

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

BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं / ITA Nos.435 & 436/PUN/2017
निर्धारण वर्ष / Assessment Years : 2007-08 and 2012-13

The Dy. Commissioner of Income Tax,
Circle – 7, Pune.

..... अपीलार्थी /
Appellant

बनाम v/s

M/s. Pune Cantonment Sahakari
Bank Ltd., 150, Radiant House,
Mahatma Gandhi Road Camp,
Pune – 411001.

..... प्रत्यर्थी /
Respondent

PAN : AAAAP1811H.

Assessee by : Shri Dhiraj Dandgavel.

Revenue by : Shri Abhijit Halдар.

सुनवाई की तारीख / Date of Hearing : 28.02.2019	घोषणा की तारीख / Date of Pronouncement: 27.03.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

These two appeals filed by the Revenue are emanating out of a consolidated order of Commissioner of Income Tax (A), Pune-5, Pune dated 20.10.2016 for the assessment years 2007-08 and 2012-13, respectively.

2. Before us, at the outset, both the parties submitted that though the appeals filed by the Revenue are for two different assessment years but the facts and issues involved in both the appeals are identical except for the assessment year and the amounts involved and the Ld.CIT(A) has also passed a consolidated order and therefore the

submissions made by them while arguing one appeal would be equally applicable to the other appeal also and thus, both the appeals can be heard together. In view of the aforesaid submissions of both the parties, we, for the sake of convenience, proceed to dispose of both the appeals by a consolidated order.

3. The relevant facts as culled out from the material on record are as under :-

Assessee is a Co-operative Bank engaged in the business of acceptance of deposits and giving loans. Assessee filed its return of income for A.Y. 2007-08 on 31.10.2007 declaring total loss of Rs.2,24,47,498/-. Thereafter, order u/s 154 of the Act was passed and deduction of Rs.2,19,44,280/- u/s 36(1)(vii) was withdrawn and the total income was determined at Rs.15,81,901/-. Thereafter, the case was re-opened by issuing notice u/s 148 of the Act and thereafter re-assessment was framed vide order dt.05.03.2015 and the total income was determined at Rs.2,49,20,300/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide consolidated order dated 20.10.2016 for A.Ys. 2007-08 and 2012-13, granted substantial relief to the assessee. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us and has raised the following grounds :

“1. Whether on the facts and in the circumstances and in Law, the CIT(A) has erred in deleting the disallowance on account of accrued interest on NPAs and failed to appreciate that the assessee is a Non-Scheduled Co-operative bank and the provisions of section 43D are not applicable to the assessee.

2. Whether on the facts and in the circumstances and in Law, the Ld.CIT(A) has erred in deleting the disallowance on account of accrued interest on NPAs and failed to appreciate that the assessee is following mercantile system of accounting and therefore such accrued interest on NPAs should be included in the income for the year by virtue of section 145 of the IT Act.

3. *Whether on the facts and in the circumstances and in Law, the Ld. CIT(A) has erred in deleting the disallowance on account of accrued interest on NPAs and failed to appreciate the decision of the Apex Court in the case of Southern Technologies (320 ITR 577) wherein the Supreme Court has held that the prudential norms issued by the RBI cannot override the provisions of the Income tax Act for computing taxable income.*

4. *Whether on the facts and in the circumstances and in Law, the Ld. CIT(A) has erred in deleting the disallowance on account of accrued interest on NPAs and failed to appreciate the decision of the Madras High Court in the case of Shakti Finance Ltd (31 taxmann.com 305) wherein the Hon'ble High Court has held that accrued interest on NPAs is to be considered as income for the year and is taxable.*

5. *Without prejudice to the above, whether the Ld. CIT(A) ought to have remitted to the AO to apply the provisions of Rule 6EA."*

3.1. Similar grounds have been raised by the Revenue in ITA No.436/PUN/2017 for A.Y. 2012-13.

4. We first take up Revenue's appeal in ITA No.435/PUN/2017. Ground Nos.1 to 5 in appeal for A.Y. 2007-08 are inter-connected and are similar to ground Nos.1 to 5 of appeal for A.Y. 2012-13. We therefore proceed to dispose of the aforesaid grounds.

4.1. On perusal of the Balance-Sheet, AO noticed that assessee had accrued interest of Rs.1,96,28,483/- on the loans and advances which were termed as bad debts by the assessee. The aforesaid interest accrued was not considered by the assessee as income. In response to the query of the AO as to why the accrued interest of loans and advances which are termed as bad are not considered as income, assessee made detailed submissions which were not found acceptable to the AO. Assessee submitted that it was following the Prudential Norms on Income Recognition, asset classification as directed by RBI and it being a Co-operative Bank it has to follow the guidelines of the

RBI. It was further the submission of the assessee that the recognition of income on NPA account has to be recognized as accrual receipt basis as per the guidelines of RBI. The submissions of the assessee were not found acceptable to AO as AO was of the view that RBI guidelines cannot override the Income Tax Act. AO was further of the view that provisions of Sec.43D are not applicable to the Co-operative Banks for the year under consideration and therefore the benefit cannot be extend to the assessee. He therefore held that the interest income of Rs.1,96,28,483/- as income of the assessee and made its addition. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who decided the issue in favour of assessee by observing as under :

“7.3 I have perused the material on record and the submissions made by the Appellant bank carefully. I tend to agree with the contentions of the Appellant bank. I also find that a similar issue has been decided by the Hon'ble ITAT Pune in its order in the case of Western Maharashtra Development Corporation Ltd vs. DCIT (2008) 114 ITJ (Pune) 54 wherein it has elaborately considered a similar situation where recovery on interest on seed money loan given by the Assessee company was extremely low and possibility of recovering these amounts was somewhat remote. In the said case, the Hon'ble ITAT has observed that no doubt there is a legal right to receive the interest but there are also ground realities which do not permit strict enforcement of this right. While holding that such interest even though accrued as per mercantile system of accounting but did not give real income to the Assessee. The Hon'ble ITAT Pune has decided the issue on accrued interest on NPA advances not to be considered as income in favour of the bank in many cases a few of which are mentioned below:

ACIT Vs Osmanabad Janta Sahkari Bank Ltd ITA No. 795/PN/2011 dtd. 31.08.2012.

ACIT Vs Siddheshwar Sahkari Bank Ltd ITA No. 794/PN/2011 dated 31.08.2012

ACIT Vs Devnagari Sahkari Bank Ltd ITA No. 817 & 1114/PN/2011 dtd. 28.09.2012.

ACIT Vs Maharashtra Nagri Sahkari Nanded Bank ITA No.1713/PN/2011 Dated 28.02.2013.

7.4 Though there are diverse views on the issue of interest on NPA accounts of different High courts as in the case of CIT vs Vasisht Chay Vyapar Ltd. 330 ITR 440 wherein the Delhi High Court ruled in favour of the assessee by holding that interest income on NPA is not taxable on accrual basis, the Hon'ble Madras High Court on the other hand in the case of Shakti Finance Ltd. 31 taxmann.com 305 has taken the stand

that interest income on NPA is taxable on accrual basis, however, at present as there are no jurisdictional High Court decisions on this issue and the jurisdictional Bench has ruled in favour of the banks in various cases. Respectfully following the jurisdictional ITAT the action of the AO to tax accrued interest on NPA accounts is not justified in law. The AO is directed to delete the said addition. These Grounds of Appeal Nos.3 and 4 for the both years are allowed.”

Aggrieved by the order of Ld.CIT(A), Revenue is now before us.

5. Before us, Ld.DR supported the order of AO. Ld.A.R. on the other hand, reiterated the submissions made before AO and Ld.CIT(A) and submitted that the issue in the present case is also covered in assessee's favour by the decision of Hon'ble Bombay High Court in the case of CIT Vs. Deogiri Nagari Sahakari Bank Ltd., (2015) 379 ITR 24 (Bom). He thus supported the order of Ld.CIT(A).

6. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to taxing of interest accrued on NPAs. We find that the Co-ordinate Bench of the Tribunal has held that interest on NPAs cannot be said to be accrued to the assessee and therefore not chargeable to tax. We further find that Hon'ble Bombay High Court in the case of CIT Vs. Deogiri Nagari Sahakari Bank Ltd., (2015) 379 ITR 24 (Bom) has held that prudential norms issued by Reserve Bank of India are applicable to Co-operative Banks and that interest on sticky advances are not taxable. We further find that Hon'ble Gujarat High Court in the case of PCIT Vs. Shri Mahila Seva Sahakari Bank Ltd., (2017) 395 ITR 324 (Guj) after considering the Reserve Bank of India guidelines, Reserve Bank of India Act, 1934, Sec.45Q of Non-Banking Companies Prudential Norms (Reserve Bank) Directions, 1998 & Sec.43D of I.T. Act has held as under :

“The expression "banking company" has been defined under section 5(c) of the Banking Regulation Act, 1949 to mean any company which

transacts the business of banking in India. Part V of the 1949 Act bears the heading "Application of the Act to co-operative societies". Section 56 thereof provides that the provisions of the Act, as in force for the time being, shall apply to, or in relation to the co-operative societies as they apply to, or in relation to banking companies subject to the modifications stated thereunder. Clause (a) of section 56, provides that throughout the Act, unless the context otherwise requires- references to a "banking company" or "the company" or "such company" shall be construed as references to a "co-operative bank". Section 2(i) of the Reserve Bank of India Act, 1934 provides that "co-operative bank", "co-operative credit society", "director", "primary agricultural credit society", "primary co-operative society" and "primary credit society" shall have the meaning respectively assigned to them in Part V of the 1949 Act. Therefore, the expression "banking company" would take within its sweep a co-operative bank.

Section 45Q of the Reserve Bank of India Act, 1934, is in Chapter III-B of the Act. The provisions of Chapter III-B have an overriding effect qua other enactments to the extent they are inconsistent with the provisions contained therein. In order to reflect a bank's actual financial position in its balance-sheet, the Reserve Bank has introduced prudential norms for income recognition, asset classification and provisioning for advances portfolio of the co-operative banks. The guidelines provided thereunder are mandatory and it is incumbent upon all co-operative banks to follow them.

Income from non-performing assets is not recognized on accrual basis but is booked as income only when it is actually received. Therefore, banks should not take to income account, the interest on non-performing assets on accrual basis."

The Hon'ble High Court while dismissing the appeal of Revenue observed as under :

"that in view of the mandate of the Reserve Bank of India Guidelines the assessee could not recognize income from non-performing assets on accrual basis and could book such income only when it was actually received. The benefit claimed by the assessee was not under any provision of the Income-tax Act, 1961. The assessee being bound by the Reserve Bank of India Guidelines which were issued under the provisions of the Reserve Bank of India Act, 1934 had not shown the interest on non-performing assets as income. By virtue of the provisions of section 45Q of the Reserve Bank of India Act, 1934, the provisions of Chapter III thereof had an overriding effect over other laws including the 1961 Act. Therefore, notwithstanding the provisions of section 43D of the 1961 Act, since the provisions of section 45Q of the 1934 Act had an overriding effect vis-a-vis income recognition principles in the Companies Act, 1956, the Assessing Officer was bound to follow the Reserve Bank of India Directions so-far as income recognition was concerned."

Before us, Revenue has not placed any contrary binding decision in its support. We therefore find no reason to interfere with the order of Ld.CIT(A). **Thus, all the grounds of Revenue in ITA**

No.435/PUN/2017 and grounds 1 to 5 of Revenue's appeal in ITA No.436/PUN/2017 are dismissed.

7. Now, we take up ground No.6 of Revenue's appeal for A.Y. 2012-13 i.e., with respect to disallowance of claim of depreciation of Rs.29,34,750/-.

7.1. On perusing the details, AO noticed that assessee has claimed depreciation on investments amounting to Rs.29,34,750/-. The assessee was asked to justify the claim. It was submitted that the depreciation was claimed on securities held by the Bank under the Available for Sale (AFS) category which needs to be valued at "Marked to Market" as per the Prudential Norms issued by the RBI. It was further submitted that since the securities were held under the category of AFS, the Bank had worked out the depreciation amount whenever the market rate is lesser than the acquisition cost and claimed the amount of depreciation as business expenditure. The submission of the assessee was not found acceptable to the AO. AO was of the view that R.B.I guidelines has no role in computation of income for income tax purpose and further assessee had not made any actual loss and it was only notional loss based on the rates prevailing on the last date of Financial Year. He was further of the view that loss is contingent in nature and cannot be allowed to be set off against the taxable income. He accordingly denied the claim of depreciation. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who following the decision of Hon'ble Bombay High Court in the case of CIT Vs. HDFC Bank Ltd reported in (2014) 368 ITR 377 and the decision of Karnataka High Court in the case of Karnataka Bank Limited Vs. ACIT reported in 356 ITR 546 decided the

issue in favour of the assessee. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us.

