IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD
(THROUGH VIDEO CONFERENCE)

BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND
SHRI S.S.GODARA, JUDICIAL MEMBER

I.T.A. No. 624/HYD/2017
Assessment Year: 2013-14

Vardhaman (Mahila) Co-operative Urban Bank Ltd., HYDERABAD [PAN: AABAT6711D]	Vs	Asst.Commissioner of Income Tax, Circle-14(1), HYDERABAD
(Appellant)		(Respondent)

For Assessee : NONE
For Revenue : Shri T.Sunil Goutam, DR

Date of Hearing : 21-12-2021
Date of Pronouncement : 17-01-2022

O R D E R

PER S.S.GODARA, J.M. :

This assessee's appeal for AY.2013-14 arises from the CIT(A)-6, Hyderabad's order dated 25-10-2016 passed in appeal No.0291/2015-16/CIT(A)-6, involving proceedings u/s.143(3) of the Income Tax Act, 1961 [in short, 'the Act'].

Case called twice. None appears at assessee's behest. It is accordingly proceeded *ex-parte.*

2. We note with the able assistance coming from the Revenue side that the assessee's sole substantive grievance raised in the instant appeal challenges correctness of both the

lower authorities' action treating interest receivable on non-performing advances of Rs.2,68,61,606/- as taxable income u/s.43D of the Act. The CIT(A)'s detailed discussion to this effect reads as under:

"02.0 The point of determination in the appeal is whether the Assessing Officer was correct in considering the sum of Rs. 2,68,61,606/- being interest receivable on non-performing advance as income of the assessee.

03.0 The assessee is an AOP engaged in the business of Banking as per Section 6 of Banking Regulation Act 1949 under the A.P Cooperative Society Act 1964. It filed its return of income admitting a total income at Rs. 1,24,90,000/-. During the course of assessment proceeding, the Assessing Officer observed that the assessee had shown interest receivable on NPAs of Rs. 2,68,61,606/- in Schedule-11 of the balance sheet which according to him should have been taken as income. But according to the assessee, its accounting policy was as per RBI guidelines and Section 430 of the Act and therefore, whenever amount received towards interest was realised in the NPA account, it was credited to the Profit & Loss account to that extent in that year, Therefore, in case of NPA, interest income was ,accounted as per the Prudential Norms laid down by the RBI, while in other cases; it was accounted for on accrual basis only. The Assessing Officer did not accept the explanation of the assessee in view of the provisions of Section 430 of the Act. He also placed reliance on the decision of the Apex Court in the case of Mis. Southern Technologies Ltd vs. Jt. CIT, Coimbatore (320 ITR 577) dated 11/01/2010, and held the interest income of Rs. 2,68,61,606/- to be taxable in the hands of the assessee.

03.1 In appeal, the assessee submitted that the amount of Rs.2,68,61,606/- was shown as contra entry in Balance sheet. In Schedule II (Interest Receivable account) and on the liability side as 'overdue interest' Reserve (inclusive of opening balance). Interest receivable was on account of merest computed on 'unsecured advances which had turned to doubtful and bad debts, on which 100% provision had been made: The principal amounts were irrecoverable and had become time barred i.e. over 3 years. The interest @ 16% was accounted to file suit against defaulters from the year 2003-04 to 2011-12, and had not been passed through Income & Expenditure Account. Those advances were in nature of bad debt, but could not be written off and had been accounted as per the prudential norms of RBI. Whenever the amount was received in the NPA account, the same was offered as income and that principle had

been consistently been followed for income recognition. According to the assessee, the Hon'ble Supreme Court in the case of M/s. Southern Technologies (supra) relied upon by the Assessing Officer had made distinction with regard to 'Income Recognition' and held that income had to be recognised in terms of the Prudential Norms, even though the same deviated from mercantile system of accounting and/or section 145 of the Income Tax Act. It could be said therefore that the Apex Court approved the 'real income' theory which was engrained in the Prudential Norms for recognition of revenue.

03.2 According to the assessee, in the case of M/s. Southern Technologies Ltd (supra) the Apex Court had dissected the matter into two parts viz., (a) Income Recognition and (b) Permissible deduction/exclusions under the Income Tax Ad and in so far as income recognition was concerned, it held that Section 145 of the I.T.Act had no role to play and the directions of Reserve Bank of India had to be followed since by virtue of 45Q of the Reserve Bank of India Act, an overriding effect was given to the directions of the Reserve Bank of India vis-a-vis income recognition principles in the Companies Act 1956. It was submitted that Visakhapatnam Bench of the Tribunal in the case of The Durga Cooperative Urban Bank Limited (ITA No.511/Vizag/2010) dated 10/03/2011 had considered that the bank was operating under a licence issued by RBI but was not a scheduled bank so as to fall within the scope of section 43D of the Act. In view of the aforesaid, it was submitted that the addition made by the Assessing Officer should be deleted.

04.0 It is to be seen that similar addition was made on identical grounds by the, Assessing Officer for A.Y. 2012-13, and in appeal against that order, after discussing the issue elaborately in appeal order NO.0012/2015/CIT(A)-6 dated 26/07/2016 passed by the undersigned, it was held that interest income accrued on the NPAs was chargeable to tax in principle. The relevant portion of the order is reproduced as under:

"Decision:

04.0 . The facts Of. the case and the submissions of the appellant have been carefully considered. The issue for consideration is whether in the case of the assessee the interest accrued on NPAs is taxable or not. Accotding to the Assessing Officer, the assessee had to account for the interest receivable on accrual basis, while according to the assessee, income was to be recognised in terms of Prudential Norms of the Reserve Bank of India and on 'real' income basis.

04.1 It was submitted by the assessee that the entire amount of interest on NPAs under consideration formed part of opening balance

of interest receivable account. If that be the case, there would be no occasion for taxing any income. If that is not the case, the question will still remain. According to it, interest receivable on NPAs was not taxable in view of the jurisdictional ITAT decision in the case of M/s. Andhra Pradesh Grameena Vikas Bank vs. ACIT in ITA No. 1459/Hyd/11 dated 29/04/2013 and the decision of ITAT, Visakhapatnam Bench in the case of DCIT V5. Durga Cooperative Urban Bank Ltd in ITA No.511/Vizag/2010 dated 10.03.2011 and the judgement dated 29/11/201 of Hon'ble Delhi High Court in the case of CIT vs. Vasisth Chay Vyapar Ltd(330 ITR 440) where it has been held that even when the assessee is following mercantile system of accounting interest on NPA could not be said to have accrued to the assessee when recovery of the principal amount itself was doubtful.

04.2 According to the assessee, the Hon'ble High Court Delhi (supra) had duly considered the decision of Hon'ble Supreme Court in the case of M/s. Southern Technologies Ltd (supra) while deciding the question of taxability of interest on NPAs and had observed that the Hon'ble Supreme Court had made a distinction with respect to 'income recognition' and held that income had to be recognised in terms of prudential norms, even though the same deviated from mercantile system of accounting and, therefore, Apex Court approved the 'real income' theory which is ingrained in the prudential norms for recognition of revenue by NBFC. But, it is to be seen that Madras High Court in the case of CIT vs Sakthi Finance Ltd (352 ITR 0102) has differed with the interpretation of Delhi High Court (supra) on the judgement of Apex Court in the case of t-t/s. Southern Technologies Ltd (supra). While deciding' the question whether nonrecognition of interest income on NPAs by the assessee following Reserve Bank of India guidelines would by itself constitute a valid ground for non-recognition of the said income on the basis of its non-accrual, the method of accounting being admittedly 'mercantile' the Hon'ble Chennai High Court observed that the Hon'ble Delhi High Court had taken the view that the decision of Hon'ble Apex Court (supra) did not apply to income recognition norms provided by RBI. According to it, the Apex Court had dealt with the aspect, i.e. income recognition norm as spelt out by the RBI as well, and had observed that RBI's directions and the Income Tax Act operated in different fields and in para 11 of its decision, the Hon'ble Supreme Court in no uncertain term had held that the collectability of interest was different from accrual and, in each and every case, the assessee had to prove that the interest income was not recognised or not taken into account due to uncertainty in collection of the income. It was for the Assessing Officer to accept the claim of the assessee under the I.T.Act or not to accept. In view of the aforesaid, the Hon'ble High Court Madras held

that mere characterisation of the account as NPA would not by itself be sufficient to say that there was uncertainty as regards realisability of interest income thereon. The ratio of its decision on interpretation of the decision of the Apex Court is that;

- *The system of accounting followed only recognises bringing the income to books.*
- *The adopted accounting policy, i.e. recognising income on NPA accounts only subject to realisation did not serve as a standard category.*
- *Accrual of interest was a matter of fact to be decided separately for each case.*
- *Only when there was uncertainty of realisability of income or interest income then it was not chargeable to tax.*

This decision of the Hon'ble Madras High Court was not- placed before the jurisdictional ITATs and, therefore, in deference to the decision of Hon'ble Madras High Court, I hold that the interest income accrued on the NPAs is chargeable to tax in principle as the assessee is following the mercantile system of accounting.

04.3 By virtue of section 43D, interest on NPAs in case of bank and financial institutions is not taxed on accrual basis, but is charged to tax only in the year of receipt or the year in which it is credited to the Profit & Loss account/ whichever is earlier. It is noteworthy that this special dispensation is available for only specific kind of NPAs. This shows that the facility of postponing taxation of income for the reason that it was not credited to Profit & Loss account and was not received is not available in respect of the interest on all kinds of NPAs. If it were stated as a general proposition that interest on NPAs should not be charged to tax on the basis of real income theory/ the provision of section 43D would be rendered otiose. It is settled law that any interpretation that renders any provision of law otiose is to be avoided.

04.4 The Assessing Officer is accordingly directed to consider for taxation only the income which accrued during the previous year under consideration. For that assessee will produce the relevant ledger account. If it fails to do so, then there would be no occasion to modify the amount of interest adopted in assessment order. In this case/ the assessee has not established that interest amount was actually not realisable. Hence/ considering the provision of section 43D and as well as the ratio of decision of Apex court in M/s. Southern Technologies Limited (supra) and Madras High Court in the case of CIT vs Sakthi Finance Ltd (supra), the assessee's claim that amount is not taxable is not accepted. Consequently/ the addition is

confirmed in principle, subject to quantification of interest amount in accordance to the direction given above.

5.0 In the result, appeal for A.Y. 2012-13 for statistical purpose is treated as partly allowed."

04.1 In view of the aforesaid and the issue being identical, following the same reasoning it is held that the interest accrued on NPAs is taxable in principle subject to taxation only of the income that had accrued during the previous year under consideration for which, the assessee will produce the relevant ledger account. Needless to say that, if it fails to do so, then there would be no occasion to modify the amount of interest adopted in the assessment order. The assessee has tried to distinguish the decision of the earlier A.Y by stating that for the A.Y under consideration, before the Assessing Officer, it had submitted that the interest amount was actually not realisable; but it is to be seen that it was done by way of a general letter for all NPAs, wherein M/s. Southern Technologies Limited (supra) the Apex Court had held that the assessee had to prove in each and every case that interest income was not recognised or not taken into account due to uncertainty in collection of the income. That was not done by the assessee and therefore, it gets no relief on that account.

05.0 In the result, appeal for A.Y. 2012-13, for statistical purpose, is treated as Partly allowed".

3. It next emerges that the instant sole issue of taxability of interest on non-performing advances is no more *res integra* in light of the tribunal's order in ITA No.1038/Hyd/2019, dt.19-01-2021 in assessee's case itself for AY.2015-16 deciding the issue against the department as under:

"3. Learned departmental representative fails to dispute that we are dealing in AY.2015-16 dealing with the case of the assessee/co-operative urban bank. The legislature has included a co-operative bank as covered u/s.43D(a) of the Act vide Finance Act, 2017 w.e.f. 01-04-2018 only. Meaning thereby that the said amendment does not carry retrospective effect. This tribunal's co-ordinate bench's decision The Taliparamba Co-operative Bank Ltd., Vs. ITO, ITA No.35/Coch/2018, dt.13-03-2019, deletes the very nature of additions of interest on NPAs in view of the foregoing statutory amendment as follows:

"2. The facts of the case are that the assessment in this case of for A.Y. 2013-14 was completed u/s 143(3) on 28.3.2016 determining a

