

**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.313/Asr/2018  
Assessment Year: 2014-15**

Dy. Commissioner of Income Tax, Circle-II, Bathinda.  <b>(Appellant)</b>	Vs.	M/s The Muktsar Central Co-operative Bank Ltd. Kotakpura Road, Muktsar. [PAN:-AAACT5773C] <b>(Respondent)</b>
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**I.T.A. No.354/Asr/2018  
Assessment Year: 2014-15**

M/s The Muktsar Central Co- operative Bank Ltd. Kotakpura Road, Muktsar. [PAN:-AAACT5773C] <b>(Appellant)</b>	Vs.	Dy. Commissioner of Income Tax, Circle-II, Bathinda.  <b>(Respondent)</b>
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<b>Appellant by</b>	Sh. Rohit Mehra, CIT. DR
<b>Respondent by</b>	Sh. Parveen Jindal, CA.

<b>Date of Hearing</b>	30.05.2023
<b>Date of Pronouncement</b>	22.06.2023

**ORDER**

**Per:Anikesh Banerjee, J.M.:**

The instant appeal of the revenue and Cross Appeal of the assessee are filed against the order of the Id. Commissioner of Income Tax (Appeals),Bathinda,[in brevity the 'CIT (A)'] order passed u/s 250(6) of the Income Tax Act 1961[in brevity the 'Act'], for A.Y. 2014-15.The impugned order was emanated from the order of the Id. Dy. Commissioner of Income Tax, Circle-2,Bathinda[in brevity the AO], order passed u/s 143(3) of the Act.

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2. The revenue has taken the following grounds:

*“(i) The CIT(A) erred in not appreciating that the assessee failed to establish that the interest receivable amounting to Rs 5,64,17,644/-, relatable to Non-Performing Assets was part of income subjected to tax as the assessee failed to furnish details of assets on which interest was not received by it and categorized by it as NPA.*

*(ii) The CIT(A) erred in not appreciating that the CBDT Circular No F. NO. 201/21/84-ITA-II, DATED 9-10-1984 provided that interest in respect of doubtful debts credited to suspense account by the Banking Companies will be subject to*

*tax but interest charged in an account where there has been no recovery for three consecutive accounting years will not be subjected to tax in the fourth year and onwards and that the assessee failed to establish that there was no recovery for a continuous period of three years and that, therefore, interest shown as receivable by the assessee was taxable income of the assessee for the year under consideration.”*

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3. The assessee has taken the following grounds:

*“1. That the Ld. CIT(Appeals) erred in law and on facts in not deleting the addition of Rs. 60,22,615/- on account of interest recoverable as on 31/03/2014 which related to the F.Y. 2010-11 and F.Y. 2011-12 and the same was already offered to tax as interest income for those years.*

*2. That the Ld. CIT(Appeals) erred in law and on facts in confirming the action of the Ld. Dy. Commissioner of Income Tax, Circle-II, Bathinda (AO) in not allowing the net claim of for Rs. 85,11,141/- made by the appellant in its Return of Income for the A.Y. 2014-15 on account of adjustment in income and expenditure through Memorandum of Changes (MOC's) made by the Statutory Auditors during finalisation of*

*financial statements for the F.Y. 2013-14 relevant to the A.Y. 2014-15.*

3. *That the Ld. CIT(Appeals) erred in law and on facts in confirming the action of the Ld. Dy. Commissioner of Income Tax, Circle-II, Bathinda (AO) for not allowing the claim of higher deduction for provision for bad and doubtful debts u/s 36(l)(viii) of the Income-tax Act, 1961 for Rs. 18,80,80,712/- being 10% of average rural advances made by the assessee bank.*

4. *The appellate may be allowed to add, amend, alter or raise additional grounds of appeal before the appeal is finally heard or disposed of.”*

4. The assessee has also taken the following additional grounds:

*“Sub.: Submission of Additional Evidence under Rule-29 of the Income-tax (Appellate / Tribunal) Rules, 1963 in Appeal No. ITA 354/ASR/2018 in the case of The Muktsar Central Co-op. Bank Ltd. Vs. DCIT, Circle-2, Bathinda for the A.Y. 2014-15 (Assessee 's Appeal)*

