

**THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND SMT. P. MADHAVI DEVI, JUDICIAL MEMBER**

**ITA No. 1650/Hyd/2017
A.Y: 2013-14**

The Kranti Cooperative Urban Bank Ltd., Secunderabad. vs. Asst. Commissioner of Income-tax,
Circle – 11(1), Hyderabad.

PAN- AAAJT 1134E

(Appellant)

(Respondent)

Assessee by : Shri P. Rajeswar Rao
Revenue by : Smt. Geetinder Mann

Date of hearing : 18-06-2018
Date of pronouncement : 22-06-2018

ORDER

PER J. SUDHAKAR REDDY, A.M.:

This is an appeal filed by the assessee directed against the order of the Ld. CIT(A) - 5, Hyderabad, dated 25/07/2017 passed u/s 250 of the IT Act, 1961 (the Act), for AY 2013-14.

2. Assessee in this case is a cooperative society, engaged in the banking business. The sole issue that arises for our consideration is whether interest income is taxable on accrual basis on 'zero coupon bonds' purchased by the assessee. Section 2(48) defines 'zero coupon bond', as under:

"zero coupon bond" means a bond—

- (a) issued by any infrastructure capital company or infrastructure capital fund or public sector company or scheduled bank on or after the 1st day of June, 2005;*
- (b) in respect of which no payment and benefit is received or receivable before maturity or redemption from infrastructure capital company or infrastructure capital fund or public sector company or scheduled bank; and*
- (c) which the Central Government may, by notification in the Official Gazette, specify in this behalf."*

3. Assessee was of the view that no income had accrued during the year on these 'zero coupon bonds' as the market value of these coupons as on the date of purchase, was the same, as on the date of closure of FY i.e. 31st March, 2013. On the other hand, the AO was of the view that interest has accrued on these 'zero coupon bonds' and applying the Circular No. 002 of 2002, 15th February, 2002, held that income has accrued to the assessee on these 'zero coupon bonds', hence, brought the same to tax. On appeal, the CIT(A) confirmed the action of the AO. Aggrieved, the assessee is before us.

4. The Id. Counsel for the assessee submits that Circular of the CBDT is not binding on the assessee and that the market value of the bonds remain same both on the date of purchase as well as on the date of 31/03/2013 i.e. the end of the Financial Year and hence there is no accrual of income. He relies on the real income theory as well as the principles of accrual. He relied on the judgment of the Mumbai Bench of the ITAT in the case of Darashaw & Co. Pvt. Ltd., in ITA No. 135/Mum/2009 and prayed for relief.

5. Ld. DR, on the other hand, relied on the order of CIT(A).

6. On careful consideration of rival contentions, we find that Hon'ble Delhi High Court in the case of CIT Vs. MGF India Ltd., 272 ITR 191, held as follows:

"That so far as the interest on zero coupon bonds was concerned, the Tribunal has examined the matter in detail and pointed out on facts that interest had not accrued and in any event, tax would have to be paid by the assessee on the maturity of the bond."

6.1 The ITAT Mumbai "D" Bench in the case of Darashaw & Co. Pvt. Ltd. (supra) applied the aforesaid judgment of the Hon'ble Delhi High Court and held as under:

"28. The relevant material facts are like this. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has disclosed long term capital gains of Rs 32,17,04,601 on sale of Zero % MSRDC Bonds 2018. The claim

of the assessee was that since these bonds were held for a period of more than one year, the gains on sale of these bonds were required to be treated as long term capital gains. However, the Assessing Officer, based on his analysis of CBDT circular dated 15th February 2002, held that the gains on sale of these bonds are taxable as capital gains. Aggrieved, assessee carried the matter in appeal before the CIT(A). The CIT(A) noted that 'bonds' sold by the assessee were covered by the definition of 'securities' under [section 2\(h\)](#) of the Securities Contracts Regulations Act, 1956, and, that these bonds were duly listed on the national Stock Exchange of India. Accordingly, in terms of proviso to [Section 2\(42A\)](#) of the Income Tax Act, where these bonds were held by the assessee for twelve months, the same qualified to be termed as 'long term capital assets'. As regards the question of taxability of interest on bonds, the CIT(A) also noted that Hon'ble Delhi High Court, in the case of CIT Vs MGF Limited (272 ITR 191), has held that interest accrual on zero coupon bonds is not taxable on accrual basis. With these observations, the CIT(A) upheld the claim of the assessee and directed the Assessing Officer to treat the capital gain, on sale of bonds, as long term capital gain. The Assessing Officer is aggrieved and is in appeal before us

29. Having heard the rival contentions and having perused the material on record, we are not inclined to interfere in conclusions arrived at by the learned CIT(A). The reason is simple. There is no dispute that, in terms of the proviso to [Section 2 \(42A\)](#), a listed security qualifies to be a long term capital asset when held for twelve months or more. There is also no dispute that the bonds held by the assessee are covered by the definition of security under the relevant provisions of the statute, i.e. [section 2 \(h\)](#) of the Securities Contracts (Regulation) Act, and that these are listed in the National Stock Exchange of India. However, the Assessing Officer has held that the bonds are required to be treated as 'short term capital asset' but then it is only elementary that circulars issued by the Central Board of Direct Taxes do not override the legal provisions of the statute - except to the extent these circulars are more beneficial to the assessee. In other words, these circulars can only relax the rigour of law. As observed by Hon'ble Supreme Court, in the case of UCO Bank Vs CIT (239 ITR 889), "Such (CBDT) circulars, however, are not meant for contradicting or nullifying any provision of the statute" and that these circulars "are meant for ensuring proper administration of the statute, they are designed to mitigate the rigours of the application of a particular provision of the statute in certain situations by applying a beneficial interpretation to the provision....." The Assessing Officer, thus, cannot derive any support from the CBDT circulars to put assessee to any

*disadvantage vis-à-vis the legal position under the provisions of the **Income Tax Act**. The CIT(A) was quite justified in reversing the stand taken by the Assessing Officer to proceed to decide taxability of gains on sale of bonds, as per the unambiguous provisions of the **Income Tax Act**. In view of these discussions, we uphold the stand of the CIT(A) and decline to interfere in the matter.”*

Respectfully following the principles laid down by the Hon'ble Delhi High Court (supra) and the order of the coordinate Bench of Mumbai ITAT (supra), in the above referred cases, we uphold the contention of the assessee and delete the addition of 9,41,094/- made in this regard.

7. In the result, appeal of the assessee is allowed.

Pronounced in the open court on 22nd June, 2018.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 22nd June, 2018.

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Copy to:

- 1) *The Kranthi Cooperative Urban Bank Ltd.,
C/o Shri P. Rajeswara Rao, CA, Flat No. 205, Priya Aptms.,
H.No. 1-1-560, New Bakaram, Hyderabad – 500 020*
- 2) *ACIT, Circle – 11(1), 10th Floor, Signature Towers, Kondapur,
Hyderabad – 500 084*
- 3) *CIT(A) - 5, Hyderabad.*
- 4) *The Pr.CIT, - 5, Hyderabad.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*