

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE  
(THROUGH VIRTUAL COURT)**

**BEFORE SHRI INTURI RAMA RAO, AM  
AND  
SHRI PARTHA SARATHI CHAUDHURY, JM**

**आयकर अपील सं. / ITA No.378/PUN/2018**

**निर्धारण वर्ष / Assessment Year : 2013-14**

The Sindhudurg Dist. Central Co-op. Bank Ltd.,  
S.V. Phadnis C.A. / Sushant S. Phadnis  
613 E Ward, Phadnis Chambers,  
Shahupuri, 1<sup>st</sup> Lane,  
Kolhapur – 416001

PAN: AABAT4262F

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Asst. Commissioner of Income-tax,  
Circle-2, Kolhapur.

.....प्रत्यर्थी / Respondent

Assessee by : None  
Revenue by : Shri Vitthal Bhosale

सुनवाई की तारीख / Date of Hearing : 14-07-2021

घोषणा की तारीख / Date of Pronouncement : 14-07-2021

**आदेश / ORDER**

**PER BENCH :**

This appeal preferred by the assessee emanates from the order of the Ld. CIT(A)-2, Kolhapur, dated 11.01.2018.

2. Brief facts of the case are that the assessee is a cooperative bank and filed its return of income for the year on 29.09.2013 declaring income of Rs.4,69,16,781/-. The Assessing Officer show caused the assessee why the contingent provision made of Rs.21,59,765/- should not be disallowed

on the ground that it is merely a provision. The assessee submitted his reply stating that the said provision was made as per RBI guidelines and therefore, it was allowable. However, the AO has disagreed with the submissions of assessee holding that the CBDT Circular No.17/2008 is against the assessee and also noted that in the assessee's own case for A.Y. 2007-08, the Pune Bench of Tribunal had upheld this disallowance. The assessee challenged the same before the ld. CIT(A). The ld. CIT(A) dismissed the appeal of assessee, against which the assessee is in appeal before us.

3. None appeared on behalf of the assessee. However, since the issue being covered, we are disposing of this appeal after hearing ld. DR.

4. After perusing the material on record, it is observed that the issue involved in the present appeal is squarely covered by the ratio laid down by the Hon'ble Jurisdictional High Court in the case of PCIT vs. Solapur District Central Co-op. Bank Ltd., 428 ITR 306. The Hon'ble Bombay High Court 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. Ludhina 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]”

5. 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. Accordingly, we allow the claim of the assessee. Thus, the grounds raised by the assessee are allowed.

6. In the result, the appeal of assessee is allowed.

Order pronounced in the open Court on 14<sup>th</sup> July, 2021.

Sd/-  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 14<sup>th</sup> July, 2021

GCVSR

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

1. अपीलार्थी / The Appellant.
  2. प्रत्यर्थी / The Respondent
  3. The CIT (Appeals)-2, Kolhapur.
  4. The Pr. CIT-2, Kolhapur.
  5. DR, ITAT, "B" Bench, Pune.
  6. गार्ड फ़ाइल / Guard File.
- //सत्यापित प्रति// True Copy// आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune