

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI S. S. VISWANETHRA RAVI, JM

आयकर अपील सं. / ITA No.2250/PUN/2017
निर्धारण वर्ष / Assessment Year : 2012-13

ACIT, Circle-12,
Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

Western Maharashtra Development
Corporation Limited,
Kubera Chambers, 2nd Floor,
Dr. Rajendra Prasad Road,
Shivajinagar, Pune-411005.

PAN : AAACW1864B

.....प्रत्यर्थी / Respondent

Revenue by : Shri Sudhendu Das
Assessee by : Shri Kishor Phadke

सुनवाई की तारीख / Date of Hearing : 15.06.2021

घोषणा की तारीख / Date of Pronouncement : 24.06.2021

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the Revenue directed against the order of the ld. Commissioner of Income Tax (Appeals)-5, Pune ('CIT(A)' for short) dated 16.06.2017 for the Assessment Year 2012-13.

2. The appellant raised the following grounds of appeal :-

"1. Whether on the facts and the circumstances of the case and in law, the ld.CIT(A) is justified in deleting the addition of Rs. 435.30 lakhs made by the AO on account of accrued interest on seed money loans in view of the fact that since all items of accounts were maintained as per mercantile system of accounting, there was no basis for accounting said accrued interest income on cash basis as section 145(1) of the Income Tax Act, 1961 clearly provides that income should be computed either on cash or on accrual basis as per amendment w.e.f. A.Y. 1997-98.

2. *The appellant craves to leave, add, amend or alter the grounds of appeal.*”

3. Briefly, the facts of the case are as under :-

The appellant is an autonomous body set up by the Government of Maharashtra. It is mainly engaged in promoting the industrialization of the Western Region of Maharashtra. The return of income for the assessment year 2012-13 was filed on 30.09.2012 declaring total income of Rs.1,88,40,260/- and the same was revised on 07.02.2014 at a loss of Rs.1,93,72,470/-. Against the said return of income, the assessment was completed by the Dy. Commissioner of Income Tax, Circle-12, Pune (‘the Assessing Officer’) vide order dated 26.02.2015 passed u/s 143(3) of the Income Tax Act, 1961 (‘the Act’) at a total income of Rs.2,41,57,531/- before setting off of the same against the brought forward losses. While doing do, the Assessing Officer made an addition of Rs.4,35,30,000/- being the interest accrued on the seed money advances which became sticky. The Assessing Officer was of the opinion that the respondent-assessee company was following mercantile system of accounting and, therefore, the interest on the seed money advances had accrued to the assessee and, accordingly, brought to tax rejecting the claim of appellant that, no income had accrued on such advances.

4. Being aggrieved, an appeal was preferred before the Id. CIT(A), who vide impugned order following the ITAT, Pune Bench decision in appellant’s own case for the assessment year 2008-09 deleted the addition.

5. Being aggrieved, the Revenue is before us in the present appeal.

6. The ld. Sr. DR vehemently contested that when the assessee was following the mercantile system of accounting, the interest on the advances given accrues on year to year basis and, therefore, the same should be brought to tax.

7. On the other hand, ld. AR had relied on the decision of the Co-ordinate Bench of the Tribunal in assessee's own case for earlier years.

8. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the taxability or otherwise of the interest on the seed money advances given to the entrepreneurs, which are classified as sticky advances. Admittedly, the respondent-assessee is following the mercantile system of accounting. It is the policy of the respondent-assessee company to account for the interest on such loans under seed money assistance scheme on receipt basis following the uncertainty of the recovery, realization of the interest. This policy is clearly stated in Clause (5) of Note No.23 read with 36 of Notes to Accounts forming part of Audited Financial Statements. Thus, material on record clearly indicates that there is uncertainty as to the recovery of the principal amount and interest on such advances. Therefore, the issue that comes up for our consideration is that whether can it be said that the interest had accrued on such advances when the assessee is following mercantile system of accounting. This issue is identical to the issue of taxability of interest on Non-performing Assets. There is no dispute that the interest had not been recognized in the books of account on sticky advances, the claim is in the nature of interest on doubtful debts, there is an uncertainty as to the recovery of advances as well as principal amount of the advances. The

