

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, BENGALURU**

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.1817/Bang/2018
(Assessment year: 2013-14)

Asst. Commissioner of Income-tax,
Circle 1(1),
Davangere.

... Appellant

Vs.

The Davangere Urban Co-op. Bank Ltd.
PB Road,
Davangere.
PAN:AAACT 8757 A

... Respondent

Appellant by : Shri R.N.Siddappaji, Addl.CIT(DR)
Respondent by : None

Date of hearing: 15/07/2019
Date of pronouncement: 17/07/2019

O R D E R

Per J. SUDHAKAR REDDY, AM:

This is an appeal by the Revenue against the order of the CIT(A), Davangere, dated 22/2/2018 for the assessment year 2013-14.

2. The only issue that arises for our consideration is whether interest on non-performing assets could be treated as income accrued during the year. The Id.CIT(A), at para. 5c & 5d 3 of his order held as follows:

“5c. I have gone through the decisions relied by the AO in her order as well as the AR. Being a co-operative bank governed by the regulations of the RBI, the appellant is expected to follow the procedural norms issued by RBI. It is not required to recognize the interest on non-performing assets and sticky loans on accrual basis. The Hon'ble High Court of Karnataka in the case of CIT Vs Canfin Homes Ltd (347 ITR 0382) has pronounced the judgement against revenue. The AO in that case had assessed interest income

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from nonperforming asset, taking a view that, the interest from NPA is assessable, even though it has not yielded income, since the assessee is following mercantile system of accounting. Decision of the Hon'ble Supreme Court in the case of UCO Bank Vs. C.I.T 237 ITR 889 (1999) on the same issue is also relied upon. The decision of the Hon'ble High Court of Karnataka in the case of CIT Vs Canfin Homes Ltd is held as under:

"Therefore, it is clear, if an assessee adopts mercantile system of accounting and in his accounts he shows a particular income as accruing, whether that amount is really accrued or not is liable to bring the said income to tax. His accounts should reflect true and correct statement of affairs. Merely because the said amount accrued was not realized immediately cannot be a ground to avoid payment of tax. But, if in his account it is clearly stated though a particular income is due to him but it is not possible to recover the same, then it cannot be said to have been accrued and the said amount cannot be brought to tax. In the instant case we are concerned with a non performing asset. As the definition of non-performing asset shows an asset becomes non performing when it ceases to yield income. Non performing asset is an asset in respect of which interest has remained unpaid and has become past due. Once a particular asset is shown to be a non performing asset, then the assumption is it is not yielding any revenue. When it is not yielding any revenue, the question of showing that revenue and paying tax would not arise. As is clear from the policy guidelines issued by the National Housing Bank, the income from non-performing asset should be recognized only when it is actually recognized. That is what, the Tribunal held in the instant case. Therefore, the contention of the Revenue that in respect of non performing assets even though it does not yield any income as the assessee has adopted a mercantile system of accounting, he has to pay tax on the Revenue which has accrued notionally is without any basis. In that view of the matter, the second substantial question framed is answered against the Revenue and in favour of the assessee."

5d. Thus, respectfully following the decisions of the Apex Court and Honible jurisdictional High Court (cited Supra) in the above cases, I also hold that the interest earned on Non-performing Assets be brought to tax on receipt basis and not on accrual basis and also keeping in view the fact that the assessee is statutorily obliged to account for the interest on non-performing assets on actual receipt basis and that, it does not matter whether the interest is shown in the year of receipt or on accrual basis as the tax rate is one and the same on the income to be assessed, it is held that the

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Assessing Officer is not justified in bringing to tax the interest on non-performing assets on accrual basis just because the assessee follows hybrid system of accounting and as such the addition of Rs.2,42,22,852/- being interest accrued on NPA is held to be unwarranted and the same is deleted. Thus, this ground is allowed in favour of the appellant.”

As the Id. CIT(A) has applied the propositions of law laid down by the jurisdictional High Court in the case of *CIT vs. Canfin Homes Ltd.* (347 ITR 382), we find no infirmity in the same. This decision is also in line with the judgment of the Hon’ble Bombay High Court in the case of *CIT vs. Deogiri Nagari Sahakari Bank Ltd* (379 ITR 241)(Bom) and the judgment of the Hon’ble Gujarat High Court in the case of Principal *CIT vs. Mahila Seva Sarkari Bank Ltd.* (395 ITR 324)(Guj). In view of the decisions, we uphold the order of the Id.CIT(A) and dismiss the appeal of the revenue.

Order pronounced in the open court on 17th July, 2019.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Place : Bengaluru
Dated : 17/07/2019
srinivasulu, sps

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

Sd/-
(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore