

आयकर अपीलीय 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.183/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

The Dy.Commissioner of Income Tax,
Circle – 6, Pune.

..... अपीलार्थी /
Appellant

बनाम v/s

M/s. Pune Merchants Co-operative
Bank Ltd.,
257, Budhwar Peth, Shivaji Road,
Pune.

..... प्रत्यर्थी /
Respondent

PAN : AAAAP3088J.

Assessee by : (Written submissions filed)

Revenue by : Shri Rajesh Gawali.

सुनवाई की तारीख / Date of Hearing : 25.06.2019	घोषणा की तारीख / Date of Pronouncement: 28.06.2019
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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) – 4, Pune dated 25.10.2016 for the assessment year 2013-14.

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

Assessee is a Co-operative Bank stated to be engaged in the business of banking activities. Assessee electronically filed its return of income for A.Y. 2013-14 on 11.09.2013 declaring total income of

Rs.2,44,31,888/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dt.05.02.2016 and the total income was determined at Rs.3,33,94,340/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.25.10.2016 (in appeal No.PN/CIT(A)-4/DCIT, Circle-6, Pune/399/2015-16) 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 the CIT(A) was right in deleting addition of unclaimed dividend of Rs.8,68,000/- transferred to statutory reserved fund when cessation of liability has resulted benefit (profits) to the assessee ?

2. On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting addition of interest of Rs. 75,25,517/- on NPA when the said interest has accrued to the bank as per the mercantile system of accounting followed by it. .

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in failing to appreciate the fact that the assessee is a co-operative bank and not a scheduled bank and that the provisions of section 43D are applicable to the financial institutions and not to co-operative societies.

4. For this and such other reasons as may be urged at the time of hearing, the order of the CIT(A) be vacated and that of the Assessing Officer be restored.”

3. The case file reveals that none attended on behalf of assessee despite issuance of notices. On the date of present hearing also none appeared on behalf of the assessee nor was any adjournment application filed, however, written submissions were filed by the assessee. We therefore proceed to dispose of the appeal ex-parte qua the assessee based on the material available on record and after hearing the Ld. D.R.

4. First ground is with respect to addition made u/s 41(1) of the Act.

4.1. During the course of assessment proceedings, AO noticed that assessee had transferred Rs.8,75,000/- to the statutory reserve fund, out of which Rs.8,68,000/- was from unclaimed dividend, Rs.3000/- on account of excess cash found, Rs.5,000/- on account of Membership entry fees. The assessee was asked to show cause as to why the addition not be made u/s 41(1) of the Act. The submissions made by the assessee were found not acceptable to the AO. AO was of the view that since the amount has been transferred to Reserve Fund, it means that assessee was sure that the amount was not required to be repaid. AO was therefore of the view that transferring amount to statutory reserve fund was a gain in the regular transaction of business. He accordingly made addition of Rs.8,75,000/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who deleted the addition made by the AO by observing as under :

“5.3 DECISION:- *I have perused the assessment order and the submission made by the appellant carefully. I find that the AO, without appreciating the facts in the case of the appellant relating to appropriation of profit for payment of dividend which remained unclaimed and also the nature of excess cash received by the appellant not by way of regular banking business activities and the entrance fees receive from the member being capital in nature, made the addition of Rs.8,75,000/- invoking the provisions of section 41(1) of the Act as situation of the liability in the case of the appellant. I also unequivocally intent to say that the AO also could not appreciate the provisions of section 41(1) of the Act, which could be applied only in the case of trading liability. As per section 41(1) of the Act where an allowance is granted to an assessee in any year in respect of any loss, expenditure or trading liability and subsequently during any previous year the assessee receives, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure, or the assessee is benefited by the remission or cessation of the trading liability, the amount received or the amount of the liability which is extinguished, it chargeable as business profits of the previous year. Remission and cessation includes unilateral Act of the assessee by way*

