

<b>IN THE INCOME TAX APPELLATE TRIBUNAL</b>
<b>COCHIN BENCH, COCHIN</b>
<b>BEFORE S/SHRI CHANDRA POOJARI, AM &amp; GEORGE GEORGE K., JM</b>

ITA No.218/Coch/ 2018
Assessment Year: 2013-14

The Kottayam District Co-op Bank Ltd., District Co-operative Bank Building, P.B. No. 140, Central Junction, Kottayam-686 001. [PAN:AAAJK 0492J]	<b>Vs.</b>	The Assistant Commissioner of Income-tax, Circle-1, Kottayam.
<b>(Assessee -Appellant)</b>		<b>(Revenue-Respondent)</b>

<b>Assessee by</b>	Shri Rajakannan, CA
<b>Revenue by</b>	Smt. A.S. Bindhu, Sr. DR

<b>Date of hearing</b>	06/11/2019
<b>Date of pronouncement</b>	14/11/2019

## **ORDER**

Per CHANDRA POOJARI, AM:

This appeal filed by the assessee is directed against the order of the CIT(A), Kottayam dated 19/02/2018 and pertains to the assessment year 2013-14.

2. The assessee has raised the following grounds of appeal:

A) The order of the Commissioner of Income Tax (Appeals) is against law and facts and circumstances of the case. The order, if allowed to stand, would occasion a travesty of justice and cause irreparable loss and hardship to the appellant.

B) The Appellate Commissioner ought to have found that the overdue interest as regards loans which had become NPA (Non Performing Asset) was credited in the profit and loss account and equal amount was created as provision for bad and doubtful debts, to neutralize the effect of the credit. The same was

done as required under the norms issued by the Co-operative Department which is the Controlling Authority of the Co-operative Banks. Both the lower authorities erroneously considered the issue and passed orders deviating from the actual issue which was canvassed by the appellant.

C) The authorities below ought to have found that going by the provisions of Section 36(1)(vii) of the Act, provision for bad debts is eligible for deduction while arriving at the total income which is to be subjected to tax.

D) The authorities below erred in comprehending that the recognition of income and creation of the provision is with a view to protect the interest of the bank in the possible litigation with the customers for recovery of the amounts advanced along with the applicable interest.

E) The appellant would submit that the provision created is relatable to individual accounts and therefore there was no reason for the authorities below to disallow the same.

F) The authorities below ought to have considered the issue in the back ground of Section 41(4) of the Act which specifically provides for taxing the bad debts during the year in which the same is recovered by the assesseees.

G) The authorities below erred in not granting set off against the current assessment year's total income of the carried forward losses of the previous assessment years. When the assessments of the previous assessment years were not altered at the time of completion of assessment vide Annexure-A order of assessment, it was not open to the authorities to disallow the same.

3. The first ground, Ground Nos. B to E is with regard to disallowance of provision of overdue interest.

4. The facts of the issue are that the assessee transferred the provision for receipt of overdue interest in the immediate previous year (F.Y. ending 31/03/2013) to the credit side of the P&L account at Rs.40,73,80,007/- thereby treated it as income and also charged to the current year's provision for overdue interest to the P&L account at Rs.51,66,96,467/-, thereby treated it as expenditure. While framing the

assessment u/s. 143(3) of the I.T. Act, the Assessing Officer added back the current year's reserve of overdue interest to the final profit declared by the assessee and thereafter, deducted the earlier year's provisions credited to the P&L account from the same and inter alia, arrived at the book profit of assessee at Rs.8,78,06,755/-.

5. Against this, the assessee carried the matter in appeal before the CIT(A). Before the CIT(A), the assessee contended that the provision for overdue interest is a provision against interest which is to be created as per the norms issued by the Co-operative department and hence, the amount of claim was not to be disallowed. It was submitted that as per the usual practice prescribed by the Co-operative department, the bank must take the interest on bad and doubtful debts also as income and added with other interest and the gross interest is to be shown as income and then they will direct a provision to the extent of that interest and charge in the profit and loss account to nullify the effect of taking it as income. According to the assessee, the interest is to be taken in the profit and loss account at the time of realization on the basis of section 43D of the Income Tax Act. The assessee further submitted that Section 43D allows the benefit of not taking the taking the interest on mercantile basis, but on cash basis and this is a provision for interest on bad and doubtful debts. The assessee also relied on the decision of Hon'ble Gujarat High Court in the case of Shri Mahila Sahakari Bank Ltd, 395 ITR 324.

