

आयकर अपीलिय 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.2992/PUN/2016  
निर्धारण वर्ष / Assessment Year : 2013-14

ACIT, Circle-1,  
Nashik

.... अपीलार्थी/Appellant

Vs.

M/s. The Deola Merchant Co-operative  
Bank Ltd. Bhagyodaya, At & Post-Deola  
Tal.- Deola, Nashik-422 001  
PAN : AAAAT4787E

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Sudhendu Das  
प्रत्यर्थी की ओर से / Respondent by : Shri Abhay Avchat

सुनवाई की तारीख / Date of Hearing : 10.09.2018	घोषणा की तारीख / Date of Pronouncement: 19.09.2018
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आदेश / ORDER

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

This appeal is filed by the Revenue against the order of CIT(A)-1, Nashik, dated 06-10-2016 for the Assessment Year 2013-14.

2. Grounds raised by the Revenue read as under :

*“1.1 Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in allowing the interest expenditure of Rs.1,16,55,721/- debited in the P & L A/c as **interest on Non Performing Assets** without obtaining the necessary verification with regard to issue of interest on NPAs by categorization of NPAs as per Rule 6EA(e) read with clause (a) of section 43D.*

*1.2 Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in allowing the interest expenditure of Rs.1,16,55,721/- to the assessee relying upon the decision of the **Hon'ble Bombay High Court in the case of Deogiri Nagari Sahakari Bank Ltd.** in Income Tax Appeal No. 53 of 2014 & ors., without appreciating the fact that, in that case the issue of interest on NPAs by categorization of NPAs as per Rule 6EA(e) read with clause (a) of section 43D **was not examined.***

*1.3 Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in allowing the interest expenditure of Rs.1,16,55,721/- without appreciating the decision of ITAT, Pune Bench in the case of **Cosmos Bank Ltd. Vs. DCIT, Circle-7, ITA No.460 & 461/PN/2012 dt. 23.01.2014,** wherein the stand of the revenue that categorization on interest of NPAs has*

to be done in terms of Sec. 43D(a) of the IT. Act r.w.r. 6EA of the I.T. Rules was upheld.

1.4 Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in allowing the interest expenditure of Rs.1,16,55,721/-, despite the fact that during the assessment proceedings the assessee was specifically asked by the AO **to provide the details provision towards interest expenditure on account of NPAs and the assessee failed to discharge his onus of providing the details** of categorization on interest on NPAs in terms of Sec. 43D(a) of the IT. Act r.w.r. 6EA of the IT. Rules.

2. The order of the CIT(A) may be vacated and that of the Assessing Officer may be restored.

3. The assessee craves leave to add, amend, alter or delete any ground of appeal.”

3. Briefly stated relevant facts are that assessee is a Cooperative Society and engaged in the banking business. Assessee filed the return of income on 28-09-2012 declaring total income of Rs.63,09,580/-. The core issue raised in this appeal relates to disallowance of interest overdue provision amounting to Rs.1,16,55,721/-. During the assessment proceedings, AO disallowed the same as per the discussion given in Para Nos. 7 and 7.1 of the assessment order. We proceed to extract the same as under :

“7. Disallowance of Interest overdue provision : The assessee had claimed interest overdue provision amounting to Rs.1,16,55,721/- in the profit and loss account for FY 2012-13. The assessee was called upon to produce the details of such provision claimed. The AR made submission dt.29-01-2016. As per the submission the assessee has stated that the provision is created on Non Performing Advances. Overdue interest is listed and total of the unrealized interest is taken. The assessee stated that it follows RBI guidelines in this respect. The attention of the AR was drawn to the fact that the assessee has not actually incurred any expenditure in this respect and such a provision is not allowed under any provision of the Income Tax Act, 1961. The AR was hence asked to explain why the same should not be disallowed.

7.1 The AR made another submission on the same day. The submission has been considered. The contention of the assessee is that it is following guidelines of RBI and such a provision should be allowed. The fact remains that the assessee has not incurred any such expenditure on which provision has been made. Further, the assessee has claimed a provision which is not allowable under any provision of the Income Tax Act, 1961. The assessee has claimed a provision u/s.36(1)(viia) which has already been allowed as per law in preceding paras. This provision is not allowable as per the Income Tax Act, 1961 and is hereby disallowed. The penalty proceedings under section 271(1)(c) r.w.s. 274 of the Income Tax Act, 1961 initiated separately for concealment and furnishing inaccurate particulars of income.

