

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 62/Asr/2023**  
Assessment Year: 2017-18

The ACIT Central Circle-1, Jalandhar	M/s The Citizen Urban Co-operative Bank Limited 506, New Jawahar Nagar, Model Town Road, Jalandhar-144001  PAN: AAAAT6369E
<b>(Appellant)</b>	<b>(Respondent)</b>

Appellant by            Shri. J.S. Bhasin, Advocate

Respondent by        Shri Rohit Mehra, CIT DR

Date of Hearing        : 30/05/2023  
Date of Pronouncement : 15/06/2023

**ORDER**

**Per Dr. M. L. Meena, AM:**

The captioned appeal is filed against the order of the commissioner of income tax -5, Ludhiana dated 09.12.2022, in respect of the assessment year 2017-18 wherein the department is challenging the deletion of addition of rupees4,08,95,449/- made by the AO on account of treating interest due to non-performing assets, as income of the year as the assessee was following mercantile system of accounting.

2. At the outset, the CIT(DR) has submitted that the Ld.CIT(A) has deleted the addition without considering the fact that disallowances was made on account of undisclosed interest due to the assessee on non performing assets and that the CIT(A) has erred in granting relief regarding the interest on non-performance assets by relying on the contention of the assessee that it was following mercantile system of accounting, except for interest on non-performing assets who is following the guidelines issued by the RBI which is in violation to the provisions of section 145 of the income tax at 1961. The CIT(DR) further submitted that the CIT(A) was not justified in deleting the addition of Rs. 32,04,736/- made by Assessing Officer on account of disallowance of broken period Interest debited by the assessee.

3. Per contra, the Ld. Counsel for the assessee has submitted that the issue is covered by the coordinate bench decision in assessee's own case in ITA numbers 416 and 417/ASR/2016 in respect of assessment years, 2012-13 and 2013-14 respectively vide order dated 27.03.2017. The relevant part of the order is extracted here under:

*6. It is seen that the method of accounting adopted by the assessee Cooperative Society is mercantile. However, with regard to interest pertaining to NPAs, the assessee has acted according to the Guidelines issued by the RBI. This method of accounting of the assessee was accepted by the department in the earlier years. It remains undisputed that the RBI Guidelines are overriding Guidelines issued by the RBI. They are mandatory in nature. The assessee has no option but to follow the same. Moreover, the method of accounting of the assessee is in accordance with the Accounting Standards issued by the Institute of Chartered Accountants of India. Further, section 45Q of the RBI Act is the governing provision. It starts with a non-obstante clause. As per this non-obstante clause, the provisions of the Chapter containing section 45Q of the RBI Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or any instrument having effect by virtue of any such law. The position is, therefore, absolutely clear. Then, in "M/s Vasisth Chay Vyapar Ltd.", vide order dated 29.11.2010, issued in ITA Nos. 552 and 565 of 2005, 1191 of 2007, 139, 466 and 537 of 2008 and 408 of 2003, the Hon'ble Delhi High Court has held that when an NBFC classifies an asset as a non-performing asset, following the directions issued by the Reserve Bank of India, it is legitimate to infer that the interest income thereon has not accrued in view of the precarious financial position of the borrower, even though*

the tax payer was following the mercantile system of accounting. In this decision, "State Bank of Travancore vs. CIT", 158 ITR 102 (SC) has been distinguished alongwith "M/s Southern Technologies Ltd. vs. JCIT", 230 ITR 577 (SC).

7. The above position has duly been taken into consideration by the Id. CIT(A) while correctly deleting the addition made. Therefore, the Id. CIT(A)'s order on this ground no. 1 is upheld.

11. In this regard, the AO, while making the addition, placed reliance on "Bank of Rajasthan" (supra). In "Bank of Rajasthan", (supra), "American Express International Banking Corporation vs. CIT", 258 ITR 601 (Bombay) was dissented from and "Vijaya Bank Ltd. vs. CIT", 187 ITR 541 (Supreme Court) was relied on. In "American Express" (supra) the Hon'ble Bombay High Court noted that the broken period interest received by the assessee bank was charged to tax as business income and, therefore, the deduction for payment made for BPI at the time of purchase of these securities could not be denied. The department could not justify as to why the BPI received should be taxed and the BPI paid should be disallowed. "Vijaya Bank Ltd." (supra) was distinguished qua the fact that the securities were held to be trading assets and not capital assets. "American Express" (supra) was followed by the Hon'ble Bombay High Court in its order dated 09.10.2002, in ITA No. 221/1997, in the case of "Union Bank of India". The department filed an SLP in "Union Bank of India". This SLP was dismissed by the Hon'ble Supreme Court in SLP No.(C)/6814/2004 reported in 268 ITR (St.) 261, on 29.03.2004.

12. The Delhi Bench of the ITAT, in "Punjab and Sindh Bank vs. DCIT", vide order dated 20.11.2008, in ITA No.2047/Del/2007 and 1504/Del/1999, taking note of the aforesaid dismissal of the department's SLP in "Union Bank of India" (supra), directed the AO to allow the BPI.

13. The ITAT Mumbai, in "Joint CIT vs. M/s Dena Bank", ITA No.3676/Mum/2000, for the A.Y. 1996-97, allowed BPI interest, following "American Express" (supra).

14. The Delhi ITAT, in "ACIT vs. Oriental Bank of Commerce", vide order dated 04.11.2015, in ITA No. 1961/Del/2011, again, took a similar view, following "American Express" (supra) .

15. So far as regards the CIT(A)'s order, the Id. CIT(A) has followed his order for A.Y. 2011-12 in "Capital Local Area Bank, Jalandhar". The facts in the present case are exactly similar with those in that case. The issue involved is the same. The said order of the Id. CIT(A) in "Capital Local Area Bank, Jalandhar" has been upheld by us in ITA No.557/Asr/2014, vide order dated 15/03/2017 authored by one of us, the Id. Accountant Member. Therein we have held as follows:

"The Assessing Officer disallowed such expenditure on the ground that purchase costs of investment could not be split up ordinarily between investment and interest expenditure. While holding so, the Assessing Officer relied on the decisions of Hon'ble Rajasthan High Court wherein the Rajasthan High Court had applied the case of Vijay Bank Ltd. vs. CIT 187 ITR 541(SC). However, the Hon'ble Bombay High Court in the case of American Express International Banking Corp. vs. CIT 258 ITR 601 (Bom) has noted that broken period interest received by the assessee was charged to tax as business income and therefore, the deduction for payment made for broken period at the time of purchase of these securities could not be denied. It was held that having assessed the income from the securities u/s 28, the department ought to have allowed deduction of payment of broken period interest as Revenue

*expenditure. The Hon'ble Court further held that there was no difference in the amount of tax whether one adopted the assessee's method or department's method since under the other method the same amount was offered to tax. The Hon'ble Bombay High Court had clearly distinguished the decision of Vijay Bank Ltd. vs. CIT and held that case law was not applicable to the facts. The Id. CIT(A) has noted in his decision that though Bank of Rajasthan Ltd. (supra) does make a strong case that the value of purchases made by assessee should be an inclusive cost which was paid by the purchaser of the security but he has followed the ease of American Express International bank (supra) for the reason that SLP filed by the Department against the decision of Hon'ble Bombay High Court in the case of Union Bank of India which had followed the decision of American Express International Bank (supra) had been dismissed by Hon'ble Supreme Court. Therefore, he has rightly held that view of Hon'ble Bombay High Court that interest from broken period should be allowed as deduction as has been upheld by Hon'ble Apex Court. In view of the above facts and circumstances, we are in agreement with the detailed findings as noted by Id. CIT(A) in his order and therefore, the Ld. CIT(A) has rightly not followed the judgment of CIT vs. Bank of Rajasthan and decision of Apex Court in the case of Vijaya Bank Ltd. vs. CIT(supra). Therefore, this grievance of the Revenue is also dismissed.*

*In view of the entire discussion and in view of the facts and circumstances and judicial precedents, we allow the appeals and Cross Objections of assessee relating to issue of disallowance of inter-transfer of securities and further the Revenue's appeal for the issues relating to disallowance on account of depreciation of investments and on account of disallowance of broken period interest are decided against the Revenue."*

4. In the present case, the method of accounting adopted by the assessee Cooperative Society is mercantile consistently. With regards to interest pertaining to NPAs, the assessee has acted according to the Guidelines issued by the RBI. This method of accounting of the assessee was accepted by the department in the earlier years. It remains undisputed that the RBI Guidelines are overriding Guidelines which are mandatory in nature. The assessee has no option but to follow the same. Moreover, the method of accounting of the assessee is in accordance with the Accounting Standards issued by the Institute of Chartered Accountants of India.

5. Considering the facts of the present case being exactly similar with those in the earlier year's case, and the issue involved is being the same, interest on non-performing assets and broken period Interest following the guidelines issued

by the RBI, the standard principles of accountancy and rule of consistency, would not be treated in violation to the provisions of section 145 of the income tax at 1961. The CIT(DR) has failed to rebut the contention and citation of the Ld. AR. In view of that matter we find no infirmity of perversity in the order of the Ld. CIT(A) to the facts on record.

6. Following the Coordinate Amritsar Bench decision, in assessee's own case in respect of assessment year 2012-13, 2013-14 and 2014-15, on parity of facts, the issue of notional interest of NPA's and disallowance of broken period interest is rightly deleted by the Ld. CIT(A) as being squarely covered in favour of the assessee. Accordingly, the impugned order under appeal is sustained.

7. In the result, the appeal is allowed.

*Order pronounced in the open court on 15/06/2023*

**Sd/-**

**(Anikesh Banerjee)  
Judicial Member**

**Sd/-**

**(Dr. M. L. Meena)  
Accountant Member**

*A.G./DOC\**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT(A)
- (5) The DR, I.T.A.T.

True Copy  
By Order