



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

**ITA No.346/CTK/2018**

Assessment Year : 2014-2015

DCIT, Berhampur Circle, Berhampur.	Vs.	M/s. Aska Co-operative Central Bank, At/PO: Aska, Dsit: Ganjam
PAN/GIR No.AAAAT 9059 P		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri P.N.Dave, AR  
Revenue by : Shri S.M. Keshkamat, CIT( DR)

**Date of Hearing : 20 /08/ 2019**

**Date of Pronouncement : 4 /09/ 2019**

**ORDER**

**Per C.M.Garg,JM**

This is an appeal filed by the revenue against the order of the CIT(A),1, Bhubaneswar dated 22.6.2018 for the assessment year 2014-15.

2. The only grievance of the revenue is that the CIT(A) is not justified in deleting the addition of Rs.23,,85,272/- made by the Assessing officer towards accrued interest on NPA.

3. The brief facts of the case are that the assessee is a Co-operative Bank governed by Indian Banking Regulation Act, 1949 having its branches at different villages of the district of Ganjam.

During the course of assessment proceedings, the Assessing Officer noticed that the assessee had added total NPA of Rs.4,32,10,895/- as per the list of 25 types loans and advances, being interest rate varies from 4.5% to 12%. Out of above, an amount of rs.23,85,272/- was not credited to its profit and loss account as interest accrual from NPA though it was claimed that it was maintaining its books of account under mercantile system of accounting. Therefore, the Assessing officer added the same to the total income of the assessee.

4. On appeal, the CIT(A) following the decision of the Tribunal in assessee's own case for the assessment year 2012-13 in ITA No.11/CTK/2017 deleted the addition of accrued interest on NPA. Hence, the revenue is in appeal before the Tribunal.

5. At the time of hearing, Id D.R. relied on the order of the Assessing Officer whereas Id A.R. supported the order of the CIT(A). Ld A.R. produced a copy of the decision of the Tribunal in assessee's own case for the assessment year 2012-13 (supra), which decision has been followed by the CIT(A) in deleting the addition made by the Assessing officer.

6. After hearing the rival submissions, we find that the CIT(A) has followed the decision of the Tribunal in assessee's own case

for the assessment year 2012-13(supra). The relevant observation of the Tribunal is as under:

" 6. We have heard extensive submissions made by the Representatives of rival sides and have perused the orders of authorities below. We have also considered various documents and decisions relied on by both the sides. We find that the issue under consideration has been covered by the decision of Co-ordinate Bench of ITAT Ahmedabad Bench in the case of *The Suvikas Peoples' Co-op Bank Ltd., vs. ACIT* in **ITA No.1288/Ahd/2014** dated 30.11.2017 wherein the ITAT Ahmedabad Bench has held as under: -

*"3. Both parties invited our attention to the case record containing a co-ordinate Bench's order in assessee's case itself, ITA No.2182/Ahd/2013 decided on 5.9.2016 adjudicating both instant issue against Revenue as under:-*

'3. The assessee is in the business of banking activities following mercantile system of accounting. During the course of the scrutiny assessment proceedings, the assessee was asked to furnish the details of interest accrued on non-performing assets. The assessee furnished necessary details. Simultaneously, the assessee claimed that it has to follow the Circulars/guidelines issued by the Reserve Bank of India and one of the guideline of the RBI is that interest income in respect of restructured accounts classified as "**standard assets**" will be recognized on accrual basis and that in respect of the account classified as "**non-performing assets**" will be recognized as cash basis. It was explained that because of these mandatory guidelines, the assessee has not recognised interest on non performing assets on accrual basis. This contention of the assessee was dismissed by the AO who was of the opinion that since the assessee is following mercantile system of accounting, it should have recognized interest on NPA on accrual basis as per the provisions of the Income Tax Act. The AO accordingly made the addition of Rs.15.50 lacs.

4. Aggrieved by this, the assessee carried the matter before the Id. But without any success.

5. Before us, the Id. Counsel for the assessee stated that this issue is no more res integra as it has been decided by the Hon'ble jurisdictional High Court in the case of *Shri Mahila Sewa Sahakari Bank Ltd.* In Tax Appeal No.531 of 2015 dated 05.08.2016 in favour of the assessee and

against the revenue. The Id. DR could not bring any distinguishing decision in favour of the revenue.

6. We have carefully considered the orders of the authorities below. We find force in the contention, of the Id. Counsel. The Hon'ble High Court (supra) was seized with the following substantial question of law:-

*'Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law and on facts in holding that interest on non performing assets is not taxable on accrual basis looking to the guidelines of the Reserve Bank of India.?'*

7. The Hon'ble High Court considered the following facts:-

5.1 The Assessing Officer was of the opinion that interest on the NPA had accrued to the assessee, even if it was not actually realized, as it was following the mercantile system of accounting and accordingly added a sum of Rs1,72,73,000/- to the total income of the assessee. The assessee carried the matter in appeal before the Commissioner (Appeals), who upheld the order passed by the Assessing Officer. The assessee challenged the order of the Commissioner (Appeals) before the Tribunal, which allowed the appeal by deleting the interest. Being aggrieved, the revenue is in appeal.

