आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 92/RPR/2018

निर्धारण वर्ष / Assessment Year : 2012-13

The Assistant Commissioner of Income Tax,
Circle-2(1), Bilaspur

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Jila Sahakari Kendriya Bank Maryadit,
Sahakari Bhawan, Nehru Chowk,
Bilaspur (C.G.)
PAN : AAAAJ0607P

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhilesh Begani, CA
Revenue by : Smt. Ila M. Parmar, CIT-DR

सुनवाई की तारीख / Date of Hearing : 11.04.2023
घोषणा की तारीख / Date of Pronouncement : 04.07.2023

आदेश / ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the revenue is directed against the order passed by the CIT(Appeals)-1, Jabalpur dated 06.03.2018, which in turn arises from the order passed by the A.O. u/ss.143(3)/263 of the Income-tax Act, 1961 (for short 'Act'), dated 31.10.2017 for A.Y. 2012-13. The revenue has assailed the impugned order on the following grounds of appeal before us:

> "1. Whether on the facts and circumstance of the case and on the points of the law Ld.CIT(A) is justified in deleting the addition of Rs.6,40,16,164/- on account of service charges receivable from the State Government, while the auditor of the assessee himself certified in his audit certificate dated 21.09.2012 that the assessee bank has understated its income by the same amount on accrual basis?
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> 2. Whether on the facts and circumstance of the case and on the points of the law Ld.CIT(A) is justified in allowing relief to the assessee, while there is specific mention of Service Charge in the letter of Chhattisgarh Rajya Sahakari Vipnan Sangh Maryadit dated 18.01.2017, which has been adjusted against excess payments for procurement of paddy and/or amount receivable from cooperative societies?
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> 3. Whether on the facts and circumstance of the case and on the points of the law Ld. CIT(A) is justified in allowing relief to the assessee, ignoring the fact that the assessee was entitled to receive service charges for procurement of paddy through cooperative societies as per agreement with the Government? The assessee bank did not receive the amount because the amount of Service Charge was adjusted with the loss caused by the assessee bank to the government.
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> 4. Whether on the facts and circumstance of the case and on the points of the law Ld.CIT(A) was justified in deleting the addition of Rs.6,40,16,164/- made by the AO relying upon the decision in cases which are distinguishable in facts from the case of the assessee?

> 5. Whether the Ld. CIT(A) was justified in deleting the additions when the State Marketing Federation adjusted the Service Charges against the due from the village level cooperative societies on the one hand and again adjusting the Service Charges of Bilaspur Central Cooperative Bank Limited on the other hand while this District bank has no direct role in paddy procurement except disbursing the finance of primary village level cooperative societies?
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> 6. The order of the Ld. CIT(A) is erroneous both in law and on facts.
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> 7. The appellant craves permission to raise the additional ground or grounds at the time of hearing of the appeal."

2. Succinctly stated, the assessee which is a co-operative society, engaged in the business of banking had filed its return of income for A.Y. 2012-13 on 29.09.2012, declaring an income of Rs.11,17,03,900/-. Original assessment was framed by the A.O vide his order passed u/s.143(3) of the Act dated 31.01.2015, determining the income of the assessee society at Rs.11,28,58,550/-.

3. The Pr. Commissioner of Income Tax (for short 'Pr. CIT), Bilaspur after culmination of the assessment proceedings called for the assessment records of the assessee society. On a perusal of the records, it was observed by the Pr. CIT that the Chartered Accountant (for short 'CA') of the assessee society in his audit certificate dated 21.09.2012 had reported that the assessee society had not accounted for the service charges of Rs.640.16 lacs that was receivable from the State Government for the work of procurement of paddy carried out on behalf of various co-operative societies. The Pr. CIT backed by the aforesaid observation of the CA

observed on a perusal of the records that the assessee bank had not accounted for its income i.e. service charges of Rs.640.16 lac that was receivable by it from the State Government on procurement of 1,47,56,017.94 quintals of paddy on behalf of various co-operative societies of a value of Rs.1,60,040.41 lacs on which it was entitled for service charges @0.40%. The Pr. CIT on the basis of his aforesaid observation therein vide his order passed u/s.263(1) dated 30.03.2017 held the assessment order passed by the A.O u/s. 143(3) of the Act dated 31.01.2015 as erroneous in so far it was prejudicial to the interest of the revenue and directed him to frame a fresh assessment after affording a proper opportunity of being heard to the assessee.

4. The A.O complying with the directions given by the Pr. CIT vide his order passed u/s.263(1) dated 30.03.2017, therein, called upon the assessee to put forth an explanation as to why the service charges of Rs.640.16 lacs (supra) receivable from the State Government were not accounted for in its returned income. As the explanation tendered by the assessee did not find favour with the A.O, therefore, he made an addition of the aforesaid amount of Rs.640.16 lacs to the returned income of the assessee, observing as under:

> "10. The submissions of the assessee have been considered carefully and the following observations are made:

a) The assessee's request to wait for the order of the Hon'ble ITAT is not acceded to, since almost seven months time has already been passed after order u/s 263(1) passed by the Ld. Principal Commissioner of Income Tax, Bilaspur. The effect of the Order u/s.263(1) should be given in timely manner. Moreover, the assessee could not furnish any documents in respect of whether any hearing took place in the Hon'ble ITAT or there is any probability that order is going to be passed shortly. The matter is a time barring one and therefore, the case is decided on merits.

b) The service charges originate via tripartite agreement which specifically mentions 0.4% service charges payable to the assessee bank upon performance of specific duties subject to terms of contract. During F.Y 2011-12, the assessee bank acquired 1,47,56,017.94 quintals of paddy amounting to Rs. 1,60,040.41 lakhs on behalf of various co-operative societies, and on the same, the assessee bank was eligible for 0.40% of service7 charges receivable from the State Government amounting to Rs. 60.16 lakhs. The Auditor in his "Audit Certificate" dated 21.09.2012, has reported that no entries of the amount receivable from the State Government have been made by the bank and thus, the profit of the bank has been understated by Rs. 640.16 lakhs.

c) In the submission of the assessee bank, it has been claimed that the Auditor clearly failed to understand the true nature of transactions and came to a conclusion that the income in the form of service charges accrues to bank and neglected the terms and conditions of the contract under which bank performs. It has also been claimed that the Auditor failed to appreciate the policy and procedures of paddy procurement and without examining the agreement and earlier year's policy. However, the Auditor did his job by pointing out such discrepancies in the books of account of the assessee and quantifying the understatement of income. In mercantile system of accounting, as soon as a sum of money is payable, is taken into account without reference to actual receipt and a debit is raised even though the sum of money is yet to be paid. The assessee has also admitted the same in their submission. Therefore, the Auditor's comments are justified considering accounting principle of mercantile system of accounting. The assessee has been consistently following mercantile system of accounting as evident from the same Auditor's certificate dated 21.09.2012.

d) The assessee stated that the auditor had completed audit on 21.09.2012 when the quantity what is procured/purchased by the societies on behalf of the Government was only available. The assessee bank has made a very generalized statement on the issue without any supporting documents. The auditor in his certificate

dated 21.09.2012 has stated the exact paddy procurement amount. As per submission, the figure finalized in December, 2012 is Rs. 160040.41 quintals. The Auditor, in his report dated 21.09.2012 has quoted the same figure. If the figure was not available before December, 2012, how the Auditor could report the said figure. The assessee is silent on the issue that from where Auditor came to know the final figure in September, 2012, if it was finalized in December, 2012. Therefore, the claim of the assessee bank on this issue is not accepted.

e) The assessee has claimed that income has not been accrued by the assessee since the State Government itself is saying that nothing shall be payable to them. In support of such claim, the assessee has enclosed a letter of Chhattisgarh Rajya Sahkari Bipanan Sangh Maryadit dated 18.01.2017 in this regard. It is surprising that the assessee is submitting a letter dated 18.01.2017 to defend their case for F.Y. 2011-12 (A.Y. 2012-13).

13) However, the letter shows present status of claim of the assessee only. The relevant portions of the said letter are reproduced as under :

"जिला सहकारी केंद्रीय बैंक मर्यादित ,बिलासपुर के अंतर्गत समितियों से विपणन संघ के लेनदारी होने के कारण खरीफ वर्ष 2011-12 का रूपए 6,22,66,400.00 खरीफ वर्ष 2012-13 का रूपए 7,12,92,771.00 तथा खरीफ वर्ष 2013-14 का रूपए 7,86,39,598.00 बैंक सर्विस चार्ज की राशि का समायोजन किया गया हैं"।

In the said letter, amount of service charge payable to the assessee is clearly specified. It is clearly stated in the above letter that the due service charge has been adjusted with the loss caused by the assessee bank. It is only present status of the assessee's claim of dues. Therefore, it cannot be said that the service charge was not payable to the assessee as on 31.03.2012. It is seen from the documents enclosed that the assessee could deposit paddy of 1,43,53,809.78 quintals to the Govt. instead of paddy of 1,47,56,017.94 quintals, but received payment. Due to short deposit of 4,02,208.16 quintals, the Govt. has adjusted the service charge amount with the loss to the Govt. caused by the assessee bank. As per mercantile system of accounting, the income accrued during the year should be recognized as income in the year in which it was accrued even though it was received or not. If any reconciliation of any contingent income/liabilities arises before the completion of audit and after the date of Balance Sheet i.e. on 31.03.2012, the same must be reported in the financial statement. Therefore, the submission of the assessee in this regard is not accepted.

f) The assessee has claimed that re-assessment proceedings based on audit objection is invalid if Assessing Officer is not satisfied. The

assessee has cited case decisions of Larsen & Tourbo Ltd. Vs. State of Jharkhand (Supreme Court) (date of decision 21.03.2017). However, the assessee has failed to understand that re-assessment proceeding u/s 147 is different from revisionary power of the Principal Commissioner. Section 263 of the Income-tax Act confers the power upon the Commissioner to call for and examine the records of a proceeding under the Act and revise any order if he considers the same to be erroneous and prejudicial to the interests of the Revenue.

g) The assessee has placed reliance on various case decisions, which have been gone through. In my opinion, the ratio of these decisions is not applicable to the issues and discrepancies pointed out in this case. Most of the decisions was referred in proceeding u/s 263 also and the Ld. Pr. CIT, Bilaspur has given his observations on these decisions. On the facts and circumstances of the instant case, the case decisions cited by the assessee are distinguishable. In the submission made on 26.10.2017, the assessee has, placed reliance on a decision of the Hon'ble ITAT, Hyderabad 'A' bench in the case of Dy.CIT,CIRCLE-1(1),Hyderabad Vs M/s. A.P. Tourism Development Corporation Ltd. Hyderabad in the ITA Nos. 361/Hyd/ 2015 & 1674/Hyd/2014. The assessee has claimed that similar type of issue is involved in the decision. However it is seen from the said decision that there was a dispute between two parties and the Hon'ble ITAT has -held that where there is a dispute, the income would accrue and would not crystallize till the dispute is settled and therefore, the same cannot be brought to tax even under mercantile system of accounting. However, in the instant case there was no dispute and the service charge payable to the assessee has already been recognized by the Bipanan Sangh, but it was adjusted with the less caused by the assessee bank. The assessee did not raise any dispute against such adjustment also. Therefore, it is not a similar case. Moreover, the decision has been delivered only on 27.09.2017 and it is not known whether the Department is preferring reference u/s 260A before the Hon'ble High Court against the said decision or not.

h) Several opportunities have been provided but the assessee could not furnish copy of agreement made for F.Y.-2011-12. It is not clear why the assessee did not submit copy of said agreement even after requisition made in this regard in the show-cause letter dated 20.09.2017. The assessee is silent in this regard in their reply submitted on 26.10.2017. However a copy of the said agreement has been procured from Chhattisgarh Rajya Sahkari Bipanan sangh Maryadit. This agreement says about payment of service charge @ 0.4% to the assessee on paddy procurement. There is no mention about non-payment of service charge for short procurement.

Therefore on procurement of paddy, service charge is accrued to the assessee.

i) The assessee has referred the comments of the auditor for the next year i.e. F.Y-2012-13. However in the said comments, the auditor is not certifying that service charge was not accrued to the assessee in F.Y.2011-12. He has only stated that he is unable to comment how the responsibility of the bank is fixed and deductions are being made on the commissions receivable to the bank. If deductions are made from the service charge on account of loss in paddy procurement, it does not imply the service charge did not accrue to the assessee.

j) It is not acceptable that the actual figure of paddy procurement was not available before Dec., 2012. If the auditor could compute the service charge at the time of audit, the assessee should have taken the same as income in mercantile system of accounting. The assessee has also tried to defer the matter to the next financial year. It is not acceptable since the auditor has already computed the escapement of the income for F.Y. 2011-12 at the time of audit.

