

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE**

**BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.1499/Bang/2016

Assessment year : 2011-12

The Shimoga District Co-operative Central Bank Ltd., Balraj Urs Road, Shimoga. PAN – AABTS 2483 A	Vs.	The Asst. Commissioner of Income-tax Circle-1, Shimoga.
APPELLANT		RESPONDENT

Appellant by	:	Shri S.V Ravishankar, Advocate
Respondent by	:	Smt. R Premi, JCIT (DR)

Date of hearing	:	10.12.2019
Date of Pronouncement	:	17.01.2020

ORDER

Per B.R Baskaran, Accountant Member:

The assessee has filed this appeal challenging the order dated 10/3/2016 passed by Id CIT(A), Davangere confirming the penalty of Rs.64.83 lakhs levied by the AO u/s 271(1)(c) of the Act for asst. year 2011-12.

2. The facts relating to the above said penalty are stated in brief :-

The assessee is a District Co-operative Central Bank carrying on banking business. During the course of assessment proceedings, the AO noticed that the assessee has not declared

interest income on loans and advances on 'accrual basis', even though the assessee was following mercantile system of accounting. The AO, accordingly, took the view that the interest accrued on the loans advanced by it should have been declared by the assessee in its return of income. When questioned about the same, the assessee submitted that it is registered under Karnataka Co-operative Society's Act and is also falling under Regulatory control of Department of Cooperation, Govt. of Karnataka, NABARD and RBI. It was submitted that, as per provisions of Karnataka Cooperative Society's Act and Rules, the assessee is bound to account for interest income, only on its realization. However, before the AO, the assessee furnished details of "interest accrued but not accounted for" during the year under consideration, which amounted to Rs.209.81 lakhs. The AO noticed that the Bangalore Bench of ITAT, vide its order dated 14/9/2012 passed in the assessee's own case, had directed that the income of the assessee has to be accounted on mercantile basis as mandated by provisions of sec. 145 of the Act. Accordingly, the AO assessed the above said "interest accrued but not received" by the assessee amounting to Rs.209.91 lakhs in the hands of the assessee. The assessee also accepted the said addition by not challenging the same before appellate authorities.

3. The AO initiated penalty proceedings u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income. Before the assessing officer, the assessee offered following explanations and accordingly pleaded that the penalty proceedings should be dropped.

“1. We have fully co-operated during the assessment procedures and have submitted all the documents and records for the smooth completion of assessment.

2. We have fully discharged the entire tax due of Rs.89,38,364/-. An amount of Rs.64,83,274/- was paid before the receipt of the assessment order and the balance amount of Rs.24,55,090/- was paid on 29/03/2014. A copy of challan is enclosed herewith.

3. We have not preferred any appeal to the higher authorities against the assessment order.

4. The addition to income made in the assessment is related to the method of accounting followed by the bank due to the statutory compulsion under the Karnataka Co-operative Societies Act, 1959.

5. During the course of assessment proceedings no undisclosed assets and properties nor unexplained investments and money nor undisclosed income were observed by the Assessing Officer.

6. The addition pertains to the adjustment required for application of provisions of Section 145 of Income Tax Act, 1961 which requires the computation

of profit under either cash or mercantile system of accounting regularly employed.

7. We are a District Central Co-operative Bank registered under the Karnataka Co-operative Societies Act, 1959 and are liable to compulsorily follow the provisions of Karnataka Co-operative Societies Act, 1959 and Karnataka Co-operative Societies Rules.

8. As per the provisions of Rule 22 and Rule 29 of Karnataka Cooperative Societies Rules, 1960 a co-operative society has to account only the incomes actually realized during the year. The rule also states that all interest accrued and due but not actually realized has to be deducted from the profits and should be added to the profits of the subsequent year when recovered.

9. Due to this restriction the bank has been regularly following since inception the method of accounting under which all expenditures and income from investments are accounted on accrual basis and only the interest income on loans and advances are accounted for on realization basis method.

10. Every year, since the removal of the deduction under Section 80P of Income Tax Act, 1961, we have been offering the difference between the interest earned on accrual basis and interest

accounted on cash basis to tax during the course of assessment.

11. During the current assessment also we have computed and voluntarily disclosed the interest accrued and not received on advances outstanding as on 31/03/2011.

