

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No.25/Del/2016
Assessment Year : 2012-13

Deputy Commissioner of
Income Tax,
Rohtak Circle,
Rohtak.

(Appellant)

Vs. M/s The Rohtak Central Co-op.
Bank Ltd.,
Bank Building, Delhi Road,
Rohtak.

PAN : AAAAT8736B.

(Respondent)

Appellant by : Shri Amit Katoch, Senior DR.
Respondent by : Shri S.K. Bansal, CA.

Date of hearing : 30.01.2019
Date of pronouncement : 01.02.2019

ORDER

PER G.D. AGRAWAL, VICE PRESIDENT :-

This appeal by the Revenue for the assessment year 2012-13 is directed against the order of learned CIT(A)-2, Gurgaon dated 21st October, 2015.

2. The Revenue has raised the following grounds of appeal :-

“(i) Whether on the facts and circumstances of the case, the Id.CIT(A) was right in law and facts in deleting the addition of Rs.2,18,11,312/- made by A.O. on account of accrued interest on loans which are classified as “Non-performing Assets” relying on the case of the assessee for A.Y. 2007-08 in ITA No.2839/Del/2011, ignoring the provision of section 43D of the I.T. Act, 1961.

“(ii) Whether on the facts and circumstances of the case, the Id.CIT(A) has erred in holding that income accrued to the assessee cannot be taken as income in the year ignoring the amended provision of section 43D of the I.T.

Act, 1961, which provided certain benefit to the certain class of assessee but do not provide such benefit to the assessee bank concerned.”

3. We have heard the arguments of both the sides and perused the material placed before us. We find this issue to be squarely covered by the decision of ITAT in assessee's own case in ITA No.2839/Del/2011 for assessment year 2007-08, wherein the ITAT deleted the addition with the following finding :-

“3.4 We have heard rival submissions and perused the material on record. The issue in question is covered in favour of the assessee by the order of the Tribunal in the case of ACIT Vs. The Jhajjar Central Coop. Bank (supra). The relevant finding of the Tribunal reads as follow :-

“Considering the above submission of the assessee which is well supported by RBI/NABARD circular dated 17/08/2002 vide para No.3.1 clearly states that the policy of income recognition should be based on record of recovery and therefore unrealized income should not be taken into profit and loss account by State Co-op Bank/Central Co-op Banks and that the provisions of Section 43D of the Act are clear regarding the recognition of interest income on NPA. The Ld.CIT(A) in our view has thus rightly held that overdue interest not realized during the year and credited to suspense interest account cannot be taken to be the income of the assessee. Thus the Ld.CIT(A) has thus rightly deleted the addition in question. The same is upheld. There is no substance in the contention of the Id.DR that the assessee was having no objection to this addition, since we find that it was an alternative submission of the assessee before the AO that “even if any addition is to be made of Rs.1,29,91,989/- then addition of Rs.1,00,51,715/- is to be made on account of interest of earlier years credited during the year to P & L account”. Even otherwise the AO is supposed to make just assessment based on the provisions of laws which can not be ignored since is agreeable to the proposed wrong addition. The ground No.3 is accordingly rejected.”

4. That the Revenue has also considered the above decision in the grounds of appeal itself. However, in the grounds of appeal, the Revenue has pleaded for not following the above order of the ITAT on the basis of provision of Section 43D of the Income-tax Act. We find that Section 43D has a special provision in the case of income of public financial institution and public company etc. That this provision is made applicable to cooperative banks other than primary agricultural society or primary cooperative agricultural and rural development bank by the Finance Act, 2017 with effect from 1st April, 2018. Therefore, the provision of Section 43D would be applicable to a cooperative bank only from assessment year 2018-19. The year under consideration before is 2010-11. We, therefore, respectfully following the above decision of ITAT in assessee's own case, uphold the order of the learned CIT(A) and dismiss the Revenue's appeal.

5. In the result, the appeal of the Revenue is dismissed.
Decision pronounced in the open Court on 01.02.2019.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT

VK.

Copy forwarded to: -

1. Appellant : **Deputy Commissioner of Income Tax,
Rohtak Circle, Rohtak.**
2. Respondent : **M/s The Rohtak Central Co-op. Bank Ltd.,
Bank Building, Delhi Road, Rohtak.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar