IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH: BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.172/PAN/2018
Assessment Year: 2014-15

DCIT Circle-2(1) Mangalore	**Vs.**	M/s. The Mangalore Catholic Co-operative Bank Ltd 14-06-686, St. Aloysius College Road Hampankataa Mangalore **PAN No.AAAAT5268Q**
APPELLANT		**RESPONDENT**

Assessee by	:	Shri Balram R. Rao, A.R.
Revenue by	:	Shri Narendra Kumar Naik, D.R.

Date of Hearing	:	02.05.2024
Date of Pronouncement	:	02.05.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by revenue is directed against order of CIT(A), Mangalore dated 12.2.2018. Originally assessee came in appeal before this Tribunal in ITA No.172/PNJ/2018 raising following grounds:

1. *The order of the learned CIT(A) is opposed to Law and facts of the case.*

2. *The learned CIT(A) has erred in deleting the addition on account of interest accrued on Non performing assets (NPA) loans on the receipt basis.*

3. *The learned CIT(A) ought to have upheld the decision of the Assessing Officer in respect of the addition made in the case of interest accrued on Non performing assets as the assessee has already identified and accounted the interest on NPAs and as such it can be clearly held that this interest on NPAs has also accrued to the assessee as on 31.03.2014and is taxable. The assessee has neither followed mercantile*

nor cash system but followed hybrid system. By virtue of the provisions of section 145 of the Income Tax Act; the assessee is required to follow either cash or mercantile system of accounting to compute the real income. The CIT(A) deleted the amount ignoring the fact that the assessee is following the mercantile system of accounting as stated in the form 3CD.The decision of the Hon'ble High Court of Karnataka relied upon by the LD.CIT(A) in the case of CIT vs Canfin Homes Ltd(2011)5Tax Corp(DT)49593 has not been accepted by the department as SLP has been filed in Supreme court.

4. *The ld. CIT(A) has erred in deleting the addition made in respect of amortization of premium paid on investments. Amortization of premium paid on government securities claimed by the assessee as deduction is not an allowable deduction as in the assessee's case the securities classified as "Held to Maturity" are permanent long term investment made by the assessee bank, which are predominantly capital in nature. Ratio of the decision of Hon'ble Madras High Court judgement in TN Power Finance & Infrastructure Development Corporation Ltd. vs JCIT(2006) 280 ITR 491 (Mad) wherein, it is held that RBI guidelines cannot override the mandatory provisions of income tax, is applicable in this case.*

7. *For these and such other grounds that may be urged that the order of the CIT(A), on the above points may be set aside and the order of the Assessing Officer be restored.*

8. *The appellant craves leave to add, alter or amend all or any of the grounds of appeal before*

2. The Tribunal Panaji Bench disposed the appeal vide order dated 1.4.2022 deciding the ground Nos.2 & 3 as follows:

"*6. Heard the ld. D.R. at length. After perusing the order of the ld. CIT(A) and perusing the facts on record on the issue on interest on NPA loans on receipt basis, we find the issue has been considered by various Tribunals on identical facts and the jurisdictional High Court in the assessee's own case has decided the issue in respect of the Assessment years 2012-13 & 2013-14 dismissing the appeal of the department.*

> *"Learned counsel appearing for the appellants fairly submits that the question raised in this appeal is answered against the appellants by this court in CIT v Canfin Homes Ltd. (2012) 347 ITR (Kar.). The appeal is accordingly dismissed."*

The ld. CIT(A) has also discussed the decision of the ITAT Bangalore Bench in the case of Shri Vijay Mahantesh Co-operative Bank Ltd. Humgund, Bagalkot Vs. JCIT, Bijapur, Range in ITA No.434/Bang/2013 dated 26.9.2014 wherein the ITAT has

relied on the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Canfin Homes Ltd. (2012) 347 ITR (Kar), wherein at para 8 of the judgement, it has been held as under:

> *"Therefore, it is clear if an assessee adopts mercantile system of accounting and in his accounts he shows a particular income as accruing, whether the amount is really accrued or not is liable to bring said income to tax. His accounts should reflect true and correct statement of affairs. Merely because the said amount; accrued was not realized immediately cannot be a ground to avoid payment of tax. But, if in his account it is clearly stated that though a particular income is due to him but is not possible to recover the same, then it cannot be said to have been accrued and said amount cannot be brought to tax.*
>
> *In the instant case we are concerned with a non performing asset. As the definition of nonperforming asset shows an asset becomes non performing when it ceases to yield income. Nonperforming asset is an asset in respect of which interest has remained unpaid and has become past due. Once a particular asset is shown to be a nonperforming asset then the assumption is it is not yielding any revenue. When it is not yielding any revenue, the question of showing that revenue and paying tax would not arise. As is clear from the policy ITA No.257/Bang/2012 guidelines issued by the National Housing Bank, the income from nonperforming asset should be recognized only when it is actually received. That is what the Tribunal held in the instant case. Therefore, the contention of the revenue that in respect of nonperforming assets even though it does not yield any income as the assessee has adopted a mercantile system of accounting, he has to pay tax on the revenue which has accrued notionally is without any basis."*

7. Consistent with the view taken by the ITAT Bangalore Bench of the Tribunal and respectfully following the judgement of the Hon'ble Karnataka High Court (supra), we uphold the order of the ld. CIT(A) on this issue and dismiss the grounds raised by the revenue."

