

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ "बी" पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE**

श्री डी. करुणाकरा राव , लेखा सदस्य  
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

**BEFORE SHRI D.KARUNAKARA RAO, AM  
AND SHRI VIKAS AWASTHY, JM**

आयकर अपील सं. / ITA No.1419/PUN/2016  
निर्धारण वर्ष / Assessment Year : 2012-13

ACIT, Circle-1,  
Solapur

.... अपीलार्थी/Appellant

Vs.

The Solapur District Central  
Co-operative Bank Ltd.,  
207-209, Gold Finch Peth,  
Solapur – 413 001  
PAN : AAATT9561B

.... प्रत्यर्थी / Respondent

Assessee by : Shri S.N. Puranik  
Revenue by : Shri Mukesh Jha, JCIT

सुनवाई की तारीख / <b>Date of Hearing : 03.05.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 09.05.2018</b>
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**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM :**

This appeal is filed by the Revenue against the order of CIT(A)-7, Pune, dated 01-04-2016 for the Assessment Year 2012-13.

2. Revenue raised total 9 grounds. All these grounds revolve around the solitary issue of deletion of addition by the CIT(A) on account of interest accrued on Non-Performing Assets u/s.43D of the I.T. Act, 1961.

3. Briefly stated relevant facts of the case are that the assessee is a Cooperative society formed under Maharashtra State Cooperative Societies Act, 1961. Assessee filed the return of income on 29-09-2012 declaring total income of Rs.39,32,53,548/-. Assessee filed the revised income on 31-10-2013 declaring total income of Rs.48,56,30,860/-. In

the assessment proceedings, AO noticed that assessee has shown NPA interest overdue amounting to Rs.10,08,15,871/- receivable from various parties. However, rejecting the explanation given by the assessee AO disallowed the said sum of Rs.10,08,15,871/-. At the end of assessment proceedings u/s.143(3) of the Act the AO assessed the income at Rs.58,64,46,730/-.

4. Aggrieved with the order of AO, assessee preferred an appeal before the CIT(A). CIT(A) allowed the claim of the assessee relying on the decision of the Tribunal in assessee's own case for A.Yrs. 2008-09, 2009-10 & 2011-12 and the decisions of Tribunal in the case of Omerga Janta Sahakari Bank Ltd. dated 30-10-2013, Osmanabad Janta Sahakari Bank Ltd. vide ITA No.795/PN/2011 dated 31-08-2012. CIT(A) also discussed the following judgmental laws on this issue while giving relief to the assessee (Contents of Para Nos. 6 to 6.4 of the order of CIT(A) are relevant in this regard) :

1. *CIT Vs. M/s. Deogiri Nagari Sahakari Bank Ltd. 128 DTR 0209 dated 11-01-2015*
2. *Southern Technologies Ltd. Vs. JCIT 320 ITR 577 (SC)*
3. *M/s. Vasisth Chay Vyapar Ltd. 330 ITR 440 (Delhi)*
4. *CIT Vs. Sakthi Finance Ltd. 352 ITR 102 (Madras)*

5. Aggrieved with the order of CIT(A) Revenue filed the present appeal raising the solitary issue referred above.

6. At the outset, narrating the above facts before us, Ld. Counsel for the assessee argues that provisions of section 43D apply to all the banks including the cooperative banks. Further, Ld. Counsel for the assessee submitted that the issue stands now covered in favour of the assessee by the order of the Tribunal in assessee's own case and other decisions/judgments.

7. Ld. DR for the Revenue relied on the order of the AO dutifully.

8. We heard both the parties and perused the orders of the Revenue and the decisions relied on by the Ld. Counsel for the assessee. We find the CIT(A) discussed the issue in Para Nos. 6 to 6.4 of his order and allowed the ground relating to interest accrued on NPA amounting to Rs.10,08,15,871/-. While doing so, he explained the provisions of section 43D of the Act and relied on the judgment of Hon'ble Supreme Court in the case of Southern Technologies Ltd. Vs. JCIT (Coimbatore) 320 ITR 577 (SC), judgment of Hon'ble Delhi High Court in the case of M/s. Vasisth Chay Vyapar Ltd. 330 ITR 440 (Delhi) and the decision of the Tribunal in assessee's own case for the A.Yrs. 2008-09, 2009-10 & 2011-12. On perusal of the finding given by the CIT(A), we find it relevant to extract the operational paras and the same read as under :

*“6.2 The crux of judicial analysis is that, first there should be NPA. Secondly, interest on NPA should not have been accrued or realized. The only interest on NPA directly taken to Balance Sheet without routing through Profit and Loss account is not to be considered as income of the appellants.*

*6.2.1 The first exercise is characterization of NPA. The second exercise will be interest none realize or accrued on this NPA's. In case of scheduled banks and financial institution and public company mentioned in section 43D the rules mentioned in 6EA and 6EB will be applicable for characterization of NPA. As per rule 6EB for public company non receipt of interest for more than two years characterizes NPA. From the decision of M/s. Vasisth Chay Vyapar Ltd non receipt of interest for period more than six months will be characterizes NPA as per guidelines of the RBI. As per CBDT circular dated 09/10/1984 the period for which default on interest should have been more than three years. After introduction of section 43D with effect from 1/4/1991 obviously the circular will not apply to the entity's mentioned in section 43D. The entity's which are not covered under section 43D for them judicial precedents should be followed which relies on RBI guidelines where more than six months default as mentioned above will be characterized as NPA, though it appears that CBDT circular dated 09/10/1984 is still applicable.*

*6.2.2 From the facts of the Vasishta Chay Vyapar (supra), it is very clear that no amount of interest was received for more than ten years. The Delhi High Court has observed that, when there is uncertainty in recovery in principal amount itself what to talk about recovery of interest. This shows that, on all accounts the amount had become NPA.*

*From the facts of the Sakthi Finance Ltd. (supra), it is very clear that interest amount on NPA was added back by the assessing Officer. The Madras High Court observed that , mere characterization of an account as a NPA would not by itself be sufficient to say that there was uncertainty as regards reliability of income or interest income thereon. Accrual of interest is a matter of fact to be decided separately for each*

case on the basis of examination of the facts and circumstances. This shows that, whether the amount has become NPA or not itself was doubtful and therefore the High Court directed AO to find out whether amounts had become NPA.