total income at Rs.28,25,030/-. On perusal of records, it was noticed that the assessment order was prima facie erroneous in so far as it was prejudicial to the interest of revenue. 2.1 The CIT found that deduction of Rs. 7,26,695/- u/s 43D in profit & Loss account for the previous year relevant to AY 2013-14 was allowed which was not in accordance with the provisions of section 43D. Section 43D gives special provision in case of income of public financial institutions or a scheduled bank or a state financial corporation or a state industrial investment corporation, public companies etc. It was noticed that the assessee does not belong to any of these categories mentioned above. However, this was allowed by the Assessing Officer which is erroneous and prejudicial to the interest of revenue. Before the CIT, the Ld. AR relied on decisions rendered in the cases of Allied Motors P. Ltd., vs.CIT (1997) 139 CTR 0364(SC); CIT vs.Chandulal Venichand (1994) 209 ITR 7(Guj) and CIT vs. Sri Jagannath Steel Corporation (1991) 191 ITR 676(Cal.). The Ld. AR also stated that section 43D(a) was amended by the Finance Act, 2017 where co.op. banks have also been included for this deduction u/s.43D with effect from 01.04.2018. CIT was of the view that the legislature had made it amply clear by stating that the provisions are retrospective. Therefore, considering the fact that this deduction is available only from 01.04.2018 as per the amendment, the CIT held that the Assessing Officer's action in allowing deduction was both erroneous and prejudicial to the interest of revenue. Hence the assessment was set aside with a direction to the Assessing Officer to consider this allowability of the deduction afresh, affording sufficient opportunity to the assessee to offer submissions.

3. Against this, the assessee is in appeal before us. The Ld. AR submitted that the assessing officer had allowed the claim of the assessee on examination and verification of the claim and records, merely because the view of the principal commissioner of income tax is different on the issue, is no ground to invoke powers under section 263 of the Income tax Act. The Ld. AR submitted that the assessee is a co-operative bank governed and controlled by Reserve Bank of India to which the prudential norms of revenue are applicable and hence, is eligible for deduction under section 43D even though it is not listed in the schedule maintained by Reserve Bank of India. In support of this, the Ld. AR relied on the decision in the case of CIT Aurangabad Vs. Peoples Co-operative Bank and others (ITA Nos. 53,54,58 & 68 of 2014. High Court of Judicator of Bombay, Bench at Aurangabad) and other decisions on this point. The Ld. AR also submitted that section 43D of the Income tax Act had been amended subsequently by Finance Act 2017, by including therein the words "Co-op. banks" for the purpose of deduction with effect from 01/04/2018. Though this amendment was done by Finance Act

2017, this being as amendment to remedy the unintended grievances caused to the Co-op. Banks, the same should be treated as retrospective in operation. The Ld. Submitted that this view was supported by the decision in the case of Allied Motors (P) Ltd., Vs. CIT (1997) 139 CTR 0364 (SC).

3.1 The Ld. AR submitted that the assessee was following mercantile system of accounting as per the laid out procedure and was providing interest on non-per forming assets, as per the procedure laid out by Reserve Bank of India as evident from accounts and hence, was eligible for deductions under section 43D as provided therein. For this, the Ld. AR relied on the decision in the case of UCO Bank, Calcutta Vs.CIT (1999) 45 CC 599 (SC) read with circular No: F201/81/84 ITA-II dated 09/10/1984. Thus, it was submitted that the assessee was eligible for deduction under section 43D even if it not a "scheduled bank". Further, the Ld. AR relied on the following case laws:

1. CIT vs. Canfin Homes Ltd. (347 ITR 382) (Kar.) ITA No. 1038/Hyd/2019

2. The Sindagi Urban Co-op. Bank vs. Department of Income Tax (ITA No.1530/Bang/2013 dated 05/03/2015) (ITAT, Bangalore)

3. Dy.CIT vs. The Saurashtra Co-op. Bank Ltd. (ITA No. 690/Ahd/2016 dated 31/01/2018 (ITAT, Ahmedabad)

4. Dy. CIT vs. Gondal Nagarik Sahakari Bank (ITA No. 504/Rjt/2015 dated 16/01/2018 (ITAT, Rajkot).

4. The Ld. DR relied on the order of the CIT.

5. We have heard the rival submissions and perused the record. In this case, the main contention of the Ld. AR is that the assessee is a Co-operative Bank and provisions of section 43D(g) is applicable and the assessee is entitled for deduction of interest on sticky loans. The provisions of section 43D(g) was inserted by Finance Act, 2017 which is clarificatory and should be applied. As such, it was submitted that the assessee cannot be denied the applicability of provisions of section 43D(g) of the Act. An identical issue was considered by Ahmedabad Bench of the Tribunal in the case of Karnavati Co-op. Bank Ltd. vs. DCIT (2012) (134 ITD 486) wherein it was held that interest on sticky advances/NPA advances cannot be brought to tax. The provisions of section 43D are applicable to Co-operative Banks also. The relevant findings of the Tribunal are as under: "Sec. 43D is in contrast with the fundamental principle of accountancy. The cardinal principle of mercantile system of accountancy is that an income is to be shown in the books of account on accrual basis. The

principle is that it is immaterial whether it was actually received or not, but if an income is expected to be received, then it should be brought to books of account as an income accrued to the assessee. Contrary to this recognized principle, this section has prescribed that an income by way of interest shall be chargeable to tax in the previous year in which it is credited. The other deviation from the said accepted principle of accountancy is that an income by way of interest shall be chargeable to tax in the previous year in which it is actually received. The Act says that the incidence of 'credit' or "actually received", whichever is earlier is to be taken into account for the purpose of chargeability of income by way of interest. Simultaneously, it is noteworthy that this section is an overriding section because the opening words are "notwithstanding anything to the contrary contained in any other provisions of this Act". Therefore, in spite of anything contained in the Act, the provisions of this section shall override those provisions. Once the statute has categorically made a law in respect of public financial institutions that interest is chargeable to tax either in the year in which credited or actually received, whichever is earlier, then it is compulsory to abide by the said rule. No scope is left with the Revenue authorities to ignore these provisions due to unambiguous use of language in the section. As far as the status of the assessee is concerned, the AO has stated that the assessee-bank is a co-operative bank. Undisputedly, the assessee is also governed by the RBI guidelines. Vide an Expln. (d) r.w.s. 36(i)(viia) annexed to s. 430 the definition of the entities incorporated by the section have been defined and in the absence of any contrary material, it is hereby held that the assessee is covered by one of the entities, hence the provisions of s. 43D are to be applied. Next issue is that whether a circular having effect of relaxing rigour of law can be treated as inconsistent with the provisions of a statute. In order to aid proper determination of the income of moneylenders and banks, the CBDT has issued a Circular dt. 6th Oct., 1952, providing that where interest accruing on doubtful debts is credited to a suspense account, it need not be included in assessee's taxable income, provided the ITO is satisfied that recovery is practically improbable. The CBDT under s.119 has power to issue circulars in exercise of its statutory powers. If the Board considers it necessary to lay down certain rules and then direct the sub-ordinate authorities, such directions are required to be followed and such circular would be binding on the Department unless and until held as ultra vires by a Court of law. The Board has powers to relax the severity or the strictness of law and the authorities are required to follow those instructions. As of now the law as laid down is that in terms of CBDT circular the interest is to be added as income only when actually received or credited in respect of the "sticky advances" while making assessment for a financial institution. It can safely be concluded that by the

insertion of a special provision to tax interest income in the case of public financial institution, etc. s. 43D has to be applied in its letter and spirit."

5.1 This decision was followed by the Rajkot Bench of the Tribunal in the case of DCIT vs. Gondal Nagarik Sahakari Bank in ITA 504/Rjt/2015 dated 16/1/2018. The same view was taken by the Bangalore Bench of the Tribunal in the case of The Sindagi Urban Cooperative Bank vs. Department of Income Tax in ITA No. 1530/Bang/2013 dated 05/03/2015 wherein it was held as under:

"8. We have given a careful consideration to the rival submissions. Section 43D of the Act is reproduced below:

43-D: Special provision in case of income of public financial institutions, public companies etc. - Notwithstanding anything to the contrary contained in any other provisions of this Act,- (a) in the case of a public financial institution or a scheduled bank or a Slate 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 having regard to the guidelines issued by the National Housing Bank in relation to such debts, shall be chargeable to tax in tin, 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. 9. Section 43D of the Act was brought in basically intended to overcome the decision of the Supreme Court in State Bank of Travancore Vs. CIT 158 ITR 102 (SC) wherein it was held that interest on doubtful advances credited to "interest suspense account" and not transferred to "profit and loss account" should be considered as accrued according to the mercantile system of accounting and was taxable as such. The benefit of exception from the said Supreme Court's decision was given through section 43D to public financial institutions as defined in section 4A of the Companies Act, 1956 scheduled banks as per Expln. (ii) to Section 36(i)(viia) of the Act, State financial corporations established under section 3 or 3A of the State Financial Corporations Act, 1951 and institutions notified under section 46 of the said Act, and State industrial investment corporations which are Government companies as per section 617 of the Companies Act, 1956 and which are engaged in providing long term finance for industrial projects and approved by the Central

Government under Sec.36(i)(viii) of the Act. As per section 43D in the cases of above said institutions interest on sticky advances falling under Health Codes 4 to 8 as per the guidelines issued by the Reserve Bank of India will be charged to tax either in the year in which the relevant interest is credited to the profit and loss account or the year of actual receipt of interest, whichever is earlier. Thus, so long as the interest is not received and so long as credits in respect of such interest are confined to "interest suspense account", such interest amounts will not be treated as income of the assessee in view of the non- obstante clause of section 430 even though the assessee is following mercantile system of accounting."

5.1 Reliance is also placed on the decision of the Karnataka High Court in the case of CIT vs. Canfin Homes Ltd. (2012) (347 ITR 382) wherein it was held as under:

"In State Bank of Travancore v. CIT [1986] 158 TTR 102 (SC) the Supreme Court held that the concept of reality of the income and the actuality of the situation are relevant factors which go to the making up of accrual of income but once accrual takes place and income accrues, the same cannot be defeated by any theory of real income. Section 145(1) of the Income-tax Act, 1961, is subject to the provisions of sub-section (2). Subsection (2) provides that the Central Government may notify in the Official Gazette from time to time accounting standards to be followed by any class of assesses or in respect of any class of income. Therefore, the requirement of complying with cash or mercantile system of accounting is subject to the directions to be issued by the Central Government in the matter of accounting standards. After the amendment to section 145 the Board has issued accounting standards to be followed by way of a Notification No. S.O. 69(E), dated January 25, 1996. Clause 6 defines "accrual" for the purpose of paragraphs 1) to (5) in the accounting standards. "Accrual" refers to the assumption that revenue and costs ore accrued, that is, recognised as they are earned or incurred (and not as money is received or paid) and recorded in the financial statements of the periods to which they relate. In this context the guidelines dated April 28,1995, were issued by the National Housing Bank with reference to non-performing assets. They state the policy on income recognition to be objective should be based on record of recovery. Income from a non- performing asset may not be recognised merely on the basis of accrual. An asset becomes non-performing when it ceases to yield income. The income from non-performing assets, therefore, should be recognised only when it is actually received. A non-performing asset is an asset in respect of which interest has remained unpaid and has become "past due". An amount is to be treated as "past due" when it remains unpaid for 30 days beyond the due date. Interest on the non-performing assets should

not be looked upon as income if such interest has remained outstanding for more than six months on and from March 31,1995. Therefore, if an assessee adopts the mercantile system of accounting and in his accounts he shows a particular income as accruing, whether that amount is really accrued or not, it is liable to tax. His accounts should reflect the true and correct statement of affairs. Merely because the amount accrued but was not realised immediately that cannot be a ground to avoid payment of tax. But, if in his account it is clearly stated that though a particular income is due to him it is not possible to recover it, it cannot be said have accrued and the amount cannot be brought to tax. Once a particular asset is shown to be a nonperforming asset the assumption is that it is not yielding any revenue. When it is not yielding any revenue, the question of showing that revenue and paying tax would not arise. Held accordingly, dismissing the appeal, that the Tribunal was right in holding that income from non-performing assets should be assessed on cash basis and not on mercantile basis despite the assessee following the mercantile system of accounting."

5.2 In view of the above discussions, we are of the view that there are judgments in favour of the assessee on the issue of applicability of section 43D(g) of the Act to the Co-operative Banks. In view of this, we are of the opinion that the order passed by the Assessing Officer is not erroneous and prejudicial to the interests of the Revenue for the purpose of invoking jurisdiction u/s. 263 of the Act. Accordingly, we quash the order passed by the CIT u/s. 263 of the I.T. Act."

We adopt the above extracted detailed reasoning mutatis mutandis and direct the Assessing Officer to delete the impugned addition".

4. Learned departmental representative could not pinpoint any distinction on facts or on law in these twin assessment years. We thus adopt judicial consistency and accept the assessee's sole substantive grievance.

5. This assessee's appeal is allowed in above terms.

Order pronounced in the open court on 17th January, 2022

Sd/-	Sd/-
(A. MOHAN ALANKAMONY)	**(S.S. GODARA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Hyderabad, Dated: 17-01-2022

TNMM

Copy to :

1.Vardhaman (Mahila) Co-operative Urban Bank Ltd., C/o. Samuel Nagadesi, Chartered Accountant, 408, Sri Ramakrishna Towers, Besides Image Hospitals, Ameer Pet, Hyderabad.

2.The Asst.Commissioner of Income Tax, Circle-14(1), Hyderabad.

3.CIT(Appeals)-6, Hyderabad.

4.Pr.CIT-6, Hyderabad.

5.D.R. ITAT, Hyderabad.

6.Guard File.