

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'B', CHANDIGARH

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
DR KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. **423/CHD/2023**

निर्धारण वर्ष / Assessment Year : 2017-18

The Baghat Urban Co-operative Bank Limited, Head Office Baghat Bank Parisar, Rajgarh Road, Solani HP 173212	Vs. बनाम	The DCIT, Circle Parwanoo, Solani, HP
स्थायी लेखा सं./PAN No: AACAT8221F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

(VIRTUAL HEARING)

निर्धारिती की ओर से/Assessee by : Sh. Vishal Mohan, Sr. Advocate with
Shri Adiyta Sood, Advocate.

राजस्व की ओर से/ Revenue by : Smt. Garima Singh, CIT DR

सुनवाई की तारीख/Date of Hearing : 29.04.2024

उद्घोषणा की तारीख/Date of Pronouncement : 30.04.2024

आदेश/Order

Per Dr. Krinwant Sahay, A.M.:

The appeal in this case has been filed by the Assessee against the order dated 08.06.2023 of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, for the Assessment Year 2017-18 on the following grounds: -

1. *That in the facts and circumstances of the case the Ld. Commissioner of Income Tax (Appeal) is not justified in confirming the addition of Rs.*

3,39,16,849/- on account of interest due / accrual basis on NPA accounts as income of the assessee?

- 2. That in the facts and circumstances of the case the Ld. Commissioner of Income Tax Appeals is not justified in not considering the Judgment of the Hon'ble Jurisdictional High Court of Himachal Pradesh whereby the Hon'ble High Court held that the interest on sticky loans (NPAs) in respect of co-operative bank is taxable on receipt basis viz-a-viz NPAs and hold that the amendment in section 43D w.e.f. 01.04.2018 should be treated as retrospective.*
- 3. That the order of the ld. CIT(A) is bad in law and facts.*

2. Brief facts of the case are that the Assessee is engaged in Financial Services Sector, i.e., Banking Companies [Code -801] as per the information given in the ITR. The Assessee is a co-operative bank engaged in banking activities and following mercantile system of accounting. During the course of assessment proceedings, the Assessing Officer has noted that the Assessee has not disclosed interest income receivable on loans treated as NPA or sticky loans on accrual basis. According to Assessing Officer, declaring of such interest was mandatory as the Assessee was following mercantile system of accounting but the Assessee has failed to do so. Therefore, the Assessing Officer made an addition of Rs. 3,39,16,849/- on account of interest due on accrual basis on NPA. Against such addition, the Assessee filed an appeal before the ld. CIT(A) NFAC,

Delhi. The Id. CIT(A) has discussed section 43D of the I.T. Act, 1961 and chargeability of tax in accordance with this section as under:-

- “(a) in the case of a public financial institution or a scheduled bank or [a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank or] a State financial corporation or a State industrial investment corporation [or a deposit taking non-banking financial company or a systemically important non-deposit taking non-banking financial company, the income by way of interest in relation to such categories of bad or doubtful debts as may be prescribed having regard to the guidelines issued by the Reserve Bank of India in relation to such debts.*
- (b) In the case of a public company, the income by way of interest in relation to such categories of bad or doubtful debts as may be prescribed having regard to the guidelines issued by the National Housing Bank in relation to such debts.*

shall be chargeable to tax in the previous year in which it is credited by the public financial institution or the scheduled bank or [a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank or] the State financial corporation or the State industrial investment corporation or [a deposit taking non-banking financial company or a systematically important non-deposit taking non-banking financial company or] the public company to its profit and loss account for that year or, as the case may be, in which it is actually received by that institution or bank or corporation or company, whichever is earlier”.

The Assessee brought to the notice of the Id. CIT(A) the ratio decided by the Hon'ble High Court of Himachal Pradesh in the case of 'Pr. CIT

Vs. Kangra Central Cooperative Bank Ltd.', ITA Nos. 82 & 83 of 2018

but the ld. CIT(A) in his finding held as under: -

*“5.0 With due respect to Hon'ble High Court of Himachal Pradesh it should be noted that the Hon'ble Supreme Court has deliberated upon the invoking of retrospectivity in subsequent judgement of **Commissioner of Income Tax-1 Ahmadabad vs. Gold Coin Health Food Pvt. Ltd in Civil appeal no. 5065 of 2008**, date of order August 18 2008. In para 15 the concept of retrospectivity has been elaborated as, existence of words like, "**shall be deemed always to have meant**" or "**shall be deemed never to have included**". It has been further held that if the amendment itself is clarificatory, only then it will have retrospective operation. There is nothing like wise in the amendment in section 43D w.e.f 01.04.2018. So, the case of the appellant is not covered under section 43D of the Income Tax Act.”*

3. In this case, the main contention of the Assessee is that the ld. CIT(A) did not consider the judgement of the Hon'ble jurisdictional High Court of Himachal Pradesh wherein the Hon'ble High Court held that the interest on sticky loans (NPAs) in respect of Co-operative bank is taxable on receipt basis and the Hon'ble High Court further held that the amendment in section 43D of the Income Tax Act, 1961 (in short 'the Act') w.e.f. 1.4.2018 should be treated retrospectively. The ld. Counsel of the Assessee further brought on record the Order of the ITAT, Chandigarh dated 6.12.2023 in the own case of the Assessee for the assessment years 2013-14 and 2014-15 and submitted that the

present case for assessment year 2017-18 is squarely covered by the order of the Chandigarh Bench of the Tribunal in ITA Nos. 366 & 377/Chd/2023, order dated 6.12.2023.

4. The ld. DR, on the other hand, has relied on the order of the authorities below. The ld. DR has also discussed the issue of retrospectivity of the implementation of the amendment brought u/s 43D w.e.f. 1.4.2018. The ld. DR argued that this amendment should be applicable only prospectively and therefore, the retrospective applicability of the amendment is not proper.

5. We have heard the rival contentions and perused the material available on record. We have also considered the findings of the ld. CIT(A) based on the order of the Hon'ble Supreme Court in the case of 'Commissioner of Income Tax-1, Ahmadabad Vs. Gold Coin Health Food Pvt. Ltd.' (supra) dated August 18, 2008. We find that the issue of retrospectivity has been dealt by the Hon'ble jurisdictional High Court in the case of 'Pr. CIT vs. Kangra Central Co-operative Bank Ltd.' (supra), on a much later date, i.e., on December 7, 2022 in which the Hon'ble jurisdictional High Court has clearly brought out the curative nature of amendment in Section 43D of the Act and thus, has held it to be implemented with retrospective effect. The judgement in the case of 'Pr. CIT Vs. Kangra Central Co-operative Bank Ltd.', ITA

Nos. 82 & 83 of 2018 of the Hon'ble jurisdictional High Court pertaining to assessment years 2012-13 and 2013-14. The Hon'ble High Court held that although the amendment in section 43D was sought to be made effective w.e.f. 1.4.2018, however, it was eligible to be treated as retrospective in nature. The relevant portion of the order of the Hon'ble High Court is reproduced as under:-

“21. A perusal of the objects of amending the existing provisions of Section 43D of the Act vide Finance Bill 2017, reveals that the benefit of the existing provision was available to scheduled bank or a public financial institution etc. With a view to provide level playing field to cooperative banks vis-à-vis scheduled banks and to rationalize the scope of Section 43D, it was proposed to introduce the amendment to Section 43D of the Act so as to include co-operative banks other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. The omission was sought to be corrected by bringing at par the scheduled banks and non-scheduled banks. Thus, it is evident that the amendment was brought in force with a view to cure the omission in Section 43D. Although, the amendment was sought to be made effective w.e.f. 1st April, 2018, but it was liable to be treated as retrospective in nature. In order to arrive at this view, reliance is made on the decision of

Hon'ble Supreme Court in Allied Motors' case supra. Moreover, it serves no purpose that the assessee, which is a nonscheduled bank, should include the NPAs/sticky loans in the relevant assessment year and then claim it as a bad debt in the next assessment year".

6. In view of the Tribunal's order in Assessee's own case in ITA Nos. 366 & 367/Chd/2023, dated 6.12.2023 (supra) and in view of the judgement of the Hon'ble jurisdictional High Court in the case of 'Kangra Central Co-operative Bank Ltd.' (supra), we find that the matter is squarely covered in favour of the Assessee by the aforesaid decision of the Hon'ble jurisdictional High Court on the issue whether the amendment is to be effective with retrospective effect or prospective effect is a question of law. This legal issue has been considered by the Hon'ble jurisdictional High Court, therefore, the ratio decided by the Hon'ble jurisdictional High Court is binding on all the authorities under its jurisdiction. Accordingly, we see no reason but to respectfully follow the said decision. In the Instant case, there is no dispute that the Assessee is a Co-operative bank and covered under the non-scheduled bank as per the Banking Regulation Act, 1949 and therefore, the amendment brought in by the Finance Act, 2017, which has been held to be retrospective in nature (by the Hon'ble jurisdictional High Court), applies in this case. Accordingly,

the addition made by the Assessing Officer and further confirmed by the Id. CIT(A), NFAC is hereby set aside.

7. In the result, the appeal of the Assessee is allowed.

Order pronounced on 30.04.2024.

Sd/-
(A.D. JAIN)
Vice President

Sd/-
(DR KRINWANT SAHAY)
Accountant Member

“आर.के.”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar