

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DELHI
BEFORE SHRI N.K. SAINI, VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 6795/Del/2015
Assessment Year: 2012-13**

**ACIT,
Circle 52(1),
New Delhi.**

(Appellant)

**vs M/s Jain Cooperative Bank Ltd.,
80, Darya Ganj,
Delhi-110002
(PAN: AAAAJ0060A)
(Respondent)**

**Department by: Shri Sridhar Dora, Sr. DR
Assessee by: None Present**

**Date of hearing: 20.11.2018
Date of pronouncement: 28.01.2019**

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.

This appeal has been preferred by the revenue against the order of the Ld. CIT (Appeals)-18, New Delhi vide order dated 5.10.2015 pertaining to assessment year 2012-13 and the sole issue under challenge before us is the action of the Ld. Commissioner of Income Tax (A) in deleting the addition of Rs. 3,61,74,735/- made on account of interest accrued on Non-Performing Assets (NPAs).

2.0 Brief facts of the case are that the assessee is a cooperative society and is carrying on banking business under license from

Reserve Bank of India. The return of income was filed declaring income of Rs. 83,22,4967/-. The case of the assessee was selected for scrutiny under CASS. During the course of assessment proceedings the Assessing Officer observed that as per audit report in Form 3CD submitted by the assessee, the assessee followed mercantile system of accounting. It was further observed that on perusal of the balance sheet and other details, the assessee had not recognised interest on NPAs as income. The assessee was asked to show cause as to why the interest accrued on NPAs should not be considered as income of the assessee and added to the total income. It was submitted before the Assessing Officer that as per the guidelines of the RBI in case of loans disbursed to its Members, the bank has to make provision for bad and doubtful loans i.e. NPAs and that at the end of the year, interest debited on such loans during the year has to be reversed. It was submitted that an amount of Rs. 3,61,74,735/- had been reversed by the bank being interest on NPAs and, therefore, this income had not been recognised in the books of accounts. However, the Assessing Officer was of the view that the guidelines of the RBI do not override the express provisions of the Income Tax Act and, therefore, in view of the

assessee following mercantile system of accounting, interest should have been recognised as income. The Assessing Officer proceeded to add this amount to the income of the assessee. Some other additions were also made and the assessment was finalised at an income of Rs.4,45,11,470/-.

2.1 Aggrieved, the assessee approached the Ld. Commissioner of Income Tax (A) who held in favour of the assessee and allowed the assessee's appeal. Now, the department is before the ITAT and has challenged the action of the Ld. Commissioner of Income Tax (A) in deleting the aforesaid addition.

3.0 None was present on behalf of the assessee/respondent when the appeal was called out for hearing nor any application for adjournment was received. However, looking into the facts of the case, we are proceeding to adjudicate the issue at hand *ex parte qua* the assessee/respondent.

4.0 The Ld. Sr. DR vehemently argued that the RBI norms cannot override the provisions of the Income Tax Act and interest on NPAs also accrues to the assessee if mercantile system of accounting is followed. The Ld. Sr. DR also submitted that various Hon'ble Courts have held that in numerous cases that

the RBI norms cannot override the provisions of the Income Tax Act. It was prayed that the order of the Ld. Commissioner of Income Tax (A) be reversed and that of the Assessing Officer be restored.

5.0 We have heard the submissions of the Ld. Sr DR and have also perused the material available on record. It is seen that the Ld. Commissioner of Income Tax (A) has discussed the issue at great length in the impugned order and has also referred to various judicial precedents of the various Hon'ble Courts while allowing the assessee's appeal. It is also seen that he has taken a favourable view of the fact that in assessee's own case on identical issue for earlier assessment years, the deletions made by the Ld. Commissioner of Income Tax (A) were upheld by the ITAT Delhi Bench and the matter was settled in favour of the assessee. ITAT Delhi Bench in assessee's own case for AY 09-10 in ITA No. 20/Del/2013 held as under:

"5. On careful consideration of above submissions, we note that the Tribunal in assessee's own case for AY 2008-09 order dated 11.7.2014 (supra) decided the issue in favour of the assessee and against the revenue with following observations and conclusion:-

"4. We have heard rival parties and have gone through the material placed on record. The appeal was earlier heard on 10.07.2012 but it was released

on 19.07.2012 for re-hearing in view of the retirement of one of the members. The Revenue has taken a specific ground vide ground No.1 by which it has challenged that Ld. CIT(A) has wrongly followed the judgement of CIT Vs Shoorji Vallabhdas & Co. 46 ITR 144 (S.C.), which was distinguished by the judgement in the case of Morvi Industries Ltd. Vs CIT 82 ITR 835. However, we find that Ld. CIT(A) had followed the former case law by applying the ratio which lays down that real income has to be considered with reference to commercial & business realities of the situation not with reference to his system of accounting. The facts in the case law of Morvi Industries Ltd. (supra) are quite different. Therefore, ground No.1 raised by Revenue deserves to be dismissed.

4.1 The Revenue has further taken ground No.2 by which it has challenged that Ld. CIT(A) has not followed the ratio of case law of State Bank of Travencore Vs CIT 158 ITR 102 (S.C.).

4.2 We have gone through the case law and we find that in that case, accounts of borrowers were debited and interest income was credited to interest suspense account whereas in the present case, the interest on bad loans has not been provided as per RBI guidelines and as per accounting standard 9 issued by Institute of Chartered Accountants of India.

4.3 We find that the issue raised by Revenue is squarely covered by the order of the tribunal in the case of Vaish Cooperative Bank Ltd. in I.T.A.No. 5449 wherein the tribunal has deleted the addition under similar circumstances vide para 7 and the relevant portion is reproduced below:

"7. Against the above order, revenue is in appeal before us. We have heard both the counsels and perused the records. We find that the interest in this case was due on non-performing assets (NPA). As per the RBI guideline in this regard, interest on NPAs is not to be recognized. Accounting standard 9 issued by the Institute of Chartered Accountant of India also

provides that income is to be recognized only when there is some reasonable certainty about the receipt of the income. We, further, find that this view is also supported by the decisions, as mentioned above. We find that in the case of CIT Vs Elgi Finance Ltd., 293 ITR 357, Hon'ble Madras High Court has held that interest on non-performing asset is not to be recognized in light of the RBI notification and accounting standard 9 issued by the Institute of Chartered Accountant of India."

5. *We find that the facts and circumstances of the present case are similar, therefore, respectfully following the same, we dismiss the appeal of the Revenue."*

6. *In view of above, we are of the considered opinion that the interest on non-performing assets is not to be recognised in the light of RBI notification and Accounting Standard 9 issued by the Institute of Chartered Accountant of India. We further respectfully note that the benefit of the ratio of the decision of Hon'ble Supreme Court in the case of CIT Vs Shooji Vallabhdas & Co. (supra) ITA No.20/Del/2013 and State Bank of Travancore vs CIT (supra) is not available for the revenue. Under these facts and circumstances, we are inclined to hold that the issue is squarely covered in favour of the assessee and against the revenue by the earlier order of the Tribunal in assessee's own case for AY 2008-09 (supra). Therefore, ground no. 1, 2 and 3 of the revenue being devoid of merits are dismissed."*

5.1 Therefore, in view of the binding judicial precedent in assessee's own case as laid down by the order of the Coordinate Bench in assessee's own case, we find no reason to interfere with the findings of the Ld. Commissioner of Income Tax (A) on this issue and we dismiss the grounds raised by the department.

6. In the result, the appeal of the department stands dismissed.

Order pronounced in the open court on 28th JANUARY, 2019.

Sd/-
(N.K. SAINI)
VICE PRESIDENT

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 28th JANUARY, 2019
'GS'

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By Order

ASSTT. REGISTRAR

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	