

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

BEFORE SHRI S.S.GODARA, JM
AND SHRI DR. DIPAK P. RIPOTE, AM

आयकर अपील सं. / ITA No.2465/PUN/2017
निर्धारण वर्ष / Assessment Year : 2014-15

Assistant Commissioner of Income Tax,
Ratnagiri Circle, Ratnagiri

.....अपीलार्थी / Appellant

बनाम / V/s.

The Ratnagiri District Central
Co-operative Bank Ltd.
Sahakar Bhavan Jawahar Path,
Ratnagiri

PAN : AAAAR7920B

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri S. P. Walimbe

सुनवाई की तारीख / Date of Hearing : 20.04.2022
घोषणा की तारीख / Date of Pronouncement : 27.04.2022

आदेश / ORDER

PER S. S. GODARA, JM :

1. This Revenue's appeal for A.Y. 2014-15 is directed against the CIT(A) -
2, Kolhapur's order dated 01/08/2017 passed in case No.
Ratnagiri/240/2014-15 involving proceeding 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. The Revenue pleads the following substantiate grounds in the instant appeal.

“1. On the facts and circumstances of the case and in Law, the CIT(A) has erred in deleting the addition of Rs.5,76,36,656/- on the account of park interest i.e. interest accrued on NPA in terms of Rule of the fact that full details of categorization of NPAs in terms of Rule 6EA of the I.T. Rules as prescribed in Section 43D of the Act were not furnished by the assessee, either before the Assessing Officer or before the CIT(A).

2. The appellant prays that the order of the CIT(A) be vacated and that of the Assessing Officer’s order may be restored.

3. The appellant craves leave to add, alter, amend or delete any of the above grounds of the appeal at the time of proceedings before the Tribunal which may please be granted”.

3. Mr. Walimbe invited our attention to the CIT(A)’s detailed discussion deleting impugned park interest income of Rs.5,76,36,656/- as under.

“ 5.2 Ground 2: This is against the action of AO in adding the park interest of Rs.5,76,36,656/-. The appellant explained that this is the interest of NPA loans and is not recognized as income as the principal itself is unsure of recovery. The AO was of the view that this provisioning cannot be allowed as the provisions of the Act more specifically sec 145 override the instructions of the RBI. I find that this issue is covered squarely in favor of the appellant by the decision of the Hon’ble Supreme Court in the case of UCO Bank Ltd cited supra. This has again been followed by the Hon’ble Bombay High Court Aurangabad Bench in the case of CIT V/s Deogiri Nagari Sahakari Bank Ltd ITA No. 53 of 2014 dated 22/01/2015. Therein the Hon’ble Court has held that interest on sticky loans cannot be assessed as income when the principal loan amount itself is doubtful of recovery. In doing so, the decision of

the Hon'ble Supreme Court in the case of UCO Bank Ltd. (1999) 4 SCC 599, has been followed. Quoting from the same-

The assessee, a cooperative bank, claimed that the interest on sticky advances was not chargeable to tax. This was rejected by the AO on the ground that Section 43D of the Income-tax Act applied only to scheduled Banks and not to cooperative banks. The Assessing Officer has also held that CBDT circular No.F201/81/84 ITAI dated 09.10.1984 is applicable only to banking companies and not to non-scheduled banks and cooperative banks. This was reversed by the ITAT. On appeal by the department to the High Court HELD dismissing the appeal:

The assessee herein being a Cooperative Bank also governed by the Reserve Bank of India and thus the directions with regard to the prudential norms issued by the Reserve Bank of India are equally applicable to the Cooperative banks. The provisions of Section 45Q of Reserve Bank of India Act has an overriding effect vis-à-vis income recognition principle under the Companies Act. Hence, Section 45Q of the RBI Act shall have overriding effect over the income recognition principle followed by cooperative banks. Hence, the Assessing Officer has to follow the Reserve Bank of India directions 1998. In UCO Bank the Supreme Court considered the nature of CBDT circular and held that the Board has power, inter alia, to tone down the rigour of the law and ensure a fair enforcement of provisions, by issuing circular in exercise of its statutory powers under section 119 of act which are binding on the authorities in the administration of the Act, it is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Further a similar issue was raised about interest accrued on a 'sticky' loan which was not recovered by the assessee bank for the last three years and transferred to the suspense account, would or would not be included in the income of the assessee for the particular assessment year (Southern Technologies Ltd. Vs. Joint Commissioner of Income Tax, Coimbtore reported in 2010 (2) SCC 548, Mercantile Bank Ltd, Bombay Vs. The Commissioner of Income Tax,

(2006) 5 SCC 221 and Vasisth Chay Vyapar Limited 330 ITR 440 (Delhi) followed).

It is evident from the above that the interest on sticky loans, where principal itself is doubtful of recovery cannot be assessed as income. In addition to this, it is seen that the decision of the Hon'ble ITAT Pune Bench in the case of Usmanabad Janta Sahakari Bank Ltd in ITA No.795/PN/11 squarely covers the issue in favor of the appellant. Respectively following the decision cited supra, the addition of Rs.5,76,36,656 is deleted and ground 2 is allowed.

4. Suffice to say, it has become crystal clear that the assessee has already succeeded on the very issue of interest on non-performing advances right upto hon'ble jurisdictional high court. Mr.Walimbe could hardly rebut the fact that the Assessing Officer had made the impugned addition u/s. 43D of the Act so as to keep this issue alive till its adjudication in hon'ble higher forums.

5. The Revenue sought to highlight the fact that the tribunal's common order in its appeals ITA NO. 133 to 139/PN/17 dated 14.02.2019 in assessment years 2004-05, 07-08 to 09-10 & 11-12 to 13-14 has restored the very issue back to the assessing authority for its necessary factual verification. We find that the learned co-ordinate bench had noted the assessee to have claimed interest on advances first credited in the profit and loss account followed by a deducting claim u/s 37 of the Act which is not the case before us. We further note that the legislature has amended section 43D vide the Finance Act, 2017 with effect from 01.04.2018 including "a co-operative bank" under its ambit whereas we are in assessment year 2014-15

only. We thus follow hon'ble jurisdictional high court decision(supra) in assessee's case(s) itself to affirm the CIT(A)'s action deleting the impugned park interest income. Ordered accordingly.

6. This Revenue's appeal is dismissed in above terms

Order pronounced in the Open Court on this 27th day of April, 2022.

Sd/-

Sd/-

(DR.DIPAK P.RIPOTE)

(S.S. GODARA)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

न्यायिक सदस्य/**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 27th April, 2022.

Ashwini

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Kolhapur.
4. The Pr.CIT-2, Kolhapur.
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.

S.No.	Details	Date	Initials
1	Draft dictated on	20.04.2022	
2	Draft placed before author	26.04.2022	
3	Draft proposed & placed before the Second Member		
4	Draft discussed/approved by Second Member		
5	Approved Draft comes to the Sr. PS/PS		
6	Kept for pronouncement on		
7	Date of uploading of Order		
8	File sent to Bench Clerk		
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R.		
11	Date of Dispatch of order		