5.1 After considering the arguments of the assessee, the CIT(A) observed that it is evident that the assessee credited the interest on Bad and Doubtful debts to the

profit and loss account. However, the CIT(A) observed that the assessee was claiming deduction for the provision created against this interest income on bad and doubtful debts under section 43D on the ground that the interest is taxable only on cash basis under this provision. The CIT(A) referred to the provisions of section 43D of the Act read as under:

"43D. Special provision in case of income of public financial institutions, etc. Notwithstanding anything to the contrary contained in any other provision of this Act, --

(a) in the case of a public financial institution or a scheduled bank or a State financial corporation or a State industrial investment corporation, the income by way of interest in relation to such categories of bad or doubtful debts as may be prescribed having regard to the guidelines issued by the Reserve Bank of India in relation to such debts;

(b) in the case of a public company, the income by way of interest in relation to such categories of bad or doubtful debts as may be prescribed<sup>[1647]</sup> having regard to the guidelines issued by the National Housing Bank in relation to such debts shall be chargeable to tax in the previous year in which it is credited by the public financial institution or the scheduled bank or the State financial corporation or the State industrial investment corporation or the public company to its profit and loss account for that year or, as the case may be, in which it is actually received by that institution or bank or corporation or company, whichever is earlier."

5.2 Therefore, the CIT(A) held that as per the provisions of section 43D of the Act, the interest on bad and doubtful debts can be offered to tax in the previous year in which either it is credited or actually received whichever is earlier. Thus, according to the CIT(A), the option to choose the methodology of accounting interest on the bad and doubtful debts is on the assessee. But once the assessee accounts the interest income on accrual basis then the same cannot be claimed as deduction under section 43D of the Act. According to the CIT(A), Section 43D is not

a provision allowing deduction from income and therefore, the CIT(A) rejected the claim of the assessee as it was not based on the provisions of the Act and dismissed the ground.

6. Against this, the assessee is in appeal before us. The Ld. AR submitted that the provisions of section 43D of the I.T Act is not applicable to the assessee. According to him, the CIT(A) misunderstood the facts of the case and dismissed the appeal of the assessee by holding that section 43D of the I.T. Act is not a provision allowing deduction from income and therefore, not applicable to the assessee. The Ld. AR submitted that as per the norms of the Co-operative Department under whose control the assessee is, interest is credited on the NPA account also notionally and create equal provision being provision for bad and doubtful debts. Therefore, also the provision created for bad and doubtful debts during the previous assessment year would be reversed during the current assessment year. In other words, the provision for bad and doubtful debts for the previous assessment year and a provision including that of the current assessment year would be the sum total of the provision made during the previous assessment year and the entire provision credited in the current assessment year, less recoveries if any made during the previous assessment year in relation to which provision was credited. The Ld. DR relied on the order of the CIT(A).

7. We have heard the rival submissions and perused the record. As observed by the CIT(A), the assessee has option to offer for taxation the overdue interest on bad

and doubtful debts on accrual basis or on actual receipt basis. In the present case, the assessee has charged the entire current year's provisions to the P&L account and claimed the same on accrual basis as an expenditure. At the same time, it has credited provisions relating to the immediate earlier assessment year as an income. Thus, the assessee wants to adopt mixed system of accounting which cannot be appreciated. The assessee's case is covered by the provisions of section 43D of the I.T. Act. As such, the assessee has to follow the mandate of this provision. Hence, in our opinion, the CIT(A) is justified in rejecting the claim of the assessee and the same is confirmed. Thus, this ground of appeal of the assessee is dismissed.

8. The next ground, Ground No. F, in our opinion is totally misplaced as there is no link of section 41(4) to the issue before us. Thus, this ground of appeal of the assessee is rejected.

9. The next ground, Ground No. G is with regard to disallowance of set off of brought forward losses. The Assessing Officer gave a specific finding that the assessee had set-off the loss brought forward Rs.5,83,60,193/- against the total income computed as per the return of income filed. However, the loss computed by the assessee for all the previous assessment years were determined at profit only, as the case appeared in arriving of net profit was similar in all assessment years. Hence, there was no loss eligible for the assessee to carry forward and set-off against the current assessment year's total income so determined by the assessment order.

9. Before the CIT(A) , the assessee submitted that the AO ought to have allowed the set off of brought forward losses. The CIT(A) observed that the assessee had not produced any documents to prove that the above finding of the Assessing Officer is incorrect. In the absence of same, the CIT(A) held that there was no merit in the ground of appeal raised on this issue and the same was dismissed.

10. We have heard rival submissions and perused the record. As rightly observed by the CIT(A), the assessee has not filed any documents to prove that the finding of the Assessing Officer was incorrect. In the absence of the same, we do not find any infirmity in the order of the CIT(A) on this issue and the same is confirmed. Thus, this ground of appeal of the assessee is dismissed.

11. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 14<sup>th</sup> November, 2019.

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

sd/-  
(CHANDRA POOJARI)  
ACCOUNTANT MEMBER

Place: Kochi

Dated: 14<sup>th</sup> November, 2019

GJ

Copy to:

1. The Kottayam District Co-op Bank Ltd., District Co-operative Bank Building, P.B. No. 140, Central Junction, Kottayam-686 001.
2. The Assistant Commissioner of Income-tax, Circle-1, Kottayam.
3. The Commissioner of Income-tax(Appeals), Kottayam.

4. The Pr. Commissioner of Income-tax, Kottayam.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)  
I.T.A.T., Cochin