k) The assessee also could not furnish any document to show that they sought clarifications from the auditor on the issue. The assessee started explaining the issue only when the department raised the issue in assessment proceeding. This also suggests that the assessee actually did not have any explanation to offer on the issue in the course of audit.

l) It is reiterated that in the letter of Chhattisgarh Rajya Sahkari Bipanan Sangh Maryadit dated 18.01.2017, the amount of service charge payable to the assessee is clearly specified. It is also specified that the service charge was adjusted with the loss caused by the assessee bank. It is only the present status of the assessee's claim of dues. Therefore it cannot be said the service charge was not payable to the assessee as on 31.03.2012.

m) The assessee has also admitted that they did not make any claim or initiated any legal action in respect of non-payment of service charge. This also suggests the fact that service charge was accrued in their case, which was adjusted with the loss caused by the bank. It is not a very practical situation that the assessee completed major portion of the job entrusted to them without receiving any income. It is seen from the study of the case that the assessee was entitled to receive only service charge for paddy procurement and they are not entitled to receive any income other than service charge for paddy procurement."

Accordingly, the A.O vide his order passed u/s. 143(3) r.w.s. 263 of the Act dated 31.10.2017 determined the income of the assessee society at Rs.17.68 crore (approx.).

5. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). The CIT(Appeals) observing that the assessee bank had not received commission on procurement of paddy during the year under reference, a fact which was evidenced from the confirmatory letter of the State government and also the corrective statement of the auditor, found favour with the claim of the assessee and vacated the addition of Rs.640.16 lacs (supra) made by the A.O.

6. The revenue being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

7. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

8. Admittedly, it is a matter of fact borne from record that the CA of the assessee bank in his audit certificate dated 21.09.2012 had reported that the assessee bank had understated its profit by not accounting for the

service charges of Rs.640.16 lacs (0.40% of Rs.160,040.41 lacs) that was receivable by it from State Government for procuring 14756017.94 quintals of paddy. For the sake of clarity the observation of the CA in his audit report dated 21.09.2012 is culled out as under:

> "The bank is providing services to various Co-operative Societies for purchase of paddy. During the Kharif Season 2011-12 the bank has acquired 14756017.94 quintals of paddy amounting to Rs.1,60,040.41 lakhs on behalf of various co-operative societies. Bank is eligible for 0.40% as service charge receivable from the State Government amounting to Rs.640.16 lakhs. No entries of the amount receivable from the State Government have been made by the bank. Thus the profit of the bank has been understated by Rs.640.16 lakhs."

9. Ostensibly, the assessee society on being confronted with the aforesaid issue, i.e. non-accounting of the service charges of Rs.640.16 lacs (supra) that was receivable from the State Government for carrying out the work of procurement of paddy on behalf of various co-operative societies, had stated before the A.O that as no such income had accrued, therefore, the same for the said reason was not recognized during the year under consideration. Elaborating on its aforesaid contention, it was the claim of the assessee that on the date on which its auditor had completed his audit i.e. on 21.09.2012, only the quantity that was procured/purchased by the assessee society on behalf of the Government was available and the final figure as regards its value i.e. Rs.1,60,040.41 lacs was made available only in the month of December, 2012. Apart from that, the assessee by drawing support from a letter of Chhattisgarh Rajya

Sahkari Bipanan Sangh, Maryadit dated 18.01.2017, had claimed that as no income had accrued to the assessee, therefore, nothing was payable to it. In sum and substance the assessee bank had come forth with two-fold submissions, viz. (i) that as the value of the paddy procured on behalf of various co-operative societies amounting to Rs.160,040.41 lacs on which it was entitled for service charges from the State Government @ 0.40% was finalized only in the month of December, 2012, therefore, in absence of availability of the said details at the time of audit the same could not have been recognized as its income; and (ii) that as evidenced by the letter issued by the Chhattisgarh Rajya Sahkari Bipanan Sangh, Maryadit dated 18.01.2017 as the services charges due to the assessee had been adjusted against the loss caused by the assessee bank, therefore, no amount was payable by the State Government to the assessee bank on 31.03.2012.

