

आयकर अपीलिय अधिकरण] पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

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

आयकर अपील सं / ITA No.383/PUN/2018

निर्धारण वर्ष / Assessment Year : 2013-14

The Asst. Commissioner of Income Tax,
Circle – 12, Pune.

..... अपीलार्थी /
Appellant

बनाम v/s

Bharati Sahakari Bank Limited,
Bharati Vidyapeeth Bhawan,
LBS Road, Navi Peth,
Pune – 411 030.

..... प्रत्यर्थी /
Respondent

PAN : AAATB4583F

Assessee by : Shri Mahaveer Jain.

Revenue by : Ms. Shabana Parveen.

सुनवाई की तारीख / Date of Hearing : 27.06.2019	घोषणा की तारीख / Date of Pronouncement: 02.07.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the Revenue is emanating out of the order of Commissioner of Income Tax (A) – 8, Pune dated 31.10.3017 for the assessment year 2013-14.

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

Assessee is a multi-state Co-operative Bank stated to be engaged in the business of banking activities. Assessee filed its return of income for A.Y. 2013-14 on 30.09.2013 declaring total income of

Rs.13,06,11,044/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dt.29.02.2016 and the total income was determined at Rs.14,82,30,040/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.18.04.2016 (in appeal No.PN/CIT(A)-8/DCIT, Circle-12/359/2017-18) allowed the appeal of assessee. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us and has raised the following grounds :

“1. The Ld. CIT(A) erred in deleting the disallowance on account of accrued interest on NPA amounting to Rs. 1,62,90,000/- and failed to appreciate that the assessee is following mercantile system of accounting and therefore, such accrued interest on NP A should be included in the income for the year by virtue of section 145 of the Income Tax Act, 1961.

2. The Ld. CIT(A) erred in deleting the disallowance on account of accrued interest on NPA amounting to Rs. 1,62,90,000/- and failed to appreciate the decision of the Apex Court in the case of Southern Technologies (320 ITR 577) wherein the Hon'ble 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.

3. Both the grounds being inter-connected are considered together.
4. During the course of assessment proceedings, AO noticed that assessee had not offered accrued interest on NPAs amounting to Rs.1,62,90,000/- as its income. The assessee was asked to furnish the details and show cause as to why the amount not be included to the total income of the assessee. To the query of AO assessee made submissions which were not found acceptable to the AO. AO thereafter following the decision of Hon'ble Apex Court in the case of Southern Technologies Vs JCIT reported in 320 ITR 577 held that interest accrued on NPAs amounting to Rs.1,62,90,000/- should be

added to the income of the assessee and accordingly made its addition. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A) who after following the decision of Hon'ble Bombay High Court in the case of CIT Vs. Deogiri Nagari Sahakari Bank Ltd., reported in (2015) 379 ITR 24 directed the AO to delete the addition made on account of interest made on NPAs. Aggrieved by the order of Ld.CIT(A), Revenue is now before us.

5. 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).

6. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to addition on account of interest on NPA accounts. We find that Ld.CIT(A) by following the order of Hon'ble Bombay High Court in the case of CIT Vs. Deogiri Nagari Sahakari Bank Ltd., (supra) 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 neither placed any contrary binding decision in its support nor has pointed out any fallacy in the findings

of Ld.CIT(A). In such a situation, we find no reason to interfere with the order of Ld.CIT(A). **Thus, the grounds of Revenue are dismissed.**

7. **In the result, the appeal of Revenue is dismissed.**

Order pronounced on the 2nd day of July, 2019.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 2nd July, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-8, Pune.
4. Pr. CIT-4, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" / DR, ITAT, "A" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

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