Hon'ble Supreme Court in the case of UCO Bank vs. CIT, 237 ITR 889 held that no hypothetical income can be brought to tax. The Hon'ble Supreme Court in the case of CIT vs. Shoorji Vallabhdas And Co., 46 ITR 144 (SC) laid down the principle that what can be taxed is only a real income, in respect of which the right to receive income had accrued, the same principle was reiterated in the case of UCO Bank (supra). Recently, the Hon'ble Supreme Court again in the case of CIT vs. Vasisth Chay Vyapar, 410 ITR 244 while considering the issue in the context of taxability of interest on Non-performing Assets held that when interest was not received and the possibility of recovery almost Nil, the interest could not be treated to have accrued. Recently, the Hon'ble Jurisdictional High Court in the case of PCIT vs. Solapur District Central Co-op. Bank Ltd., 428 ITR 306 relying on the decision in case of (i) CIT v. Shoorji Vallabhdas & Co. [1962] 46 ITR 144 (SC), (ii) Pr. CIT v. Shri Mahila Sewa Sahakari Bank Ltd. [2017] 395 ITR 324/[2016] 242 Taxman 60/72 taxmann.com 117 (Guj.), (iii) Pr. CIT v. Sarangpur Co-operative Bank Ltd. [2018] 406 ITR 302/258 Taxman 230/97 taxmann.com 304 (Guj.) and (iv) Pr. CIT v. Ludhiana Central Co-operative Bank Ltd. [2018] 99 taxmann.com 81 (Punj. & Har.) on the issue of taxability of interest on the non-performing assets held as follows :-

- *The issue is squarely covered by the judgments of Gujarat High Court and Punjab & Haryana High Courts. The Gujarat High Court in case of Pr. CIT v. Shri Mahila Sewa Sahakari Bank Ltd. [2017] 395 ITR 324/[2016] 242 Taxman 60/72 taxmann.com 117 had undertaken the detailed exercises to examine an identical situation. The Court held that the Cooperative Banks were acting under the directives of the Reserve Bank of India with regard to the prudential norms set out. The Court was of the opinion that taxing interest on NPA cannot be justified on the real income theory. The decision of the Gujarat High Court in Shri Mahila Sewa Sahakari Bank Ltd., (supra) was carried in Appeal by the Revenue to the Supreme Court and such appeal was dismissed. [Para 5].*
- *The Court concluded in case of Pr. CIT v. Ludhiana Central Co-operative Bank Ltd. [2018] 99 taxmann.com 81 concluded that the Tribunal while relying upon the various pronouncements had correctly decided the issue regarding taxability of interest on NPA in favour of the assessee as being*

taxable in the year of receipt; the Tribunal had upheld the deletion made by the CIT(A) on account of addition of Rs.3,02,82,000 regarding interest accrued on NPA and that there was no illegality or perversity in the aforesaid findings recorded by the Tribunal. [Para 6].

- *The issue is thus, covered by the decisions of two High Courts. Against the judgment of the Gujarat High Court, the appeals have been dismissed by the Supreme Court. Thus, the Supreme Court can be seen to have approved the decision of the Gujarat High Court. Therefore, there is no reason to entertain these Appeals, since no question of law can be stated to have arisen. [Para 7].*
- *For the reference, it may also be noticed that subsequently, legislature has amended section 43D. Section 43D essentially provides for charging of interest on actual basis in case of certain special circumstances, in the hands of the public financial institutions, public companies etc. Explanation to section 43D defines certain terms for the purpose of said section. Clause (g) was inserted in the said explanation by Finance Act, 2016 which provides that for the purpose of such section, Cooperative Banks, Primary Agricultural Credit Society and Primary Agricultural and Rural Development Bank shall have meanings respectively assigned in Explanation to sub-section 4 of section 80B. By virtue of such insertion, the Cooperative Banks would get the benefit of section 43D. One way of looking at this amendment, can be that, the same is curative in nature and would, therefore, apply to pending proceedings, notwithstanding the fact that, the legislature has not made the provision retrospective. [Para 7].*
- *As per the Memorandum explaining the provision, the insertion of clause (g) to the Explanation was to provide for a level playing field to the Cooperative Banks. This may be one more indication to hold a belief that, the legislature in order to address a piquent situation and to obviate unintended hardship to the assessee, has introduced the amendment. However, in the present case, there is no need to conclude this issue and leave it to be judged in appropriate proceedings. [Para 8]”*

9. The ratio of above decision of the Hon’ble Bombay High Court in the case of Solapur District Central Co-op. Bank Ltd. (supra) is subsequently followed by the Hon’ble Madhya Pradesh High Court in the case of Bhind District Co-Operative Central Bank Ltd. vs. Income-Tax Department, 429 ITR 121 and the Hon’ble Madras High Court in the case of CIT vs. Tiruchirapalli District Central Co-Operative Bank Ltd., 429 ITR 127 and also the Hon’ble Karnataka High Court in the case of CIT vs. Davangere District Central Co-Operative Bank Ltd., 430 ITR 29. The issue in the present appeal is identical to the issue of taxability of interest on the non-performing assets. Therefore, the ratio laid down in the above decisions clearly applicable to the facts of

present case. Therefore, we do not see any reason to interfere with the order of the Id. CIT(A). Accordingly, the ground of appeal raised by the Revenue is dismissed.

10. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on this 24th day of June, 2021.

Sd/-

(S. S. VISWANETHRA RAVI)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(INTURI RAMA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 24th June, 2021.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-5, Pune.
4. The Pr. CIT-4, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.