12. Our software is designed to account only the interest earned on cash basis. Hence the computation of interest on accrual basis has to be done manually every year. There are a large number of borrower accounts for which interest has to be calculated separately. This work is done at the head office and figures will be available very late. Hence we are unable to offer the said income to tax at the time of filing the returns. Hence the same is offered to tax voluntarily during the assessment.

13. The interest receivable on the loans outstanding as on 31/03/2011, for the period from 01/04/2010 to 31/03/2011 which is Rs.6,81,36,749/- and in respect of earlier years is Rs.6,20,05,890/- aggregating to Ps. 13,01,42,639/-. In the Year AY 2010-11 interest outstanding of Rs.10,91,61,171/- had already been added to income and therefore is excluded from taxation for the current AY 11-12. The difference of Rs.2,09,81,469/- is offered

to tax and the same has been assessed. The taxes due have already been paid.

14. As it is a matter of interpretation of Law and as we are bound by the Karnataka Co-operative Societies Act and Rules provisions, the question of concealment or providing inaccurate particulars do not arise.

15. As the entire additions made in the assessment order pertains to interpretations of Law, the ground of concealment and furnishing inaccurate particulars does not arise.”

4. The AO was not convinced with the explanations furnished by the assessee and accordingly levied penalty of Rs.64.83 lakhs u/s 271(1)(c) of the Act for furnishing of inaccurate particulars of income. The Id CIT(A) also confirmed the penalty order and hence the assessee has filed this appeal before the us.

5. The Id AR submitted that the assessee has not accounted for interest accrued on loans, but not received by it as per the mandate of the Karnataka cooperative societies Act and Rules, which require that the interest income should be accounted for on realization basis. He further submitted that the explanations furnished by the assessee was reasonable and were based on facts. Hence the said explanations were not found to be false or not bonafide by the AO. The assessee has disclosed the amount of interest accrued but not received by it before the AO during the course of assessment

proceedings. Accordingly, the ld AR submitted that the non-disclosure of impugned income should not be considered as the case of furnishing of inaccurate particulars of income, as there was a valid reason for the same. Accordingly he submitted that the impugned penalty should be deleted. The ld AR also placed reliance on the decision rendered by Hon'ble Karnataka High Court in the case of CIT Vs. M/s Steel Center (ITA No.15/Bang/2008 dated 3/6/2014), wherein the Hon'ble High Court has held that the penalty should not be levied when the assessee has offered explanations and it was not found to be false or not found to be bonafide. He also submitted that the coordinate bench of ITAT, Bangalore has appreciated the fact that the cooperative banks are constrained to account for its interest income on receipt basis in the case of the Bhatkal Urban Cooperative Bank Ltd., Vs. DCIT (ITA No.429/Bang/2011) dated 12/10/2012 and restored the matter to the file of the AO with certain directions. He submitted that the coordinate bench has considered the decision rendered by Hon'ble Supreme Court in the case of UCO Bank Vs. CIT (237 ITR 889) in this regard, wherein it was held that the interest due on loans which were doubtful of recovery need not be recognized as income. Accordingly, the ld AR submitted that the impugned penalty should be deleted.

6. On the contrary the ld DR submitted that the assessee has consciously not declared interest accrued on loans but not received by it in its return of income. When confronted by AO only, the assessee has declared the interest income so not declared by it in the return of income. He submitted that the assessee has accepted

the addition made by the AO by not challenging the same in appellate proceedings. All these aspects prove that the assessee has furnished inaccurate particulars of income. He further submitted that the AO has initiated penalty proceedings for furnishing of inaccurate particulars income and also levied penalty on the very same limb. Accordingly, he submitted that the Id CIT(A) was justified in confirming the penalty levied u/s 271(1)(c) of the Act.