22. Therefore, in terms of the above decision, where an assessee makes provision for NPA and seeks deduction of such amount under section 36(1)(vii) or section 37 of the Act, then in the computation of income, the RBI Guidelines would have no role to play, and hence an add back. Insofar as income recognition is concerned, the Supreme Court has held thus: "Applicability of Section 145.

57. At the outset, we may state that in essence the RBI Directions, 1998 are prudential/provisioning norms issued by RBI under Chapter III-B of the RBI Act, 1934. These norms deal essentially with income recognition. They force the NBFCs to disclose the amount of NPA in their financial accounts. They force the NBFCs to reflect "**true and correct**" profits. By virtue of Section 45-Q, an overriding effect is given to the RBI Directions, 1998 vis-à-vis "**income recognition**" principles in the Companies Act, 1956. These Directions constitute a code by itself. However, these RBI Directions, 1998 and the IT Act operate in different areas. These RBI Directions, 1998 'have

nothing' to do with computation of taxable income. These Directions cannot overrule the "**permissible deductions**" or "**their exclusion**" under the IT Act. The inconsistency between these Directions and the Companies Act is only in the matter of income recognition and presentation of financial statements. The accounting policies adopted by an NBFC cannot determine the taxable income. It is well settled that the accounting policies followed by a company can be changed unless the AO comes to the conclusion that such change would result in understatement of profits. However, here is the case where the AO has to follow the RBI Directions, 1998 in view of Section 45-Q of the RBI Act. Hence, as far as income recognition is concerned, Section 145 of the IT Act has no role to play in the present dispute." Thus, insofar as income recognition is concerned, the court has held that even the Assessing officer has to follow the RBI Directions, 1998 in view of section 45Q of the RBI Act and that as far as income recognition is concerned, section 145 of the Income Tax Act, has not role to play.

8. And held as under: -

23. In the light of the above discussion what emerges is that while determining the : tax liability of an assessee, two factors would come into play. Firstly, the recognition of income in terms of the recognized accounting principles and after such income is recognized, the computation thereof, in terms of the provisions of the Income Tax Act, 1961. Insofar as the computation of taxability is concerned, the same is solely governed by the provisions of the Income Tax Act and the accounting principles have no role to play. However, recognition of income stands on a different footing. Insofar as income recognition is concerned, it would be the RBI Directions which would prevail in view of the provisions of section 45-Q of the RBI Act, and section 145 would have no role to play. Hence, the Assessing officer has to follow the RBI Directions.

*9. Respectfully following the decision of the Hon'ble jurisdictional high Court (supra), we set aside the findings of the Id. CIT(A) and direct the A.O. to delete the addition of Rs.15.50 lacs which also includes the addition of Rs.1,30,864."*

We further find that in the case of assessee in view of income recognition not laid down by Hon'ble High Court having interest on NPA is not to be shown as the income of the assessee and not to be charged to tax. Thus, the case of recognition of income u/s.

145 of the Act and not a case of deduction under any provision of the Act Section 45-Q in Chapter III-B of RBI and other enactments to the extent same are inconsistent with the provision contents therein. The RBI guidelines provided therein are mandatory and it is incumbent upon all Co-operatives Banks to follow the same. Therefore assessee-bank should not take the income on account of interest on NPA on accrual basis. We further find support and guidance from the various decisions relied on as discussed in above para. More particularly, Ld. CIT(A) followed the case law of Hon'ble Karnataka High Court in the case of *Shakti Finance Ltd.* (supra) and Hon'ble Gujarat High Court in the case of *Shri Mahila Sewa Sahakari Bank Ltd.* (supra). Moreover, we find that no such addition on account of NPA interest has been made by the AO while making assessment u/s. 143(3) of the Act for AY 2015-16 in the case of assessee. In the light of aforesaid facts and circumstances of the case, we are of the considered opinion that the addition on account of NPA interest is not justified. Accordingly, same is directed to be deleted. We order accordingly."

7. Before us, Id D.R. could not point out any specific error in the order of the CIT(A). He also could not point out distinguishing feature to not to follow the decision of the Tribunal referred to in the impugned order. He also could not bring anything on record to show that the above order of the Tribunal was varied in appeal by any higher forum. Hence, we find no infirmity in the order of the CIT(A), which is hereby confirmed and ground of appeal of the revenue is dismissed.

8. In the result, appeal filed by the revenue is dismissed.

Order pronounced on 4 /09/2019.

Sd/-	sd/-
<b>(Laxmi Prasad Sahu)</b>	<b>(Chandra Mohan Garg)</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Cuttack; Dated 4 /09/209

B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : DCIT, Berhampur Circle,  
Berhampur
2. The Respondent. M/s. Aska Co-operative  
Central Bank, At/PO: Aska, Dsit: Ganjam
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT- 1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**