of writing off such liability in its books of account. The amount is taxable in "the year of receipt" where the assessee to whom the trading liability may have been allowed is succeeded in his business either because of amalgamation or demerger of two companies or on account of the constitution of new firm or the business is continued by some other persons when the assessee ceases to carry on the business, then the person succeeding will be chargeable to tax on the amount received in relation to which deduction or allowance has been made. Section 41(1) of the Act applies even if remission, cessation of recovery of liability take place after the discontinuance of business. From the above, it can clearly be seen that in none of the items added by the AO could fall under the aforesaid provisions of section 41(1) of the Act. Therefore, the AO was not justified in invoking the aforesaid section for making addition of the amount of Rs.8,75,000/-. Even otherwise the same could also not be added as appellant's income for the nature of such items, as stated by the appellant, which resulted into crediting the same to the reserve fund. Accordingly, the addition so made of Rs.8,75,000/- is hereby deleted. Ground 1 raise by the appellant is thus allowed."

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

5. Before us, Ld. D.R. supported the order of AO whereas the assessee in the written submissions relying on the decision of Pune Bench of the Tribunal in the case of The Commercial Co-operative Bank Limited Vs. DCIT (ITA No.265/PN/2014 dated 31.03.2015) submitted that all the appropriations made out of the taxable profits and credited to respective fund account during the assessment year cannot be treated as income. The copy of the aforesaid order was also placed on record. Assessee thus supported the order of Ld.CIT(A).

6. We have heard the Ld. D.R. and perused the material on record. The issue in the present ground is with respect to addition u/s 41(1) of the Act. We find that Ld.CIT(A) after considering the provisions of Sec.41(1) of the Act has given a finding that none of the items added by the AO would fall under the provisions of Sec.41(1) of the Act. We find that the Co-ordinate Bench of the Tribunal in the case of The

Commercial Co-operative Bank Limited (supra) after placing reliance on the decision of Pune Tribunal in the case of Bhingar Urban Co-operative Bank Limited Vs. ITO (ITA No.2027/PUN/2013 and others dated 20.10.2014) and on identical facts had deleted the addition made by the AO. Before us, Revenue has not pointed out any fallacy in the findings of Ld.CIT(A). We therefore find no reason to interfere with the order of Ld.CIT(A). **Thus, the ground No.1 of the Revenue is dismissed.**

7. Ground Nos.2 and 3 being inter-connected are considered together.

7.1. During the course of assessment proceedings, AO noticed that assessee had not offered accrued interest on NPAs amounting to Rs.75,25,517/- 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 was of the view that when assessee was following the mercantile method of accounting, the interest on NPAs has to be accounted for and that RBI guidelines issued are not intended to regulate the Income Tax Laws. He further noted that identical addition was made in A.Y. 2012-13 against which assessee had filed appeal before Ld.CIT(A). He therefore to keep the matter alive, made addition of Rs.75,25,517/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A) who after following the decision of Co-ordinate Bench of the Tribunal in the case of Bhagini Nivedita Co-operative Bank Ltd., in ITA

No.136/PUN/2014 order dated 29.05.2015 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.

8. Before us, Ld. D.R. supported the order of AO. Assessee in the written submissions inter-alia submitted that assessee is following the RBI guidelines and policies for accrual of income and as per the guidelines of RBI, the interest accrued on NPA accounts is not to be considered as income. It was further submitted that Hon'ble Bombay High Court in the case of CIT Vs. Deogiri Nagari Sahakari Bank Ltd., reported in (2015) 379 ITR 24 on identical facts has decided the issue in favour of the assessee. He thus supported the order of Ld.CIT(A).

9. We have heard the Ld. D.R. 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 Pune Tribunal had 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., (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 ground Nos.2 and 3 of Revenue are dismissed.**

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

Order pronounced on the 28th day of June, 2019.

Sd/-

(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 28th June, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-4, Pune.
4. Pr. CIT-3, 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.