2.1. Further, there as no adjudication of ground Nos.4 to 7. Consequently, there was a MP filed by the assessee in MP No.6/PNJ/2022, the Tribunal vide order dated 9.10.2023 decided as follows:

"3. We have heard the Id. DR and gone through the material on record. It is noticed that the issue of amortization of premium paid on government securities was taken note of by the Tribunal on page 2 of its order as the issue under challenge. However, it remained to be decided. In the given circumstances, we recall the original order passed u/s 254(1) for the limited purpose of disposal of ground challenging the deletion of addition of Rs. 10,10,915/- on account of amortization of

premium paid on government securities held under the category 'Held At Maturity'. The Registry is directed to fix the appeal for hearing in due course after notice to both the sides."

2.2. Hence, this appeal is listed for hearing today to consider ground Nos.4 to 7.

3. After hearing both the parties, we are of the opinion that similar issues came for consideration before Hon'ble High Court of Karnataka in assessee's own case in ITA No.23/2019, the High Court vide judgement dated 11.10.2022 held as under:

"Sri Balaram R. Rao, learned Advocate for the respondent submits that the two substantial questions of law raised in this appeal on 31.10.2019 are covered by the decisions in the case of The Pr. Commissioner of Income-tax, CIT(A) and another Vs. M/s. Sough Canara District, Central Co-operative Bank Ltd., in ITA No.393/2016 decided on 14.12.2021.

2. The said submission is not disputed by Sri Dilip M., learned standing counsel for the appellants.

3. In view of the above, substantial questions of law raised in this appeal are held against the Revenue and in favour of the assessee and this appeal stands dismissed."

3.1. While taking the above decision, the Hon'ble Karnataka High Court placed reliance on the earlier judgement in the case of South Canara District Central Co-op. Bank Ltd. reported in 442 ITR 313, wherein held as under:

6. "*On extensive analysis of the factual aspects, the Tribunal has arrived at a conclusion that though the assessee is promoting the formation of self help groups in the Districts of Dakshina Kannada and Udupi, and the loans are given to such self help groups for home industries like candle making, soap making and such other activities, the income generated by such self help groups come back to the assessee as deposits. The commercial exigency being established under the provisions of section 37(1) of the Act, the same has been considered in the light of the judgment of the Hon'ble Rajasthan High Court in Addl CIT v. Rajasthan Spg. & wvg. Mills Ltd. [2004] 137 Taxman 367/[2005] 274 ITR 465, which has been rendered following the decision of the Hon'ble Apex Court in the case of Sassoon J. David & Co. (P) Ltd. v. CIT* [1979] 1 Taxman 485/118 ITR 261. *Having regard to the legally settled principles with reference to the expression 'wholly or exclusively' used in section 37(lj of the Act, the Tribunal has dismissed the appeal filed by the revenue. We find it appropriate to quote the relevant paragraph of the said decision, which reads as under:*

"20. It—has to be observed here that the expression "wholly and exclusively" used in section of the Act does not mean 'necessarily'. Ordinarily it is for the assessee to decide whether any expenditure should be incurred in the course of his or its business. Such expenditure may be incurred voluntarily and without any necessity and if it is incurred for promoting the business and to earn profits, the assessee can claim deduction under section 10(2)(xv) of the Act even though there was no compelling necessity to incur such expenditure. It is relevant to refer at this stage io the legislative history of section 37 of the Income-tax Act, 1961 which corresponds to section of the Act. An attempt was made in the Income-tax Bill of 1961 to lay down the 'necessity' of the expenditure as a condition for claiming deduction under section 37. Section 37(1) in the Bill read "any expenditure laid out or expended wholly, necessarily and exclusively for the purposes of the business or profession shall be allowed". The introduction of the word 'necessarily' in the above section resulted in public protest. Consequently when section 37 was finally enacted into law, the word 'necessarily' came to be dropped. The fact that somebody other than the assessee is also benefited by the expenditure should not come in the way of an expenditure being allowed by way of deduction under section IO(2)(xv) of the Act if it satisfies otherwise the tests laid down by law. This view is in accord with the following observations made by this Court in CIT v. Chandulal Keshavlal & Co. [1960] 3 SCR 38 at page 48:"

7. *In the light of the said decision, the expenses incurred by the assessee cannot be held to be not allowable expenses under section 37 of the Act. The CIT (Appeals) as well as the Tribunal has analyzed the factual aspects in the background of the legal principles, which by any stretch of imagination cannot be held to be perverse or arbitrary. Moreover, these factual aspects recorded by the fact finding authorities cannot be interfered. Accordingly, the substantial question of law no. 3 is answered in favour of the assessee and against the revenue."*

3.2. In view of the above precedents, we are inclined to decide the issue in favour of the assessee and against the revenue.

4. Ground Nos.4 to 7 of the revenue's appeal are dismissed.

5. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 2nd May, 2024

Sd/-	**Sd/-**
(Beena Pillai)	**(Chandra Poojari)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 2nd May, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5 Guard file

By order

Asst. Registrar,
ITAT, Bangalore.