*(Fixed for 06/09/2022)*

*During the hearing held on 06/07/2022, the Hon'ble Tribunal directed the appellant-assessee to submit additional evidence under Rule-29 of the Income-tax (Appellate Tribunal) Rules,*

*1963 in the matter of additions for Rs. 85,11,141/- (Ground No. 2 as per Form-36) confirmed by Ld. CIT(A) vide order dated 19/03/2018.*

*In this connection, we submit as under:*

*i) That in the ITR for the A.Y. 2014-15, the assessee claimed net deduction for Rs. 85,11,141/- on account of adjustment in expenditure and income which was made by the Statutory Auditors at the time of audit for the F.Y. 2013-14. The net effect of the increase/decrease in expenses and income was that the income of assessee was reduced by Rs. 85,11,141/-. The adjustments i.e. increase/decrease in income & expenses were made through Memorandum of Changes (MOC) by the statutory auditors and the Income Tax Return for the A.Y. 2014-15 was filed on the basis of information contained in audited balance sheet and profit & loss a/c for the year ended 31/03/2014 and the assessee claimed net deduction for Rs. 85,11,141/- in the ITR consequent upon MOC by the statutory auditors. During the appellate proceedings, the assessee submitted details related to claiming deduction for Rs. 85,11,141/- but the same was ignored by the Ld. CIT(A) mainly for the reason that the assessee has not submitted formal application under Rule-46 A of Income-tax Rules, 1962 for*

*admission of additional evidence and confirmed the additions made by the assessing officer.*

*ii) That the appellant has submitted the details of the net deduction for Rs. 85,11,141/- at Page No. 39 to 44 of the Paper Book filed with this Hon'ble Tribunal and a copy of these details are again submitted for admission of additional evidence from Page No. 3 to 8.*

*iii) That the appellant prays that the additional evidence now been submitted would have material bearing on the issue which needs to be decided by this Hon'ble Tribunal and ends of justice demands admission of such evidence for proper adjudication of the matter. The appellant was prevented by sufficient cause to lead such evidence before the assessing officer/Ld. CIT(A) as sufficient opportunity was not given.*

*Your Honor, the appellant prays that in the interest of substantial justice, the additional evidence now being submitted herewith or subsequently be allowed as per Rule-29 of ITAT Rules, 1963.”*

4. Brief fact of the case is that the assessee is a Co-operative Bank incorporated as a Co-operative Society and is engaged in the business of banking. The grievance of the revenue is that the Id. CIT(A) has erred in allowing relief amount to

Rs.5,64,17,644/- related to the interest receivable on Non-Performing Assets (NPA). The assessment was completed with addition related to the interest on NPA and the interest recoverable amount to Rs.60,22,615/- and assessment in income and expenditure through memorandum of changes, (MOC) made by the statutory auditor during finalisation of financial statement for F.Y. 2013-14 amount to Rs.85,11,141/- and has not allowing the claim higher deduction for provision of bad and doubtful debts u/s 36(1)(viiia) of the Act amount to Rs.18,80,80,712/- being 10% of average rural advance made by the assessee bank. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) only allowed the relief amount to Rs.5,64,17,644/- related to interest receivable on NPA. The rest amount was not taken as there is no proper ground was taken by the assessee. However, other deductions claimed by the assessee are duly rejected by the Id. CIT(A). Being aggrieved both the parties filed an appeal before us.

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5. The Id. AR invited our attention in appeal order page 17, the relevant para is extracted as below:

*“I have considered only those amounts which have been admittedly included in P&L account to the extent of Rs. 9,76,17,644/- which cannot be added because these are already offered to tax in the year under consideration. I have also discussed above that the amount of Rs.5,64,64,785/- which is interest on NPA cannot be taxed as discussed above. However, no adjudication can be done about Rs. 60,22,615/- because there is no ground of appeal before me regarding the claim of the appellant that this amount has been offered in earlier years and added in the year under consideration again.*

*In summation the appellant gets relief of Rs. 9,76,17,644/- and Rs. 5,64,64,785/- only. The ground of appeal is partly allowed.”*

5.1 The Id. AR further invited our attention in submission related to support of his claim which is extracted as below: -

*“1. That the Respondent-Assessee is a Co-operative Bank incorporated as a Co-operative Society and is engaged in the business of banking. The grievance of the Revenue is that the Ld. CIT(A) has erred in allowing relief amounting to Rs. 5,64,17,644/-related to interest receivable on Non-Performing Assets.*

*2. That by following RBI guidelines in respect of accounting of interest on NPA's as per Prudential Norms of Recognition of Income*

*and Asset Classification and following Accounting Standard-9 (AS-9) on Revenue Recognition as prescribed by the Institute of Chartered Accountants of India, the assessee has not considered accrued interest as income. In accordance with the said Accounting Standard, where there is an uncertainty about the collection of revenue, recognition of income or such revenue is postponed to the extent of uncertainty involved. In such cases, recognition of revenue shall be made on only receipt basis or only when it is reasonably certain that the ultimate collection will be made. In view of AS-9, the co-operative bank recognized revenue (interest income) on advances classified as NPA on actual receipt basis because the certainty of recovery of interest was not known to the bank as per the RBI Norms.*

*3. That the assessee is consistently following the said system of accounting in respect of interest on NPA as per Prudential Norms of Recognition of Income and Asset Classification. This is in consonance with the provisions of section 145 of the Act. It is well settled law that the method of accounting regularly followed, and which is regularly accepted by the Revenue while assessing income of the earlier years has to be accepted while assessing income of the subsequent years.*

*4. That the appellant-assessee contends that even under the Mercantile System of Accounting, no interest has accrued to the assessee considering the 'Real Income. The income can be said to be 'accrued' only when there is reasonable of receiving the same in the*

*near future. In the case of NPA's, there is no such certainty and therefore no interest income has even accrued to the assessee under i~e Mercantile System of Accounting on the loans classified as Non-performing Assets.*

*That the Ld. CIT(A) after considering the submissions made by the assessee vide submissions dated 27/02/2018, wherein the assessee relied upon certain decisions also in the matter, deleted the additions for Rs. 5,64,64,785/-. The appellant relies upon above submissions as made before the Ld. CIT(A) during appellate proceedings vide submission dated 27/02/2018 before your good self also. Copy of submission dated 27/02/2018 enclosed in the accompanying Paper Book from Page No. 4 to 14.*

*5. That the assessee may bring to the notice of this Hon'ble Bench that the issue relating to chargeability of interest on NPA's of Co-operative Banks has been decided by this very Tribunal in favour of the assessee in the case of DCIT, Cicle-Moga Vs. The Moga Central Co-op. Bank Ltd. vide order dated 04/10/2017 in ITA Nos. 222 & 223/(Asr)/2017. The assessee in this case was also a co-operative society engaged in the business of banking and has not offered to tax interest on NPA's on accrual basis even though it was following mercantile system of accounting. The Hon'ble Tribunal considering the facts of the case and following its earlier decisions dated*

*20/01/2017 and 14/07/2017 in the case of The Jalandhar Central Co-operative Bank Ltd., Jalandhar and Kapurthala Central Co-operative Bank Ltd. respectively and decision dated 03/01/2017 of ITAT, Chandigarh in ITA No. 526/Chd/2013 in the case of The Ludhiana Central Co-operative Bank Ltd., dismissed the Revenue's Appeal. The Copy of the above order dated 04/10/2017 in the case of The Moga Central Co-operative Bank is enclosed at Page No. 15 to 25 in the accompanying Paper Book.*

*6. That aggrieved by the order dated 03/01/2017 of ITAT, Chandigarh in the case of Ludhiana Central Co-operative Bank (supra), the Revenue preferred appeal before the Hon'ble Punjab & Haryana High Court and the High Court dismissed the Revenue's Appeal in the matter by concluding at Para-32 of its order that interest on NPA's is taxable in the year of receipt and confirmed the findings recorded by the Hon'ble Chandigarh Tribunal in the matter. The Hon'ble High Court at Para-30 (Page No. 30) of the judgement observed that-*

*“Therefore, notwithstanding the provisions of section 43 D of the Act, since the provisions of section 45Q of the 1934 Act have an overriding effect vis-a-vis income recognition principles in the Companies Act, the Assessing Officer is bound to follow the RBI Directions so far as income recognition is concerned.”*

6. The Id. DR vehemently argued and fully relied on the assessment order.

7. We heard the rival submission and relied on the documents available in the record. The issue is well adjudicated by the Id. CIT(A). The entire issue is covered by the RBI guideline in respect of accounting of policies on NPA which is duly covered by the AS-9. In our considered view, we do not intervene in the order of the Id. CIT(A). Accordingly, the ground of the revenue is dismissed.

7.1. In the result, the appeal of revenue **ITA No. 313/Asr/2018** is dismissed.

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8. In this Cross Appeal, the assessee has taken additional ground related to adjustment of (MOC) amount of Rs.85,11,141/-. During hearing the Id. AR withdraw the ground no. 3. So, the ground nos. 1 and 2 are remained for adjudication.

#### **8.1 Ground No.1**

The Id. AR first pointed out that the ground no. 1 is related to the interest recoverable as on dated 31.03.2014 amount to Rs.60,22,615/- which was not adjudicating by the Id. CIT(A) as the ground was not taken separately before the first appellate authority. The Id.AR had drawn our attention in page 17 of the appeal order. The relevant para is extracted as below:

*“I have considered only those amounts which have been admittedly included in P&L account to the extent of Rs. 9,76,17,644/- which cannot be added because these are already offered to tax in the year under consideration . I have also discussed above that the amount of Rs.5,64,64,785/- which is interest on NPA cannot be taxed as discussed above. However, no adjudication can be done about Rs. 60,22,615/- because there is no ground of appeal before me regarding the claim of the appellant that this amount has been offered in earlier years and added in the year under consideration again.*

*In summation the appellant gets relief of Rs. 9,76,17,644/- and Rs. 5,64,64,785/- only. The ground of appeal is partly allowed.”*

9. The ld. DR vehemently argued and relied on the order of revenue authorities.

10. We heard the rival submission and considered the documents available in the record. Perusal of record we find that the ground was not separately taken- by the assessee in appeal before the ld. CIT(A). But in appeal before the ITAT, the assessee has prayed for adjudicating this ground separately. We consider the prayer of the assessee.

**Ground No. 2**

11. The ld. AR submitted the additional evidence under Rule 29 related to adjustment income and expenses were made through memorandum of charges (MOC) by the statutory auditor and the ITR for A.Y.2014-15 was filed on basis of the information contained in audit balance sheet and profit and loss account for the year 31.03.2014 and the assessee claimed no deduction for Rs.85,11,141/- in the ITR consequent upon MOC of statutory auditor. After details discussion the additional ground of assessee is accepted, and the ld. DR had not made any objection against the acceptance of additional ground. During appeal proceeding the assessee submitted details related to claim of deduction Rs.85,11,141/- but the ld. CIT(A) had not adjudicated as the reason that the assessee has not submitted formal application under Rule 46-A of the Income Tax Rules, 1962 for admission of additional evidence and accordingly confirmed the additions made by the ld. AO. The ld. AR placed the additional evidence under Rule 29 of ITAT Rule and prayed for acceptance. The ld. DR had not made any strong objection against this additional evidence of the assessee. Accordingly, the additional evidence is duly accepted by the bench and remit back to the ld. CIT(A).

12. Under these facts and circumstances of the case and in the interest of substantial justice and fairness to both the rival parties, as also that adjudication of this issue will require enquiries and verification of the facts, we are inclined to set aside the appellate order passed by Id. CIT(A) and restore the matter back to the file of Id. CIT(A) for fresh adjudication on merits and in accordance with law. The Id. CIT(A) is directed to pass detailed, reasoned and speaking order after making such enquiries and verifications as he may deem fit. The Id. CIT(A) shall give proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law, and evidence/explanations submitted by assessee in its defence shall be admitted by Id. CIT(A) in the interest of justice, which shall then be adjudicated by Id. CIT(A) on merits in accordance with law. We clarify that we have not commented on the merits of the issue and all the contentions are kept open. Ground nos. 1 & 2 of appeal of the assessee are allowed for statistical purposes. We order accordingly.

13. **Ground No. 3** is not pressed.

14. **Ground No. 4** is general in nature.

14. In the result, the appeal of the revenue bearing **ITA No. 313/Asr/2018** is dismissed & appeal of the assessee bearing **ITA No.354/Asr/2018** is allowed for statistical proposes.

**Order pronounced in the open court on 22.06.2023**

Sd/-

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

Sd/-

**(ANIKESH BANERJEE)**  
**Judicial Member**

Copy of the order forwarded to:

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

True Copy  
By order