(Addition of Rs.1,16,55,721/-)”

4. In the First Appellate proceedings, the CIT(A) relying on the decision of the Tribunal in the case of The Janalaxmi Co-op. Bank Ltd Vs. CIT in ITA No.1955/PUN/2014 for the A.Y. 2010-11 decided on 20.05.2016 granted relief to the assessee. Further, the CIT(A) also deleted the addition made by the AO u/s.14A of the Act.

5. Aggrieved with the order of CIT(A), the Revenue filed the present appeal before the Tribunal challenging the deletion of addition of Rs.1,16,55,721/- with the grounds extracted above.

6. At the outset, Ld. DR for the Revenue submitted that the grounds are not drafted properly and the core issue relates to recognition of interest income on NPAs. Grounds are argumentative ones. He dutifully relied on the argumentative grounds raised by the Revenue in the appeal and also relied on the order of AO. Further, Ld. DR submitted (statement of facts) that the assessee claimed interest overdue provision amounting to Rs.1,16,55,721/- in the profit and loss account for F.Y.2012-13 and the provision of interest is created with reference to the Non Performing Advances. The said provision is total of the unrealized interest with reference to the NPAs and the assessee did not incur any such expenditure. Ld. DR relied on the following judgments and other cases where the Revenue preferred appeals before the Hon'ble High Court :

1. Shakti Finance Ltd. 31 Taxman.com 305
2. Southern Technologies Ltd. Vs. JCIT 2 SCC 548

Ld. DR further submitted that without obtaining the necessary verification with regard to issue of interest on NPAs, i.e. categorization of NPAs qua the provisions of Rule 6EA(e) read with clause (a) of section 43D of the Act. He

further stated that section 43D of the Act is held to be applicable to Cooperative Bank. Ld. DR placed reliance on the following decisions:

- i) Cosmos Bank Ltd. Vs. DCIT, ITA Nos.460 & 461/PN/2012 dated 23.01.2014.
- ii) Sarangpur Cooperative Bank Ltd. Vs. DCIT, ITA No.86/Add/2014 dated 25.06.2015

7. Per Contra, Ld. Counsel for the assessee relied on the order of CIT(A) and submitted that the issue raised by the Revenue is covered in favour of the assessee and against the Revenue by virtue of the judgment of Hon'ble jurisdictional High Court in the case of CIT Vs. M/s. Deogiri Nagari Sahakari Bank Ltd. in Income Tax Appeal No.53 of 2014 & Ors. Ld. Counsel therefore prayed for dismissing the appeal of the Revenue. The ratio of the judgment is that no interest on NPAs is taxable.

8. We heard both the parties and perused the orders of the Revenue. We have also considered the decisions relied on by both the sides. We find the Revenue raised grounds improperly. Relying on the issues decided by the CIT(A), we find the core issue relates to the taxability of the interest on NPAs, categorised so as per the RBI norms. In this regard, we perused the contents of Para No. 7.2 of the order of CIT(A) and find the issue now stands covered in favour of the assessee. For the sake of completeness, we find it relevant to extract the said operational para and the same reads as under :

*“7.2. I have considered the facts of the case, the submission of the appellant, the order of the Assessing Officer and the order of the Hon'ble ITAT. On the same issue, the Hon'ble Tribunal in the case of The Janalaxmi Co-op Bank Ltd for A.Y.2010-11 held interalia as under:*

*6. Be that as it may, the issue relating to interest on sticky loans has been recurring before the Tribunal in various cases. The Tribunal after following the decision of Hon'ble Supreme Court of India and the judgment rendered by the Hon'ble Jurisdictional High Court has been consistently holding that no addition can be made on account of*

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interest accrued on NPAs. The relevant extract of the findings of the Tribunal in the case of ACIT Vs. Shri Chhatrapati Rajashri Shahu Urban Co-op. Bank Ltd. (supra) are reproduced here-in-below:

"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** ITA No. 1955/PN/2014, A.Y. 2010-11 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**

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**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 ITA No. 1955/PN/2014, A.Y. 2010-11 interest accrued on NPAs. The ground of appeal No.1 raised by the Revenue is dismissed."

7. Thus, in view of the facts of the case and the order of Tribunal discussed above, we set aside the impugned order and allow the appeal of the assessee."

Respectfully following the decision of Hon'ble Tribunal the facts remaining the same, the Assessing Officer is directed to delete the addition of Rs.1,16,55,721/-".