7. We have heard the rival contentions and pursued the record. It is the submissions of the assessee that it is bound by the Karnataka Cooperative Society's Act and Rules which, according to the assessee, mandate that the interest income should be accounted for on "realization basis" only. There is no dispute with regard to the fact that the assessee is following mercantile system of accounting and hence, as per the provisions of sec. 145 of the Act, the interest accrued on loans advanced by it should have been offered for taxation, even though it has not been received by it. At the same time, we should notice that the Hon'ble Supreme Court has held in the case of UCO Bank Ltd., (Supra) that the interest due on loans which were doubtful of recovery need not be recognized as income. This law has been laid down by Hon'ble Supreme Court on the basis of "real income principle", i.e., only real income should be brought to tax. The principle of "real income theory" has been appreciated by the coordinate bench in the case of Bhatkal Urban Cooperative Bank Ltd., (Supra). Be that as it may, the fact remains that the assessee has not declared interest accrued but not received by it in its return of income and the same was declared only during

the course of assessment proceedings. It was explained that, as per the Circulars issued under Karnataka Society's Act and Rules, NABARD and RBI, it was required to account for the interest income on realization basis. Thus, we noticed that there is some valid reason for the assessee in not declaring interest accrued but not received by it. There is also no dispute with regard to the fact that the assessee has offered interest income whenever it has realized it. Before the Ld CIT(A) the assessee has furnished details of interest adjustments required to be made u/s 145 of the Act in the financial year 2010-11 and 2011-12 relevant to the asst. years 2011-12 and 2012-13. For the sake of convenience, we extract below the details furnished by the assessee before the Ld CIT(A).

“The Appellant has offered for tax the interest accrued during A 2011-12 in the A Y 2012-13 during which the accrued interest had been actually received. The Appellant places before the Hon'ble CIT (A) the table showing details of interest received and accrued during A 2011-12 and A 2012- 13.

NO	Particulars	2010-11	2011-12
1	Interest demand during the year	27,59,62,602	39,55,05,697
2	Interest recovery during the year	25,49,81,134	43,18,81,983
3	Interest o/s as at end of the year	13,01,42,639	9,37,66,353
4	Actual interest earned(accrued)	27,59,62,602	39,55,05,697
5	Interest Adjustment u/s 145	2,09,81,468	-3,63,76,285

As may be seen from the above table, the accrued interest not received of Rs. 2,09,81,4681- was added to the income during AY 2011-12 to give effect

to Section 145 of the IT Act, 1961. Whereas during AY 2012-13 the interest received was more than the interest accrued and hence, the adjustment u/s 145 leads to deduction from the returned income amounting to Rs. 3,63,76,2851- . The Appellant has not claimed this deduction during AY 2012-13 and the same has also not been deducted during the course of assessment u/s 143(3) for AY 2012-13. This has resulted in double tax payment on an amount of Rs. 3,63,76,285/-“

8. On perusal of the above table, we notice that the interest adjustments warranted an addition of Rs.209.81 lakhs during the year under consideration and, while in the succeeding asst. year i.e. asst. year 2012-13, it warrants reduction of the total income by Rs.363.76 lakhs. According to the assessee it has not claimed deduction of above said amount in asst. year 2012-13. These facts would show to that the interest income is not altogether concealed, but accounted for in the succeeding years on 'receipt basis', According to the assessee, the above system is followed in consonance with certain principles directed to be followed by its controlling authorities. In effect, it results in shifting of income from one year to another year only.

9. Hence we are of the view that the explanations furnished by the assessee cannot be said to be false. We also notice that the AO has also not found it to be false or found it to be not bonafide. In any case, the system so followed by the assessee results in shifting

of income from one year to another year and the said practice, according to the assessee, is supported by the directions given by the controlling authorities. Accordingly, we are of the view that, in the facts and circumstances of the case, the impugned addition of Rs.209.81 lakhs would not give rise to levy of penalty u/s 271(1)(c) of the Act. Accordingly, we set aside the order passed by Id CIT(A) and direct the AO to delete the impugned penalty.

10. The assessee has also raised a legal issue regarding the validity of sanction given by the Joint Commissioner of Income tax. Since we have decided the issue on merits, we decline to adjudicate the above said legal issue, as the same would be academic in nature.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on **17th January, 2020.**

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(B.R Baskaran)
Accountant Member

Bangalore,

Dated, the 17th January, 2019.

/Vms/

Copy to:

1. Appellant (s) / Cross Objector(s)
2. Respondent(s)
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Dictation note enclosed
10. Date on which order goes for Xerox & endorsement.....
11. Date on which the file goes to the Head Clerk
12. The date on which the file goes to the Assistant Registrar for signature on the order
13. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
14. Date of Despatch of Order.
14. Dictation note enclosed