8. Before us, Ld.D.R. supported the order of AO. Ld.A.R. on the other hand reiterated the submissions made before AO and Ld.CIT(A) and further submitted that in view of the decision of Hon'ble Bombay High Court in the case of HDFC Bank (supra), no interference to the order of Ld.CIT(A), is called for. He thus supported the order of Ld.CIT(A).

9. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to disallowance of claim of depreciation. We find that Ld.CIT(A) while deciding the issue in favour of assessee had relied on the decision of Hon'ble Bombay High Court in the case of CIT Vs. HDFC Bank Ltd., (ITA No.250 of 2012 dt.17.07.2014) which has been reproduced by CIT(A) under para 10.03 of her order :

“10.3 I have perused the material on record and submission made by the Appellant carefully. I find that this issue is squarely covered in favour of the Appellant in the case of CIT Vs. HDFC Bank Ltd. ITA No. 250 of 2012 dated 10.07.2014 wherein in the decision the Hon'ble Mumbai High Court at paragraph 7 to 12 has stated as under :

7. After perusing the order passed by the Appellant dated 23 rd March 2009 and the impugned order passed by the ITAT, we find that the ITAT was fully justified in setting aside the order of the Appellant dated 23 rd March 2009 and allowing the deduction of Rs.87.11 lakhs to the Assessee. In this regard, the reliance placed by Mr Mistry, the learned Senior Counsel appearing on behalf of the Respondent - Assessee on the judgment of this Court in the case of Commissioner of Income Tax v/s Bank of Baroda (supra) is well founded. The facts before the Division Bench in the case of CIT v/s Bank of Baroda (supra) were that the Assessee Bank had in its possession during the relevant assessment year shares and securities worth several crores. The method of valuation followed by the Assessee was to value the investments at cost or market value whichever was lower. During the year of account, depreciation with regard to the securities held by the Assessee Bank was to the tune of Rs.11,82,35,007/- and therefore, the Assessee Bank claimed a deduction with reference to the said depreciation. This was disallowed by the

Income Tax Officer. Being aggrieved, the Assessee Bank went in appeal to the CIT (Appeals) who took the view that the said investments were rightly valued at the end of the year at cost or market value whichever was lower and the difference arising as a result of this valuation had to be allowed to the Assessee as a loss. The Revenue, being aggrieved by the order of the CIT (Appeals) carried the matter further to the Tribunal who confirmed the order of the CIT (Appeals). In view thereof, the Revenue approached this Court by way of a reference. On these facts, the question of law framed by this Court was as follows :-

"(A) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was entitled to deduction on account of depreciation in the value of investments and, consequently, debiting disallowance of Rs.11,82,35,007 ?"

8. This Court, in answering the aforesaid question of law in favour of the Assessee and placing reliance on the judgment of the Supreme Court in the case of United Commercial Bank v/s CIT, reported in (1999) 240 ITR 355(SC) held as under :-

"In our view, the judgment of the Supreme Court in United Commercial Bank's case (1999) 240 ITR 355 squarely applies to the facts of this case.

In fact, the present case before us is on a stronger footing because in the case of United Commercial Bank, the loss was not debited to the profit and loss account whereas in this case, as can be seen from the working at pages 25 and 26 of the paper-book, the loss of Rs.11,82,35,007/- has been debited to the profit and loss account which is reflected as a provision for liability in the balance-sheet and the shares and securities were valued at cost on the assets side.

For the reasons given hereinabove, we answer the above quoted question in the affirmative, i.e. in favour of the assessee-bank and against the Department."

9. In the present case, we find that the facts and issues that are covered by the aforesaid judgment squarely apply to the facts and issues raised in the present Appeal. Not only are we in full agreement with the judgment of this Court in the case of CIT v/s Bank of Baroda (supra) but we are bound by the same. We therefore respectfully follow the ratio laid down in the said judgment.

