance of Depreciation claimed on MICR Security printer while allowing depreciation claimed on other printers.

4. The Commissioner erred in confirming the addition of Rs.39,67,293/- being the interest not received on Non-Performing assets (NPAs) in determining the taxable income of the Appellant.

5. The Commissioner erred in confirming the disallowance of expenditure incurred in the nature of Repairs and Maintenance on Leased Buildings as 'Capital Expenditure' and reducing the depreciation claimed instead of allowing the entire expenditure.

6. For these and other grounds that may be urged at the time of hearing, it is prayed that appeal may be allowed."

4. Ground Nos. 1 & 6 are general in nature. Ground No. 3 is relating to depreciation on MICR Security scanner, we notice that Id. CIT(A) has already allowed depreciation on printers. Therefore, there is no grievance to the assessee. Accordingly, this ground is dismissed as not pressed.

5. As regards ground Nos. 2 regarding disallowance of depreciation claimed on UPS, Cash Dispenser and ATM Switch in determining the total income, the assessee claimed depreciation at 60% on printers, UPS, Scanners, Cash dispenser Hardware and ATM Switch on the ground that they are peripherals and accessories covered under the head computers. Whereas the AO, referring to section 2(1)(i) of the Information Technology Act, 2000, allowed the depreciation on the above items at 15% only.

6. The CIT(A) after elaborately discussing the issue at length, allowed 60% depreciation on printer and scanner and confirmed the action of the AO at 15% depreciation on Cash Dispenser, ATM Switch, MICR security printer and UPS.

7. Ld. AR submitted that the issue in dispute is squarely covered by the decision of the coordinate bench of ITAT, Hyderabad in assessee's own case for AY 2013-14 in ITA No. 1265/Hyd/2014, vide order dated 28/02/2018.

8. Ld. DR neither controverted the submissions of the Id. AR nor brought any contrary decision in this regard.

9. Considered the rival submissions and perused the material on record. As submitted by the Id. AR, we find that the issue in dispute squarely covered by the decision of the coordinate bench in AY 2013-14 (supra), wherein both of us are party, and the coordinate bench has held as under:

"6. Having regard to the rival contentions and the material on record, we find that in the case of CIT vs. Orient Ceramics and Industries Ltd (Supra), the Hon'ble Delhi High Court has followed the decision of the Coordinate Bench of the High Court in the case of CIT vs. BSES Yamuna Powers Ltd to allow depreciation @ 60% on computer peripherals and accessories and also UPS. We find that in the case of CIT vs. BSES Yamuna Powers Ltd, the Hon'ble Delhi High Court was considering the depreciation allowable on computer accessories and peripherals such as, printers, scanners and server etc., which form an integral part of the computer system and cannot be used without the computer.

7. In the case of DCIT vs. Datacraft India Ltd (cited Supra), the Hon'ble Special Bench of the Tribunal at Mumbai was considering whether computer accessories & peripherals such as routers and switches can be classified as computer hardware, when they are used

along with a computer and it was held that when their functions are integrated with a 'computer' and when a device is used as part of the computer in its functions, then it would be termed as a computer.

8. *The Coordinate Bench of the Tribunal in the case of Saraswat Infotech Ltd (Supra) has followed the decision of the Hon'ble Bombay High Court in the assessee's own case to hold that depreciation @ 60% is allowable on UPS.*

9. *In the case of Global Trust Bank Ltd (Supra), Coordinate Bench of the Tribunal at Delhi has held that the ATM is a computer telecommunication device that allows Bank Customers to access banking at places other than the normal bank without having to take the trouble to go to the Bank in person and collect the cash as is done under the conventional method of withdrawing money from the Bank and that the ATM Machines are computerized machines which not only allow the customers to withdraw money but they can check the account balance, pay bills, purchase goods and services and therefore, unless it is computerized and linked with the main server, it is not possible to operate the ATM.*

10. *From the reading of the above judgments, we find that the assessee is eligible for depreciation @ 60% on ATM and other related accessories. As regards depreciation @ 60% on UPS is concerned, we find that though the UPS can independently function without the assistance or integration with a computer and is an alternate mode of supply of power and does not depend on any assistance from a computer, the computer can function only on a power supply and when there is no power supply, it is connected to UPS so that it can work uninterruptedly and without losing the unsaved data when the power goes off. Therefore, in our opinion, UPS also can be considered as a computer if it is connected to the ATM Machine or a Computer and depreciation thereon is allowable at 60%. AO is directed to verify if the UPS are used for the functioning of the ATM and allow depreciation accordingly. Therefore, the grounds of appeal No.1 to 3 are treated as allowed for statistical purposes."*

As the issue under consideration is materially identical to that of AY 2013-14, following the conclusions drawn in AY 2013-14, we direct the AO to decide the issues in line with the directions given by the ITAT in AY 2013-14. Accordingly, ground Nos. 2 & 3 are treated as allowed for statistical purposes.

10. As regards ground No. 4 relating to addition on account of interest receivable on NPAs, the AO observed that in the computation of income, the assessee reversed interest on NPA's amounting to Rs. 39,67,923/-. The claim of the assessee was that the Bank had written off the above amount on account of NPAs as per the directives of RBI, which are binding on the banks. The AO observed that the provisions of section 43D of the Act cannot be applied to the assessee bank as it is not a scheduled bank but a cooperative bank. according to AO, non-scheduled cooperative banks are specifically excluded from the exemption including interest of sticky advances. He, therefore, treated the interest on sticky advances as income of the assessee.

11. Before the CIT(A), the assessee submitted elaborately, which were extracted by the CIT(A) in his order. After considering the submissions of the assessee, the CIT(A) discussed the issue at length by referring section 43D and various case law as well as RBI guidelines and held that the AO is justified in treating interest on NPAs as taxable on accrual basis instead of on realization basis.

12. Aggrieved the assessee is in appeal before us.

13. Ld. AR submitted that the issue in dispute is squarely covered by the decision of the coordinate bench of ITAT, Hyderabad in assessee's own case for AY 2013-14 in ITA No. 1265/Hyd/2014, vide order dated 28/02/2018.

14. Ld. DR neither controverted the submissions of the Id. AR nor brought any contrary decision in this regard.

15. Considered the rival submissions and perused the material on record. As submitted by the Id. AR, we find that the issue in dispute squarely covered by the decision of the coordinate bench in AY 2013-14 (supra), wherein both of us are party, and the coordinate bench has held as under:

13. Having regard to the rival contentions and the material on record, we find that the Hon'ble Gujarat High Court and also the Hon'ble Bombay High Court has considered the decision of the Apex Court in the case of Southern Technologies Ltd to hold that the interest on non-performing assets/sticky loan is to be recognized only when it is received or credited to the P&L A/c. The Coordinate Bench of this Tribunal in the case of Kranthi Coop. Urban Bank Ltd (Supra) has also considered this issue at length and at Paras 5 to 9, has held as under:

*“5. Aggrieved by the order of Ld. CIT(A) the assessee is an appeal before us. The Ld. counsel placed before us a copy of the latest order of the Hon'ble Gujarat High Court in the case of **Pr. Commissioner of Income Tax Vs. Shri Mahila Sewa Shakari Bank Ltd.**, (ITA No. 531 of 2015, dated 05-08-2016), wherein the bench referred to catena of decisions and decided in favour of the assessee by observing as under:*

11. From the rival submissions advanced by the learned counsel for the respective parties, it is evident that there is no dispute that the RBI Guidelines are applicable to the assessee. It is the case of ITA No.1194/Hyd/2016 The Kranti Co-operative Urban Bank Ltd., Hyderabad. The assessee that in view of the RBI Guidelines, it cannot charge interest on accrual basis and that following the theory of the real income, taxability of any notional income like accrued interest on NPAs would not arise. It has also been contended that even otherwise in view of the CBDT Circular bearing F No.201/21/844- ITA-II dated 09-10-1984, interest on accrual basis is not taxable if not received for three years even through credited to

the suspense account. The court observed that though RBI Act may not override the provisions of Income Tax Act. Income has to be recognised in terms of prudential norms by applying the real income theory.

6. The revenue contended, in the aforesaid decision, that Sec. 43D of made, the assessee cannot indirectly claim benefit. On this aspect, the court observed that the benefit was claimed by the assessee not under any provisions of the IT Act, but, on account of the fact that it is bound by the RBI Guidelines, which are issued under the provisions of the RBI Act whereby the interest on NPAs cannot be shown as income. The **provisions of sec. 45q of the RBI act** would have an overriding effect over the other laws, including the Income Tax Act. Therefore, notwithstanding the provisions of Sec. 43D of the Act, the A.O. is bound to follow the RBI Guidelines so far as the income recognition is concerned.

7. It was thus, finally concluded that interest on NPAs cannot be brought to tax when the actual income is not received. Ld. Counsel for the assessee submitted that the principal amount was declared as NPAs somewhere in the year 2002-03 and in all the subsequent years, the interest on NPAs is not brought to tax by the revenue and suddenly in this year, the revenue made an addition. He further submitted that there are catena of decisions with regard to the accrual of income only in the year of receipt. Even if it is assumed that there are two views possible, as per the decision of the Hon'ble Supreme Court in the case of **CIT Vs. Vegetable Products ITA No.1194/Hyd/2016 The Kranti Co-operative Urban Bank Ltd., Hyderabad Ltd., (1973) 88 ITR 192 (SC)**, a view which is favourable to the assessee has to be taken and thus he strongly submitted that the addition made by the A.O, and confirmed by the CIT(A), is not in accordance with law.

8. The Ld. DR, on the other hand, submitted that the provisions of the RBI Act are subservient to the provisions of Sec 43D of the income tax Act and thus strongly relied

upon the orders passed by the taxing authorities.

9. We have carefully considered the rival submissions and perused the record. The arguments advanced by the assessee are fully supported by the decision of the ITAT Visakhapatnam Bench as well as the decision of the Hon'ble High Court of Gujarat (supra) which, in terms, were based on several reported decisions of other High Courts. Id. DR could not place any judgement wherein a contrary was taken on this issue. Under these circumstances, we respectfully follow the decision of the Hon'ble High Court of Gujarat and the decision of the ITAT Visakhapatnam Bench (supra) and hold that the A.O. as well as CIT(A) were not justified in bringing to tax a sum of Rs. 2,58,279/-, towards alleged accrued interest on NPAs. In the circumstances of the case, the A.O. is directed to delete the addition.

14. Respectfully following the same, we direct the AO to consider the interest on NPAs as income only in the year of receipt. The addition is accordingly deleted and the Ground of appeal No.4 is allowed.

As the issue under consideration is identical to AY 2013-14, following the decision of the coordinate bench in the said year, we direct the AO to consider the interest on NPAs as income only in the year of receipt. Accordingly, the addition made on this count is hereby deleted and ground No. 4 is allowed.

16. As regards ground No. 5, the Id. AR of the assessee has not argued about this ground before us and, therefore, the same is dismissed as not pressed.

17. In the result, appeal of the assessee is partly allowed for statistical purposes.

Pronounced in the open Court on 28th March, 2018.

Sd/-
(D. MANMOHAN)
VICE PRESIDENT

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 28th March, 2018

kv

Copy to:-

- 1) *The Adarsh Cooperative Urban Bank Ltd., 1-251/1, Phase – 1, IDA Jeedimetla, Hyderabad – 500 055.*
- 2) *ACIT, Circle – 11(1), IT Towers, AC Guards, Hyd – 500 004.*
- 3) *CIT(A) – 5, Hyd.*
- 4) *Pr. CIT – 5, Hyd.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) Guard file

S.No.	Description	Date	Intls	
1.	Draft dictated on			Sr.P.S./P.S
2.	Draft placed before author			Sr.P.S/PS
3	Draft proposed & placed before the second Member			JM/AM
4	Draft discussed/approved by second Member			JM/AM
5	Approved Draft comes to the Sr.P.S./PS			Sr.P.S./P.S
6.	Kept for pronouncement on			Sr. P.S./P.S.
7.	File sent to the Bench Clerk			Sr.P.S./P.S
8	Date on which file goes to the Head Clerk			
9	Date of Dispatch of order			