10. It was the claim of the Ld. AR on the basis of his aforesaid contentions that now when service charges of Rs.640.16 lacs (supra) receivable by the assessee bank had been adjusted against the loss that was caused by the assessee bank due to short deposit of Rs.4,02,208.16 quintals of paddy, therefore, as per the real income theory, in absence of any income, the aforesaid amount of Rs.640.16 lacs (supra) could not have been brought to tax in its hands. The Ld. AR in order to support his aforesaid contention that income tax could not be levied on hypothetical income had relied on a host of judicial pronouncements, as under:

(i) CIT Vs. Excel Industries Ltd. (2013) 358 ITR 295 (SC)

(ii) P.G And W. Sawoo Pvt. Ltd. Vs. CIT (2016) 385 ITR 60 (SC)

(iii) Morvi Industries Ltd. Vs. CIT (1971) 82 ITR 835 (SC)

(iv) CIT Vs. Ashokbhai Chimanbhai (1965) 56 ITR 42 (SC)

(v) E.D. Sasson & Company Ltd. Vs. CIT (1954) 26 ITR 27 (SC)

(vi) Godhra Electricity Co. Ltd. Vs. CIT (1997) 225 ITR 746 (SC)

(vii) CIT Vs. Birla Gwalior (P) Ltd. (1973) 89 ITR 266 (SC)

(viii) CIT Vs. Suman Dhamija (2016) 382 ITR 343 (SC)

(ix) CIT Vs. Bechtel International Inc. (2019) 414 ITR 558 (Bom. HC)

(x) CIT Vs. Asea Brown Boveri Ltd. (2020) 427 ITR 166 (Kar.HC)

(xi) CIT Vs. Mahalaxmi Textile Mill Ltd. (1967) 66 ITR 710 (SC)

(xii) Wipro Finance Ltd. Vs. CIT (2022) 443 ITR 250 (SC)

Our attention was specifically drawn by the Ld. AR to the judgment of the Hon'ble High Court of Bombay in the case of CIT (International Taxation) Vs. Bechtel International Inc. (2019) 414 ITR 558 (Bom. HC). Referring to the aforesaid judicial pronouncement, it was submitted by the Ld. AR that the Hon'ble High Court while approving the view taken by the Tribunal, had observed, that in absence of any real income having accrued to the assessee there could be no justification for the A.O to have brought to tax hypothetical income. It was the claim of the Ld. AR that now when pursuant to the adjustment of loss for short procurement of paddy the State Government had set-off the service charges of Rs.640.16 lacs (supra) and nothing was admittedly payable to the assessee, therefore, there was

no justification for the A.O to have brought the aforesaid amount of service charges to tax in the hands of the assessee bank.

11. We have deliberated at length on the issue in hand, i.e. as to whether or not the A.O was justified in bringing to tax the service charges of Rs.640.16 lacs (supra) which the assessee had failed to recognize as its income for the year under consideration. As observed by us hereinabove, it is a matter of fact borne from record that the assessee's CA in his audit report dated 21.09.2012 had admitted about understatement of profit of Rs.640.16 lacs (supra) by the assessee bank i.e. service charges which were receivable by the latter from the State Government of Chhattisgarh for the services provided to various co-operative societies for procurement of 1,47,56,017.94 quintals of paddy valued at Rs.160,040.41 lacs during Kharif Season, 2012. Although it was the claim of the assessee bank before the lower authorities, as well as before us, that as the work of paddy procurement was finalized in December, 2012, therefore, there was no material available at the time of audit i.e. on 21.09.2012 on the basis of which service charges income that had yet not accrued to the assessee could have been recognized, but we are unable to find favour with the said contention. We, say so, for the reason that the assessee's CA in his audit report dated 21.09.2012 had categorically stated that the bank had understated its profit of Rs.640.16 lacs i.e. 0.40% of Rs.160,040.41 lacs (value of 1,47,56,017.94 quintal of paddy that was procured on behalf of

various co-operative societies) which, thus, reveals beyond doubt that the complete details for recognizing the said income was at the relevant point of time very much available with the assessee. In sum and substance, the aforesaid claim of the assessee that in absence of the requisite details as regards the service charges that were receivable by the assessee bank from the State Government, there was no occasion for it to have recognized the same as its income for the year under consideration clearly militates as against the factual position which can safely be gathered from the reporting of the assessee's auditor in his audit certificate dated 21.09.2012. As observed by the A.O, and, rightly so, if the details as regards the value of paddy procured by the assessee bank on which it was entitled for service charges @ 0.4% was not available before December, 2012, then, it is beyond comprehension as to how the auditor had recorded the said figure in his certificate dated 21.09.2012.

12. Apropos the claim of the assessee that no income in the form of service charges had accrued in its favour, for the reason that the letter of Chhattisgarh Rajya Sahkari Bipanan Sangh, Maryadit dated 18.01.2017 clearly states that the same had been adjusted against the loss that was caused by the assessee bank due to short deposit of 4,02,208.16 quintals of paddy, we are unable to persuade ourselves to concur with the same. Before proceeding any further, we deem it fit to cull out the relevant

extract of the aforesaid letter dated 18.01.2017 (supra) which reads as under:

"जिला सहकारी केंद्रीय बैंक मर्यादित ,बिलासपुर के अंतर्गत समितियों से विपणन संघ के लेनदारी होने के कारण खरीफ वर्ष 2011-12 का रूपए 6,22,66,400.00 खरीफ वर्ष 2012-13 का रूपए 7,12,92,771.00 तथा खरीफ वर्ष 2013-14 का रूपए 7,86,39,598.00 बैंक सर्विस चार्ज की राशि का समायोजन किया गया हैं"|

Although, the aforesaid letter dated 18.01.2017, inter alia, states that the service charges payable to the assessee bank for the year under consideration had been adjusted as against the loss caused by the assessee bank due to short deposit of 4,02,208.16 quintal of paddy, but we are unable to fathom as to how the same would justify the failure of the assessee bank to account for and recognize the aforesaid service charges income that had accrued to it during the year under consideration.

13. Admittedly, it is a settled position of law that as per the real income theory, it is the real income alone which is liable to be brought to tax in the hands of the assessee and no taxes can be levied on a hypothetical income, but we are unable to persuade ourselves to subscribe to the contention of the Ld. AR that the said theory would apply to the facts involved in the present case before us. We, say so, with all the conviction for the reason that there is no denying of the fact as had been reported by the assessee's

CA in his audit report dated 21.09.2012 that income in the form of service charges amounting to Rs. 640.16 lacs, i.e. @0.40% of Rs.1,60,040.41 lacs (value of 1,47,56,017.94 quintals of paddy) had accrued to the assessee bank during the year under consideration for the services which were rendered by it to various co-operative societies for purchase of paddy. Now when the aforesaid income had accrued to the assessee in definite terms, therefore, there was no justification for it to have kept the recognizing of the same in abeyance. Our aforesaid view is fortified by the judgment of the **Hon'ble Supreme Court** in the case of **CIT Vs. A. Gajapathy Naidu (1964) 53 ITR 114(SC)**. The Hon'ble Apex Court in its aforesaid order had observed as under:

> "The problem raised before us can only be answered on the true meaning of the express words used in s. 4 (1)(b)(i) of the Act. It reads: -
>
> > "Subject to the provisions of this Act, the total income of any previous year of any person includes all income, profits and gains from whatever source derived which….
> >
> > (b) if such person is resident in the taxable territories during such year,-
> >
> > (i) accrue or arise or are deemed to accrue or arise to him in the taxable territories during such year. "
>
> We are not concerned in this case with the expression "deemed to accrue or arise to him", as that expression refers to cases set out in the statute itself introducing a fiction in respect of certain incomes. In regard to the question when and whether an income accrues or arises within the meaning of the first part of the said clause, we have a decision of this Court which has clearly enunciated the principles underlying the said expression: that is the decision in E. D. Sassoon and Company, Ltd., v. The Commissioner of Income-tax, Bombay City(1). In that decision this Court accepted the definition given to the words "accrue" and "arise" by Mukerji, J., in Rogers Pyatt Shellack & Co. v. Secretary of State for India(2), which is as follows:
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> > "..... both the words are used in contradistinction to the word "receive" and indicate a right to receive. They represent a stage anterior to the point

> of time when the income becomes receivable and connote a character of the income which is more or less inchoate."
>
> Under this definition accepted by this Court, an income accrues or arises when the assessee acquires a right to receive the same. It is common place that there are two principal methods of accounting for the income, profits and gains of a business-, one is the cash basis and the other, the mercantile basis. The latter system of accountancy "brings into credit what is due immediately it becomes legally due and before it is actually received; and it brings into debit expenditure the amount for which a legal liability has been incurred before it is actually disbursed." The book profits are taken for the purpose of assessment of tax, though the credit amount is not realized or the debit amount is not actually disbursed. If an income accrues within a particular year, it is liable to be assessed in the succeeding year. When does the right to receive an amount under a contract accrue or arise to the assessee i.e., come into existence? That depends upon the terms of a particular contract. No other relevant provision of the Act has been brought to our notice-for there is none-which provides an exception that though an assessee does not acquire a right to receive an income under a contract in a particular accounting year, by some fiction the amount received by him in a subsequent year in connection with the contract, though not arising out of a right accrued to him in the earlier year, could be related back to the earlier year and made taxable along with the income of that year. But that legal position is sought to be reached by a process of reasoning found favour with English courts. It is said that on the basis of proper commercial accounting practice, if a transaction takes place in a particular year, all that has accrued in respect of it, irrespective of the year when it accrues, should belong to the year of transaction and for the purpose of reaching that result closed accounts could be reopened. Whether this principle is justified in the English law, it has no place under the Indian Income tax Act. When an Income-tax Officer proceeds to include a particular income in the assessment, he should ask himself inter alia, two questions, namely, (i) what is the system of accountancy adopted by the assessee? and (ii) if it is mercantile system of accountancy, subject to the deemed provisions, when has the right to receive that amount accrued? If he comes to the conclusion that such a right accrued or arose to the assessee in a particular accounting year, he shall include the said income in the assessment of the succeeding assessment year. No power is conferred on the Income-tax Officer under the Act, to relate back an income that accrued or arose in a subsequent year to another earlier year on the ground that the said income arose out of an earlier transaction."

In so far the claim of the assessee that its aforesaid income of Rs.640.16 lacs (supra) had thereafter been adjusted by Chhattisgarh Rajya Sahkari Bipanan Sangh, Maryadit as against the loss that was caused by the assessee bank to the State government because of short deposit of

4,02,208.16 quintals of paddy, the same in our considered view not being in the nature of an event either relatable to the year under consideration; or the date of audit report i.e. on 21.09.2012 of the assessee's CA, thus, would by no stretch of imagination germane to the non-accounting of its income of Rs.640.16 lac (supra) which had clearly accrued to it during the year under consideration. In case the assessee bank was called upon to make good a loss that was caused by any act on its part to the State government in the subsequent years, then, it was open for the assessee bank to have accounted for the said loss in the said succeeding year. If the contention of the assessee bank is to be accepted, then, it would lead to a situation wherein every assessee would justify non-accounting and suppression of its profits for a year for the reason that the same on account of a loss in the subsequent year/years had resulted to setting-off its income. One can well understand that in case if the loss in question was inextricably interlinked or interwoven with the event leading to generation of the income that had accrued in the hands of the assessee bank, i.e. service charges on procurement of paddy by the assessee on behalf of various co-operative societies and the liability for the same had arisen during the year under consideration, then, the same had to be considered in light of the real income theory as had been propounded by the various Courts, but we are afraid that the facts involved in the present case do not fall within the scope and gamut of any such situation. We, say

so, with all the conviction, for the reason that the letter dated 18.01.2017 of Chhattisgarh Rajya Sahkari Bipanan Sangh, Maryadit as had been pressed into service by the Ld. AR to support his aforesaid contention refers to an event much subsequent to the year under consideration.

14. On a careful perusal of the Clause 12.1 of the agreement dated 29.02.2012 between Chhattisgarh Rajya Sahkari Bipanan Sangh, Maryadit and the primary agriculture co-operative society (hereinafter referred to as "agent"), it transpires that while for the said agents were entitled to commission, viz. (i) payment towards administrative charges @ Rs. 5/- per quintal; and (ii) incidental charges @ Rs.4/- per quintal, while for the assessee bank i.e. Jila Sahakari Kendriya Bank Maryadit was entitled to service charges @ 0.4% of the value of paddy. Further, as per Clause 12.3 the agent societies were required to furnish details of paddy/*Bardana* latest by 15th March, 2012 and on verification of the same the aforesaid commission was to be paid to them. As per Clause-13 though the agents/societies were categorically stated to be entitled for commission on the value of paddy that was lifted for custom milling but no such condition regulated the entitlement of assessee bank for commission @ 0.4%. To sum up, we have perused the aforesaid agreement dated 29.02.2012 and are unable to trace any restriction on the entitlement of the assessee bank for service charges in case of any short procurement of paddy.

15. Be that as it may, we may once again reiterate that if in case in the subsequent year the State government had held the assessee bank as responsible for causing certain loss to it and had sought adjustment of the same as against the outstanding service charges that were payable to the assessee bank, then, the same in no way would justify non-accounting of the said service charges as income by the assessee during the year under consideration, i.e. A.Y.2012-13 in which, the same had accrued to it. We are of a strong conviction that the CIT(Appeals) had misconceived the real income theory, as the fact as it so remains is that income in the form of service charges of Rs.640.16 lacs (supra) as certified by the assessee's CA had accrued to the assessee bank during the year under consideration. Once again, we may herein reiterate that in case the assessee society had suffered some loss during the period falling subsequent thereto, then, it was vested with all the rights to raise a claim for setting-off such loss as against its income for the subsequent year and further carry forward any such unabsorbed loss to the subsequent provisions as per the extant law. In the present case before us, we are unable to comprehend as to on what basis the aforesaid subsequent loss suffered by the assessee bank is being sought to be adjusted against its income for the year under consideration. Not only the reporting by the assessee's CA as regards suppression of its profit amounting to Rs.640.16 lacs (supra) is discernible from his audit report dated 21.09.2012, but also the fact that the income had

unconditionally accrued to the assessee during the year under consideration can safely be gathered on the basis of our aforesaid deliberations.

16. In so far the judicial pronouncements that have been relied upon by the Ld. AR are concerned, we find that the same are clearly distinguishable on facts. The Courts in neither of the cases had held that a loss which had sprang up in a subsequent year would justify non-accounting of the income by the assessee during the year in which the same had accrued.

17. We find on a perusal of the order of the CIT(Appeals) that he had simply gone by the claim of the assessee bank that as per the confirmatory letter of the Ministry of the State Government and the corrective statement of the auditor of the assessee bank it was not in receipt of any commission on procurement of paddy during the year under consideration, and had, thus, vacated the said addition. We are unable to concur with the basis on which the aforesaid addition had been vacated by the CIT(Appeals). In so far the corrective statement of the auditor of the assessee bank is concerned, we find that the same is in the context of the immediately succeeding year i.e. A.Y.2013-14, wherein the CA vide his letter dated 25.09.2017 in context of the said year, had stated that he was unable to comment as to how the responsibility of the bank was fixed and deductions were being made from the commissions receivable to the bank.

For the sake of clarity, the letter dated 25.09.2017 of the assessee's auditor for the immediately succeeding year i.e. A.Y.2013-14 is culled out as under:

> "We are unable to comment how the responsibility of the bank is fixed & deductions are being made from the commissions receivable to the bank. Thus, we are unable to comment whether the policy adopted by the bank is correct or not."

The vague reporting by the assessee's auditor in the immediately succeeding year i.e. A.Y.2013-14 does not inspire any confidence. Apart from that, a careful perusal of the aforesaid observation of the auditor further fortifies the claim of the department that income in the form of service charges had actually accrued to the assessee bank during the year under consideration. We, say so, for the reason that the auditor in the succeeding year i.e. A.Y.2013-14, had reported, viz. "……*deductions are being made from the commission receivable to the bank*". Once it is established that the commissions were receivable to the bank, then, we are unable to fathom any basis for the assessee bank to claim that the said income was not liable to be brought to tax in its hands during the year in which the same had accrued.

18. We, thus, considering the facts involved in the case before us are unable to persuade ourselves to subscribe to the view taken by the CIT(Appeals), who had dislodged the well-reasoned order of the A.O and thus, set-aside his order and uphold the addition of Rs.640.16 lacs (supra)

that was made by the A.O while framing the assessment vide his order passed u/s.143(3) r.w.s.263 of the Act dated 31.10.2017. Thus, the **Grounds of appeal Nos. 1 to 7** raised by the department are allowed in terms of our aforesaid observations.

19. In the result, the appeal filed by the revenue is allowed in terms of our aforesaid observations.

Order pronounced in open court on 04th day of July, 2023.

Sd/-	Sd/-
ARUN KHODPIA	**RAVISH SOOD**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 04th July, 2023
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Jabalpur (C.G)
4. The Pr. CIT, Bilaspur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.