From the above decision of the CIT(A), we find the CIT(A) relied on the decision of the Tribunal in the case of The Janalaxmi Co-op. Bank Ltd. for the A.Y. 2010-11 which inturn relied on the decision of the Tribunal in the case of ACIT Vs. Osmanabad Janta Sahakari Bank Ltd. in ITA No.795/PN/2011, dated 31-08-2012. CIT(A) also made a reference to another order of the Tribunal in the case of ACIT Vs. Deogiri Nagari Sahakari Bank Ltd. in ITA No.817 and 1114/PN/2011. This decision of the Tribunal is affirmed by the Jurisdictional High Court in the Income Tax Appeal No.53 of 2014 and others. The Hon'ble High Court has laid down the proposition that the **interest accrued on NPAs is not taxable in the hands of the assessee in view of the guidelines issued by the RBI.** For the sake of completeness, we proceed to extract the finding given by the High Court and the same reads as under :

"9. The Income Tax Appellate Tribunal has referred the case of M/s. Vasisth Chay Vyapar Limited 330 ITR 440 (Delhi). In this case, the revenue relied upon the decision of the Hon'ble Supreme Court in the case of Southern Technologies Ltd. supra. The learned Income Tax Appellate Tribunal has reproduced the observations made by the Delhi High Court while referring the said case of M/s. Southern Technologies Limited supra. The assessee herein being a Co-operative Bank also governed by the Reserve Bank of India and thus the directions with regard to the prudential norms issued by the Reserve Bank of India are equally applicable to the Co-operative banks. **The Hon'ble Supreme Court in the case of Southern Technologies Limited supra held that provisions of section 45Q of Reserve Bank of India Act has**

**an overriding effect vis-a-vis income recognition principle under the Companies Act. Hence, section 45Q of the RBI Act shall have overriding effect over the income recognition principle followed by cooperative banks. Hence, the Assessing Officer has to follow the Reserve Bank of India directions 1998, as held by the Hon'ble Supreme Court.**

10. The Honourable Apex Court in the case of Uco Bank case (supra) had an occasion to consider the nature of CBDT Circular and Hon'ble Apex Court has thus held that Board has power, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circular in exercise of its statutory powers under section 119 of act which are binding on the authorities in the administration of the Act, it is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Further a similar issue was raised about interest accrued on a 'sticky' loan which was not recovered by the assessee-bank for the last three years and transferred to the suspense account, would or would not be included in the income of the assessee for the particular assessment year, .....

11. The learned counsel for respondent has placed reliance in a case of Mercantile Bank Ltd., Bombay Vs. The Commissioner of Income Tax, Bombay, City-III reported in (2006) 5 SCC 221, where similar question was raised before the Apex Court. The question was whether the assessee is liable to be taxed under Income Tax Act, 1961 **in respect of the interest on doubtful advances credited to the interest suspense account.** In this case, the Uco Bank's Case (supra) was also referred and the Hon'ble Apex Court has allowed the appeal to the extent of question raised as aforesaid. Furthermore, the respondent Co-operative banks, as understood by Section 43 C of the Income Tax Act on the Scheduled Bank.

12. Learned Counsel for the appellants/revenue placed reliance on the judgment in the case of Southern Technologies Ltd. Vs. Joint Commissioner of Income Tax, Coimbatore reported in 2010 (2) SCC 548. However, this judgment pertains to non Banking financial companies. **Uco Bank case (supra) and Mercantile Bank (supra) case squarely applies to the facts of the present case and issued involved. We therefore, do not find it necessary to interfere in the judgment of the Appellate Tribunal. We hold that no substantial question of law arises in these appeals."**

The Hon'ble Jurisdictional High Court has analysed the applicability of the ratio of the judgment of Supreme Court in the case of Southern Technologies Ltd. (supra) and found inapplicable to the non-banking financial companies. It is also evident that overriding effect of the provisions of the RBI Act in matters of recognition of interest income relating to sticky loans is also decided in favour of the assessee in view of other Supreme Court judgments in the case of Uco Bank and Mercantile Bank (supra). CIT(A) also followed the ITAT's decisions (supra) while giving

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relief to the assessee. Therefore, in our opinion, we find no reason to interfere with the decision of the CIT(A) in this regard. We therefore uphold the order of CIT(A) and direct the AO to delete the addition. Accordingly, the grounds raised by the Revenue are dismissed.

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

Order pronounced on this 19<sup>th</sup> day of September, 2018.

**Sd/-**  
**(VIKAS AWASTHY)**  
न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(D.KARUNAKARA RAO)**  
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 19<sup>th</sup> September, 2018.  
Satisb

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Nashik.
4. आयकर आयुक्त / The Pr. CIT-1, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,स

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