

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'DB' BENCH  
DELHI**

**BEFORE: SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT  
&  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.77/DDN/2019**

**&**

**ITA No. 4091/DDN/2018**

**(Assessment Years: 2009-10 & 2011-12 respectively)**

(THROUGH VIDEO CONFERENCING)

Nainital District Co-Operative Bank, Nainital Road, Haldwani 263139	Vs.	The DCIT, Circle -1, Ayakar Bhawan, Chorgalia Road, Gaula Par, Kathgodam, Haldwani, Uttarakhand
<b>PAN/GIR No. AAAAN 1154 F</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	None
Revenue by	Shri A.S. Rana, Sr. DR
<b>Date of Hearing</b>	<b>19/10/2023</b>
<b>Date of Pronouncement</b>	<b>31/10/2023</b>

**ORDER**

**PER M. BALAGANESH (A.M):**

These appeals in ITA No.77/DDN/2019 and ITA No. 4091/DDN/2018 for A.Ys. 2009-10 & 2011-12 arises out of the order by the Id. Commissioner of Income Tax (Appeals), Haldwani in appeals No.10159/CIT(A)/HLD/2018-19 & 10094/CIT(A)/HLD/2016-17 dated 16.05.2019 & 21.12.2017 (hereinafter referred to as Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 148 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 10.12.2018 & 29.07.2016 by the Id. ACIT Circle, Haldwani (hereinafter referred to as Id. AO).

2. At the outset, we find the appeal filed by the assessee for A.Y. 2009-10 before us is delayed by 64 days. The registry had issued the defect notice to the assessee on 25.06.2018. The said defect is not yet rectified by the assessee by filing a condonation petition giving the reasons for the delay. This appeal has been listed for hearing on 27.07.2021, 28.09.2021, 01.12.2021, 08.02.2022, 27.04.2022, 29.06.2022, 23.08.2022, 12.10.2022, 20.02.2023, 20.06.2023, 25.07.2023, 20.09.2023 and on 19.10.2023. On none of these occasions, there was any representation from the side of the assessee nor any adjournment request has been filed. The Ld. DR also placed on record the service report of having served the assessee, the notice of hearing. Since sufficient opportunities were given to the assessee and the assessee had not even taken the minimum effort of even rectifying the defects, we do not deem it fit to wait for the presence of assessee. Since the defects are not removed by the assessee, the appeal of the assessee for the A.Y. 2009-10 is hereby dismissed as defective.

**ITA 77/DDN/2019 - A.Y. 2011-12**

3. This appeal was fixed for hearing on 24.02.2023, 22.06.2023 25.07.2023, 20.09.2023 & finally on 19.10.2023 i.e. today. The Ld. DR also placed on record the service report of having served the notice of hearing on the assessee. Since sufficient opportunities were granted to the assessee, we deem it fit to dispose of this appeal on hearing the Ld. DR and based on material available on record.

4. The assessee has raised the following grounds before us:-

*1. The Ld. (CIT-A) has without going into the facts of the case has sustained the additions of Rs. 22,66,126.00, made by disallowing the application of interest on PACS Deposit Insurance Fund and Agriculture Credit Stabilization Funds.*

*2. The Ld. CIT(A). CIT-A failed to appreciate that the interest was applied as per Government Guidelines past practices and in terms of banking norms as the control of the funds is not with the assessee bank.*

*3. The Ld. CIT-A missed to note that the Ld. ACIT had no tangible reason to believe that income has escaped assessment and no satisfaction was given to*

*the assessee against the objection filed by the assessee after issue of notice under section 148 of the act, before completing the assessment.*

*4. That the impugned order is bad in law and not in consonance with facts, and against the principles of natural justice.*

5. We have heard the Ld. DR and perused the materials available on record. The assessee is a regional rural bank and had filed its return of income for the A.Y. 2011-12 on 30.09.2011 in the status of Co-Operative Society by declaring income of Rs. 7,05,06,267/-. The assessee filed a revised return on 25.01.2013 declaring income of Rs. 7,41,46,270/-. In the original return, the assessee had claimed an income of Rs. 36,40,000/- on account of dividends from other co-operative societies as exempt income and the same was offered to tax in the revised return. The original assessment was completed u/s. 143(3) of the Act on 27.03.2014 determining total income of Rs. 7,41,53,670/- after making an addition of Rs. 7,400/- on account of expense of excess rent claimed by the assessee.

6. Later during the course of assessment proceedings for A.Y. 2012-13, the Ld.AO found that the assessee had created funds viz. PACS Deposit Corporation Funds and Agricultural Credit Stabilization fund out of its surplus income after appropriation of tax, which were reflected on the liability side of the balance sheet. The Ld. AO noticed that assessee exercises all control over these funds. These funds are interest bearing and interest is being claimed by the assessee in the P&L account. The fund is neither assessed to income tax nor registered u/s. 12AA of the Act. The Ld. AO noticed that since the assessee exercises complete control over the funds, the assessee is effectively paying interest to itself and claiming the deduction in the P&L account which is not admissible under sections 30 to 43D of the Act as business expenditure. During the year, the following expenses have been debited under the head 'other expenditure' in the P&L account:-

*PACS debit fund* – Rs. 2,58,373/-

*Agricultural credit stabilization fund* – Rs. 20,07,753/-

*Total* - Rs. 22,66,126/-

7. The Ld.AO accordingly reopened the assessment by issuing notice u/s. 148 of the Act on 27.03.2018 after obtaining prior approval from the Ld. Principal Commissioner of Income Tax, Haldwani. The assessee vide letter dated 31.10.2018 submitted that the return of income already filed may be considered as a return in response to notice issued u/s. 148 of the Act. In the reassessment proceedings, the Ld.AO proceeded to disallow the interest claim of Rs. 22,66,126/- on the ground that the same is paid to one self and the fund is not registered and the assessee has got complete control over those funds. Accordingly, he held that the said interest expenditure of Rs. 22,66,126/- is not an allowable expenditure. This action of the Ld. AO was upheld by the Ld. CIT(A) who by placing reliance on the decision of co-ordinate bench of Pune Tribunal in the case of *Solapur District Co-operative Bank Ltd. reported in 52 taxmann.com 258* in ITA No. 495/PN/2012 dated 29.09.2014 dismissed the appeal of the assessee.

8. The reopening of assessment has been made for the A.Y. 2011-12 based on the information noticed by the Ld. AO during the course of scrutiny assessment proceedings of A.Y. 2012-13. This information is definitely a tangible material which have come into the possession of the Ld. AO enabling him to *prima facie* form a reasonable belief that income of the assessee had escaped assessment warranting reopening thereon. Hence, we hold that the assessment has been validly reopened for the A.Y. 2011-12. Hence the ground raised by the assessee in this regard is dismissed.

9. With regard to the issue of disallowance of interest on merits amounting to Rs. 22,66,126/-, we find that the Ld. CIT(A) had placed reliance on the order of his predecessor for A.Y. 2008-09 dated 13.04.2017 in assessee's own case and also on the decision of co-ordinate bench of Pune Tribunal in the case of *Solapur District Co-operative Bank Ltd. reported in 52 taxmann.com 258* while deciding the impugned issue of disallowance of interest against the assessee. Due to continuous absence of the assessee before us, we are not able to ascertain as to whether any appeal was preferred by the assessee for A.Y. 2008-09 against the order of the Ld. CIT(A) dated 13.04.2017 before this Tribunal and as to how the said appeal was disposed of by this Tribunal. The Ld. DR before us also was not able to provide necessary

assistance on this fact. Hence we hold that since the decision has been taken by the Ld. CIT(A) by placing reliance on the co-ordinate bench of Pune Tribunal referred supra, we do not deem it fit to interfere in the said order of the Ld. CIT(A). Accordingly, the grounds raised by the assessee on merits for A.Y. 2011-12 are dismissed.

10. In the result, both the appeals of the assessee are dismissed.

Order pronounced in the open court on 31/10/2023.

**(SAKTIJIT DEY)**  
**VICE PRESIDENT**

**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

Delhi; Dated 31/10/2023

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**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Delhi