

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 6404/MUM/2016
Assessment Year: 2009-10**

DCIT-1(2)(2), R. No. 535,
5th floor, Aayakar Bhavan,
M.K. Road,
Mumbai-400020

Vs.

M/s Maharashtra State
Financial Corporation

Appellant	PAN No. AAACM3751F Respondent
Revenue by	: Mr. Anoop Hiwase, DR
Assessee by	: Mr. MihirTanna, AR
Date of Hearing	: 08/05/2018
Date of pronouncement	: 16/05/2018

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the Revenue. The relevant assessment year is 2009-10. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-2, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) r.w.s 148 of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the Revenue read as under:

"On the facts and in the circumstances of the case in law, Ld. CIT(A) erred in directing the Assessing Officer to delete the addition on account of onetime settlement (OTS) of Rs.1,69,25,000/-, since the amount received from

borrowers towards OTS has not been credited either for Principal Component or for interest to P&L as assessee's income.

3. Briefly stated, the facts of the case are that the assessee file its return of income for the assessment year (AY) 2009-10 declaring loss of Rs.17,21,36,512/-. The assessee is engaged in the business of financing activities.

During the course of re-assessment proceedings, the Assessing Officer (AO) found that the assessee had framed One Time Settlement (OTS) scheme for non-performing assets and during the year under consideration had written off Rs.401.85 lakhs in terms of OTS and the same was debited to the profit and loss (P&L) account. Further, on perusal of the tax audit report, the AO found that the assessee had received a sum of Rs.169.25 lakhs from borrowers towards OTS and the same was not credited to the P&L account. The assessee was following cash system of accounting and therefore, the AO held that the amount received on account of OTS was required to be brought to account and taxed. The AO further observed that the assessee is a public company and engaged in the business of providing loans and advances to various companies. It has also to write off debtor and borrowers, if they fail to return the loan amount and the same being claimed as losses from P&L account. Thus the AO brought to tax Rs.1,69,25,000/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). Having gone through the assessment order and the submission of the assessee, the Ld. CIT(A) held as under:

“3.3 I have duly considered the submission of the appellant’s AR and the facts of the case. I have also gone through the assessment order dated 28.10.2014 wherein AO has added a sum of Rs.1,69,25,000/- received under the head “One Time Settlement Scheme” and the same has not been offered as income in the year under question. As against this, the AR of the appellant argues that the One Time Settlement Scheme received from the default borrowers comprised of principle outstanding amount only and not interest component and therefore it cannot be taxed and further AR of the appellant argues that the interest components whatever received from the borrowers, it has been offered now and accordingly he pleads for deletion of addition of Rs.1,69,25,000/-. I have gone through the details submitted by the appellant company wherein for the A.Y. 2010-11 it is mentioned that Rs.10,94,215/-has been offered to tax by the appellant company. Accordingly, I direct the AO to verify the above facts whether all such interest have been offered or not whenever interest recovered in the subsequent years, Revenue have no right to tax capital receipt of Rs.1,69,25,000/- and as the said amount is not debited in the P&L Account, therefore, I direct the AO to delete the above addition of Rs.1,69,25,000/-and examine the interest portion alone whether it is duly taxed or not. Accordingly, this ground of appeal is allowed.”

5. Before us, the Ld. DR relies on the order passed by the AO and submits that the assessee follows cash system of accounting and therefore, the amount received on account of OTS was required to be brought to account and taxed.

6. On the other hand, the Ld. counsel of the assessee submits that during the year under consideration, the assessee received a sum of Rs.169.25 lakhs towards OTS applications for settlement of accounts which comprised of principal outstanding amount only. Majority of the OTS applications are for settlement of accounts which comprises mainly

of principal outstanding amount. The competent authority has approved the scheme in the financial year (FY) 2009-10 relevant to the assessment year (AY) 2010-11 and accordingly, the appropriation of the suspense account has been made in subsequent years. As per the said appropriation, interest portion of Rs.10,94,215/- was added to the income of the corporation in the AY 2011-12 i.e. the year in which the amount was appropriated after the assessee got approval from the prescribed authority and the principal amount of Rs.1,26,42,100/- (Rs.1,37,36,315/- minus Rs.10,94,215/-) was appropriately reduced from loans and advances. It is submitted that OTS received from the default borrowers comprised of principal outstanding amount only and not interest component and therefore, it cannot be taxed.

7. We have heard the rival submissions and perused the relevant materials on record. It is found that the assessee is a loss making financial corporation (Bank) and major part of advances have been sanctioned and disbursed before 2002. During the year under consideration, the assessee did not sanction or disburse any loans in order to concentrate on maximizing the recovery during the year. Since the AY 2002-03, the assessee started making provisions for NPA ('Non-Performing Assets) as per the guidelines of Reserve Bank of India. But the assessee has not taken any deduction u/s 36(viia)(c) of the Act as there were losses in every year.

We find that during the year under consideration, the assessee received a sum of Rs.169.25 lakhs towards OTS applications for

settlement of accounts which comprised of principal outstanding amount only.

Also we find that appropriation of interest portion of Rs.10,94,215/- was added by the assessee to its income in the AY 2011-12.

In view of the above facts, we uphold the order of the Ld. CIT(A).

8. In the result, the appeal is dismissed.

Order pronounced in the open Court on 16/05/2018.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 16/05/2018

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai