

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A”BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.401/Bang/2018
AssessmentYear: 2012-13

M/s. Kushtagi Taluk P C A R D Bank Ltd. NH-13, Iikal Road Kushtagi Dist. Koppal PAN NO :AAALP0093Q	Vs.	ACIT Circle-1 Bellary
APPELLANT		RESPONDENT

Appellant by	:	Shri Soumya, A.R.
Respondent by	:	Shri Sankar Ganesh K., D.R.

Date of Hearing	:	10.02.2022
Date of Pronouncement	:	11.02.2022

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 30.11.2017 passed by Ld. CIT(A) Gulbarga and it relates to the assessment year 2012-13. The assessee is aggrieved by the decision of Ld. CIT(A) in confirming the addition of Rs.1,68,82,745/- made by the A.O. u/s 43B of the Income-tax Act,1961 [‘the Act’ for short].

2. The facts relating to the issue are stated in brief. The assessee is a primary co-operative agricultural and rural

development bank engaged in providing credit facilities to its members. During the course of scrutiny proceedings, the A.O. noticed that the assessee has claimed interest expenditure of Rs.1,68,82,745/- in its income and expenditure account, but the same has not been paid to the concerned banks. Hence, the A.O. proposed to add back the same to the total income and it was accepted by the representative of the bank. Accordingly, the A.O. completed the assessment by making addition of above said amount, apparently u/s 43B of the Act.

3. Before Ld. CIT(A), the assessee submitted that the above said interest expenditure was payable to M/s. Karnataka State Co-operative Agricultural & Rural Development Bank Ltd., (KSCARD Bank), Bangalore. It was further submitted that the above said bank does not fall under the definition of public financial institution or a scheduled bank within the provisions of section 43B(d)&(e) of the Act. However, the Ld. CIT(A) noticed that the representative of the bank had consented for the disallowance of the above said interest expenditure. Accordingly, he took the view that no appeal lies against agreed addition. Accordingly, he confirmed the disallowance made by the A.O.

4. The Ld. A.R. submitted that the interest expenditure has been paid to M/s. Karnataka State Co-operative Agricultural & Rural Development Bank Ltd., which is neither a public financial institution nor a scheduled bank within the meaning of section 43B(d). She further submitted that the interest payable to co-operative banks was brought in sec.43B(e) of the Act only with effect from 1.4.2018. Accordingly, she submitted that the provisions of sec.43B are not applicable to the above said claim. Accordingly she submitted that the A.O. was not justified in making disallowance of interest expenditure payable u/s 43B of the Act.

She further submitted that there is no estoppel against law and hence the consent given by the representative of the bank is not binding on the assessee.

5. The Ld. D.R., on the contrary, supported the order passed by the Ld. CIT(A) and reiterated that the assessee had agreed for the addition.

6. We heard the rival contentions and perused the record. We have noticed that the interest expenditure debited by the assessee was payable to M/s. Karnataka State Co-operative Agricultural & Rural Development Bank Ltd. Since the AO has disallowed the same on the reasoning that it was not paid to concerned banks, apparently he has invoked the provisions of sec.43B for making this disallowance. The provisions of section 43B read as under:-

“43B. *Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—*

- (a) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or*
- (b) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, or*
- (c) any sum referred to in clause (ii) of sub-section (1) of section 36, or*
- (d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or a State financial corporation or a State industrial investment corporation, in accordance with the terms and conditions of the agreement governing such loan or borrowing, or*
- (e) any sum payable by the assessee as interest on any loan or advances from a scheduled bank ⁵⁵[or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank] in accordance with the terms and conditions of the agreement governing such loan or advances, or*
- (f) any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee, or*
- (g) any sum payable by the assessee to the Indian Railways for the use of railway assets,*

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him :

.....”

7. Clause (b) and (e) of sec.43B are relevant here. A perusal of section 43B(b) of the Act would show that the same is applicable to interest payable to any public financial institution or state financial corporation or state industrial investment corporation. Admittedly, 'KSCARD bank', being a co-operative bank, will not fall under the above said categories. Accordingly, section 43B(d) of the Act will not apply to the facts of the present case.

8. We notice that section 43B(e) of the Act shall be applicable to KSCARD bank. However, said provision was amended to include *a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank* by Finance Act, 2017 w.e.f. 1.4.2018, meaning thereby, the said provision was made applicable to interest payable to a co-operative bank only from assessment year 2018-19 onwards. The assessment year under consideration is assessment year 2012-13 and in that year interest payable to a co-operative bank is not covered by section 43B(e) of the Act. Accordingly, this provision will also not apply to the assessee.

9. In that view of the foregoing discussions, the A.O. was not justified in invoking the provisions of section 43B of the Act for disallowing the interest payable to KSCARD Bank Ltd. As rightly pointed out by Ld. A.R., there is no estoppel against law and hence the consent given by the representative of the bank cannot be a ground in confirming the disallowance. Accordingly, we set aside

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the order passed by Ld. CIT(A) on this issue and direct the A.O. to delete the disallowance.

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

Order pronounced in the open court on 11th Feb, 2022.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 11th Feb, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.