10. We find that even the judgment of the Karnataka High Court in the case of Karnataka Bank Ltd. (supra), reliance on which was placed by Mr Mistry, squarely covers the issue raised in this Appeal. The facts in the case before the Karnataka High Court were that the Assessee was holding securities in different categories as mandated by the RBI Master Circular dated 1st September 2003. The Assessee treated such securities as stock-in-trade and claimed depreciation on the book value after valuing the securities at cost or market value whichever was lower. The Revenue refused to accept the Assessee's plea for the deduction and disallowed the same and added back to the total income the said amount. Aggrieved by the said order, the Assessee preferred an Appeal before the CIT (Appeals). The same was dismissed upholding the contention of the Assessing Authority. Aggrieved

thereby, the Assessee preferred an Appeal to the Tribunal. The Tribunal *inter alia* held that since the securities on which the depreciation had been claimed on the earlier years had not been identified, the issue was restored to the file of the Assessing Officer for consideration afresh and partly allowed the Appeal. Being aggrieved by the said order, Karnataka Bank Ltd. preferred an Appeal to the Karnataka High Court under section 260A of the Act. After discussing various judgments of the Supreme Court, the Karnataka High Court held as under :-

"From the aforesaid judgments of the apex court, now it is clear that a method of accounting adopted by the taxpayer consistently and regularly cannot be discarded by the Departmental authorities on the view that he should have adopted a different method of keeping the accounts or on valuation. Financial institutions like bank, are expected to maintain accounts in terms of the RBI Act and its regulations. The form in which, accounts have to be maintained is prescribed under the aforesaid legislation. Therefore, the account had to be in conformity with the said requirements. The RBI Act or the Companies Act do not deal with the permissible deductions or exclusion under the Income Tax Act. For the purpose of the Income Tax Act, if the Assessee has consistently been treating the value of investment for more than two decades the investments as stock-in-trade and claimed depreciation, it is not open to the authorities to disallow the said depreciation on the ground that in the balance-sheet it is shown as investment in terms of the RBI Regulations. The RBI Regulations, the Companies Act and the Income Tax Act operate altogether in different fields. The question whether the assessee is entitled to particular deduction or not will depend upon the provision of law relating thereto and not the way, in which the entries are made in the books of account. It is not decisive or conclusive in the matter. For the purpose of the Income Tax Act whichever method is adopted by the assessee, a true picture of the profits and gains, i.e. real income is to be disclosed. For determining the real income, the entries in the balance-sheet is required to be maintained in the statutory form may not be decisive or conclusive. It is open to the Income Tax Officer as well as the assessee to point out true and proper income while submitting the income tax returns. Even if the assessee under some misrepresentation or mistake fails to make an entry in the books of account, although under law, a deduction must be allowed by the Income Tax Officer, the assessee will not lose any right on claiming or will be debarred from being allowed the deduction. Therefore, the approach of the authorities in this regard is contrary to the well settled legal position as declared by the apex court.

In the instant case, the assessee has maintained the accounts in terms of the RBI Regulations and he has shown it as investment. But consistently for more than two decades it has been shown as stock-in-trade and depreciation is claimed and allowed. Therefore, notwithstanding that in the balance-sheet, it is shown as investment, for the purpose of Income Tax Act, it is shown as stock-in-trade. Therefore, the value of the stocks being closely connected with the stock market, at the end of the financial year, while valuing the assets, necessarily the

bank has to take into consideration the market value of the shares. If the market value is less than the cost price, in law, they are entitled to deductions and it cannot be denied by the authorities under the pretext that it is shown as investment in the balance-sheet.

(emphasis supplied.)

Before us, Revenue has not placed any contrary binding decision in its support. In view of the aforesaid facts, we find no reason to interfere with the order of Id. CIT(A). **Thus, ground No.6 of Revenue's appeal in ITA No.436/PUN/2017 is dismissed.**

10. In the result, both the appeals of Revenue are dismissed.

Order pronounced on 27th day of March, 2019.

Sd/-

(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 27th March, 2019.

Yamini

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

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वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.