6.2.3 The above analysis shows that, whether amount has become NPA or not is to be decided first then treatment of the interest thereon is to be considered for offering to Income Tax on the basis of accrual or receipt basis.

6.3 From the facts of the case, it is apparent from the record that appellant has received interest after recovery of NPA an amount of Rs.4,19,53,662/-.

6.4 Respectfully following the decision of ITAT Pune in the case of appellant for A.Y. 2008-09, 2009-10 and 2011-12 the amount of Rs.10,08,15,871/- claimed as NPA is not to be taxed in the year under consideration. Therefore, the ground No.1 of the appeal is allowed.”

Further on the similar issue, the Tribunal in the assessee's own case vide ITA No.106/PN/2015 & CO No.05/PUN/2016 and others for A.Y. 2011-12 in its consolidated order dated 04-02-2016 has observed as under :

“14. We find that similar issue as before us arose in Kolhapur Mahila Sahakari Bank Ltd. Vs. ITO in ITA No.01/PN/2013, relating to assessment year 2009-10, vide order dated 29.01.2014. The Tribunal in turn following the ratio laid down by the Pune Bench of Tribunal in ACIT Vs. Osmanabad Janta Sahakari Bank Ltd. in ITA No.795/PN/2011, order dated 31.08.2012, held as under:-

“2. The assessee is a Co-operative Bank engaged in the business of accepting deposits from members and giving loans to members. It has filed its return of income on 11.09.2009 for the year under consideration declaring total income at ₹ 14,57,840/-. In the scrutiny assessment, the Assessing Officer noticed that the assessee had not credited interest receivable or accrued on non-performing assets (hereinafter referred to as NPA) to its profit and loss account for financial year 2008-09. The Assessing Officer after rejecting the various contentions of the assessee has held that the RBI guidelines are not intended to regulate the income tax law and the assessee was liable to be assessed on accrual basis u/s.5 of I.T. Act for the reasons (i) benefits extended to schedule bank, public financial institutions, public companies for the purpose of section 43D were not extended to a co-operative bank and (ii) the assessee was following mercantile system of accounting and not cash system. Ultimately the Assessing Officer taxed on accrued interest of ₹ 25,20,022/- advance claimed to be NPA account. The matter was carried before the first appellate authority wherein, following the Osmanabad Janta Sahakari Bank Ltd. in ITA No.795/PN/2011, the CIT(A) has decided the issue in favour of the assessee and the same has been opposed before us on behalf of revenue.

2.1 After going through the rival submissions and material on record, we find that in Osmanabad Janta Sahakari Bank Ltd. (supra) the Tribunal has decided the issue in favour of assessee by observing as under:

“7. In the case before us, admittedly, assessee has directly taken the interest to the Balance Sheet and it is not routed through the Profit & Loss Account. Moreover, the issue of the taxability of the interest on the sticky losses/advances, is covered in favour of the assessee by the decision of the coordinate Benches in the case of The Durga Cooperative Urban Bank Ltd., Vijayawada (supra) and Karnavati Cooperative Bank Ltd. (supra). We find no reason to interfere with the reasoned order of the Ld. CIT(A) and accordingly the same is confirmed. In the result, the Revenue’s ground is dismissed.”

The above decision has been followed in (i) ACIT, Circle-3, Nanded V/s Bhagyalaxmi Mahila Sahakar Bank Ltd. ITA No.793/PN/2011, (ii) ACIT, Circle-3 V/s Sidheshwar Sahakari Bank Ltd. ITA No.794/PN/2011, (iii) ACIT (Central) V/s Latur Urban Co-operative Bank Ltd. ITA No.792/PN/2011 and (iv) Asst. CIT, Circle-1 V/s Deogiri Nagari Sahakari Bank Ltd. ITA No.817 & 1114/PN/2011.”

15. The Hon’ble Bombay High Court in CIT Vs. M/s. Deogiri Nagari Sahakari Bank Ltd. in Income Tax Appeal No.53 of 2014 & Ors. has laid down the proposition that the interest accrued on NPAs is not taxable in the hands of assessee, in view of the guidelines issued by the RBI.

16. Following the same parity of reasoning, we hold that no addition is warranted on account of interest accrued on NPAs. Accordingly, we uphold the order of CIT(A) in deleting the addition made on account of interest accrued on NPAs. The ground of appeal No.1 raised by the Revenue is dismissed.”

9. Considering the settled nature of issue relating to taxation of interest accrued on NPAs, we find the same stands covered in favour of the assessee in the assessee’s own case and others. Therefore, we uphold the order of CIT(A) deleting the addition. Accordingly, the grounds raised by the Revenue are dismissed.

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

Order pronounced in the open court on this 09<sup>th</sup> day of May, 2018.

Sd/-

**(VIKAS AWASTHY)**

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

**(D. KARUNAKARA RAO)**

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 09<sup>th</sup> May, 2018  
सतीश

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-7, Pune
4. CIT-7, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B Bench" Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune