

IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND

SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.158/Nag./2019

(Assessment Year : 2009-10)

Income Tax Officer
Ward-2, Bhandara

..... Appellant

v/s

The Bhandara Urban Co-operative Bank Ltd.
Gandhi Chowk, Bhandara 441 904
PAN – AAFT7398G

..... Respondent

Assessee by : Shri Manoj G. Moryani
Revenue by : Shri Kailash C. Kanojiya

Date of Hearing – 29/05/2024

Date of Order – 29/05/2024

ORDER

PER K.M. ROY, A.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 29/03/2019, by the learned Commissioner of Income Tax (Appeals)-2, Nagpur, [*learned CIT(A)*], for the assessment year 2009-10.

2. Following grounds have been raised by the Revenue:-

"1. Whether, on the facts and in the circumstances of the case, the Ld. CIT(A) erred in not appreciating the disallowance u/s 36(viia) to the tune of Rs. 1,94,57,134/- made in assessment order under the provision I.T. Act 1961?"

2. Whether, on the facts and in the circumstances of the case, the Ld. CIT(A) erred in not appreciating the addition made in respect of accrued

interest on NPAs to the tune of Rs. 1,43,97,123/- made in assessment order under the provision I.T. Act 1961?

3. Any other Ground which may be raised during the course of hearing."

3. Facts in Brief:- The assessee is a Co-operative Bank working under the guidelines and regulations of Reserve Bank of India. Return of income for the year under consideration was electronically filed on 29/09/2009, declaring total income of ₹ 99,65,218. The assessee has also debited an amount of ₹ 1,43,97,123, in the Profit & Loss Account for provision for interest accrued on NPA. The amount was debited as the principal amount was itself doubtful of receiving back by the assessee, so the interest accrued on those NPA loans is not to be recognized as income, as per prudent norms of income, issued by the Reserve Bank of India. However, the Assessing Officer has disallowed the claim under section 36(1)(viiia) of the Act of ₹ 1,94,57,134, and also made addition of ₹ 1,43,97,123, on account of accrued interest on NPA on due basis. Being aggrieved, the assessee filed appeal before the first appellate authority.

4. Insofar as the issue relating to disallowance of claim under section 36(1)(viiia) of the Act of ₹ 1,94,57,134 is concerned,, the learned CIT(A) deleted the addition on account of bad and doubtful debts under section 36(1)(viiia) of the Act. The findings of the learned CIT(A) from Page-6 to 8, are reproduced below:-

"5.1 Ground No 1 & 2: These two Grounds are related to disallowance of deduction u/s 36(1) (viiia) amounting to Rs.1,94,57,134. During the assessment proceedings, the related discussion has been made from page No.2 to page No.5 of the impugned assessment order dated 30-12-2011. The learned AO made a detailed discussion as to why and how the additions

were made by him. On page No.2 to page no.5, he made the said discussion. The gist of the same is as under:-

i. The deduction u/s 36(1)(viiia) shows that it applies to a scheduled bank or a non scheduled bank or a Co-operative Bank other than a primary agricultural society or a primary co-operative rural development bank..

ii. The deduction is restricted to 7.5% of total income computed before making any deduction under this clause and Chapter VIA and an amount not exceeding 10% of aggregate advances made by rural branches of such bank computed in the prescribed manner.

iii. To avail itself of the deduction a bank like in this case has to fit in the definition given in Explanation appended below the said Section 36(1)(viiia). The terms "scheduled bank", "non scheduled bank" and "Co-operative Bank" have been defined in the said explanation and the term "Co-operative Bank" has the same meaning as given in part V of the Banking Regulation Act, 1949. Thus, a "Co-operative Bank" means a State Co-operative Bank, a Central Co-operative Bank and a primary co-operative Bank.

However, the Ld. AO thereafter making some discussion tried to arrive at the conclusion that in the case of the appellant bank the bylaws permit admission of any co-operative society as member and therefore the bank would not qualify as a "primary co-operative bank" as the same i.e. primary co-operative bank the definition is given in Section 56 clause (ccv) of Banking Regulation Act. By the discussion in between the Ld. AO also reached the conclusion that as per NABARD Act (National Bank for Agriculture and Rural Development) 1981, as per Section 2(d) the banks like the appellant bank are neither "Central co-operative bank" nor "State co-operative bank" as defined in Section 2(d) of the same Act i.e. NABARD Act, 1981.

5.1.1 Thereafter depending on the above discussion and line of thinking, the learned AO disallowed the deduction as claimed by the appellant and as discussed above made total disallowance of Rs.1,94,57,134/- on account of provision for bad and doubtful debts.

5.1.2 As mentioned above in para no.4, in these appeal proceedings the learned counsel submitted a written reply dated 07.03.2019 on 08.03.2019 related to the above addition i.e. disallowance on account of bad and doubtful debts. Related to this issue, it has been submitted that the same has been already decided in favour of the appellant in the Assessment Years which are immediately succeeding to the Assessment Year in question i.e. A.Y. 2010-11 as well as another AY i.e. AY 2012-13. The same has been quoted and which has been mentioned that in addition to this order of the then learned CIT(A) the same has also been upheld by the learned ITAT Nagpur Bench wherein it has appreciated the fact that RBI has issued a list of banks titled as "List of DCCBs in Maharashtra" wherein at Sr. No. 6 the name of the Assessee is mentioned. Hon'ble Bench also relied on the Order passed by ITAT Nagpur Bench in the case of ACIT v/s Arvind Sahakari Bank Ltd., Katol [ITA No. 376 & 377/Nag/2013]. Thus, this issue has been

squarely covered in these cases and the addition made on this account needs to be deleted.

5.1.3 In view of the above discussion and giving due consideration to the written submission made by the appellant, it is decided that it will meet the ends of justice if in particular the matter is decided in favour of the appellant in light of the various judgements. Therefore the Ground No.1 & 2 are allowed."

The Revenue being aggrieved, is in appeal before the Tribunal.

5. The learned Departmental Representative fairly accepted that this issue is covered in favour of the assessee by various judicial precedents.

6. The learned Counsel for the assessee, in support of his arguments, placed relied upon the following case laws:-

- i) ITO v/s the Bhandara District Central Co-operative Bank Ltd., ITA no.345/Nag./2014, order dated 25/02/2016;*
- ii) ACIT v/s Arvind Sahakari Bank Ltd., ITA no.376 & 377/Nag./2013, order dated 16/09/2015;*
- iii) CIT v/s M/s. Deogiri Nagari Sahakari Bank Ltd., ITA no.53 of 2014, judgment dated 22/01/2015 (HC-Aurangabad);*
- iv) Southern Technologies Ltd. v/s JCIT, [2010] 320 ITR 577 (SC);*
- v) Godhra Electricity Co. Ltd. v/s CIT, [1977] 225 ITR 746 (SC);*
- vi) Mercantile Bank Ltd. v/s CIT, Appeal (Civil) no.310 of 2001, judgment dated 01/05/2006 (SC);*
- vii) CIT v/s Vasisth Chay Vyapar Ltd. [2011] 330 ITR 440 (HC-Del.); and*
- viii) UCO Bank v/s CIT, judgment dated 13/05/1999.*

7. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. We find that this issue has been decided in favour of the assessee by the Coordinate Bench of the Tribunal, Nagpur Bench, in the case of Arvind

Sahakari Bank Ltd., ITA no.376-377/Nag./2013, order dated 16/09/2015, for the assessment year 2009-10 and 2010-11. The issue is also covered by the decision of the Co-ordinate Bench of the Tribunal, Nagpur, in Revenue's appeal being ITO v/s The Bhandara District Central Co-operative Bank Ltd., ITA no.345/Nag./ 2014, order dated 25/02/2016, for the assessment year 2010-11, wherein the Tribunal has decided this issue against the Revenue and in favour of the assessee. The relevant findings of the Tribunal is reproduced below:-

""4. It was also noted by the Ld. AO that the appellant has not declared / recognized interest on accrual basis on NPAs. He considered the submission made by the appellant submission made by the appellant and came to the conclusion that neither RBI norms nor the accounting standards stop accrual interest income on NPAs. He based his findings on the judgment of Hon'ble Apex Court in the case of Southern Technologies Ltd. Vs. JCIT wherein it was held that the RBI directions issued under RBI Act do not override the provisions of Income tax Act and that the RBI directions and the Income tax Act operating different fields. He further noted that the form no. 3CD of Tax Audit Report showed that the method of accounting followed by the appellant is "mercantile" and also that the tax audit report mentions that interest on NPAs is accounted for on cash basis and that the tax audit report is bad in law to the extent that hybrid system of accounting is not permitted in view of the provisions of section 145 of the Act. In view of the same the Ld.AO added an amount of Rs. 27,03,083/- as income of the appellant being interest accrued on NPAs.

5. Upon assessee's appeal, as regards the first issue as to whether the assessee is entitled to claim deduction u/s 36(1)(viiia) the learned CIT(Appeals) decided the issue in favour of the assessee by observing as under:

"I have carefully considered the facts of the case and the written submissions of the appellant. Section 5 of the Banking Regulation Act 1949 rws 56 of the said Act makes it very clear that all cooperative banks under the direct supervision and registration of the RBI are companies within the meaning of section 5(c) of the Banking Regulation Act 1949. The RBI decides, as to whether a certain bank is a scheduled bank or non scheduled bank. In case of the appellant it has been duly registered and approved by RBI as a non-scheduled bank and has been so notified as such alongwith several other banks. The list of such non scheduled bank is available at the website of RBI, the copy of which has been furnished by the appellant during the course of appellate proceedings. There is merit in the submission of the appellant that explanation to section 36(1)(viiia) of

the Act at clause (i) leaves the definition of a non-scheduled bank to the Banking Regulation act and a non scheduled bank means banking company as defined in section 5(c) of the Banking Regulation Act. Thus it is clear that once a bank has been declared and notified as a non scheduled bank under the Banking Regulation Act by the RBI, it is entitled to deduction u/s 36(1)(viiia) of the Act. In view of the same it is held that the appellant would be entitled to claim a deduction of 2,12,523/- u/s 36(1)(viiia) of the Act."

6. *As regards the second issue of disallowance of 27,03,083 as income of the assessee being interest accrued on NPAs, learned CIT(Appeals) considered the orders of ITAT, Vishakhapatnam Bench in the case of CIT vs. Durga Co-operative Urban Bank*

(ITA No. 511/Vizag/2010) and also the Hon'ble Delhi High Court decision in the case of Vasisth Chay Vyapar Ltd. 330 CTR 440. Considering the above, learned CIT(Appeals) decided the issue in favour of the assessee by observing as under:

On perusal of the above judgment clearly establishes that the facts of the case are identical to the case law quoted above. The Hon'ble Tribunal has also taken into consideration the ratio of the Apex Court in Southern Technologies Ltd. And that of the Delhi High Court in the case of Vasisth Chay Vyapar Ltd. (supra) reported in 330 CTR 440 (Del). Respectfully following the above judicial pronouncements, I hold that the AO has not justified in disallowing 27,03,083/- as income of the appellant being interest accrued on NPAs. This ground is therefore allowed."

8. Since the issue for our adjudication is covered by the aforesaid decision of the Tribunal, consistent with the view taken therein, we decline to interfere with the order passed by the learned CIT(A) by dismissing the ground no.1, raised by the Revenue.

9. Insofar as ground no.2, which relates to the addition of ₹ 1,43,97,123, towards accrued interest on non-performing assets is concerned, we find that the issue is covered in favour of the assessee by the judgment of the Hon'ble Bombay High Court, rendered in CIT v/s Deogiri Nagari Sahakari Bank Ltd., ITA no.53 of 2014, judgment dated 22/01/2015, wherein the Hon'ble Court has held as under:-

"11. The learned counsel for respondent has placed reliance in a case of *Mercantile Bank Ltd., Bombay Vs. The Commissioner of Income Tax, Bombay City-III* reported in (2006) 5 SCC 221, where similar question was raised before the Apex Court. The question was whether the assessee is under Income Tax Act, 1961 in respect of the interest on doubtful advances credited to the interest suspense account. In this case, the Uco Bank's Case (*supra*) was also referred and the Hon'ble Apex Court has allowed the appeal to the extent of question raised as aforesaid. Furthermore, the respondent Co-operative banks, as understood by Section 43D of the Income Tax Act on the Scheduled Bank.

12. Learned counsel for the appellants / revenue place reliance on the judgment in the case of *Southern Technologies Ltd. Vs. Joint Commissioner of Income Tax, Coimbtore* reported in 2010 (2) SCC 548. However, this judgment pertains to non Banking financial companies. Uco Bank case (*supra*) and *Mercantile Bank (supra)* case squarely applies to the facts of the present case and issues involved. We therefore, do not find it necessary to interfere in the judgment of the Appellate Tribunal. We hold that no substantial question of law arises in these appeals."

10. We also find that this issue is further also covered by the decision of the Co-ordinate Bench of the Tribunal, Nagpur, in ACIT v/s Arvind Sahakari Bank Ltd., ITA no.376 and 377/Nag./2013, order dated 16/09/2015, wherein the Tribunal observed as under:-

"10. As regards the second issue, the interest accrued of non performing assets of the bank, the AO has opined that the same is taxable on accrual basis. In this regard the AO further placed reliance on the judgment of the Hon'ble Apex Court in the case of *Southern Technologies Ltd. 320 ITR 577*. Upon assessee's appeal, learned CIT (Appeals) referred to the ITAT Vishakhapatnam Bench decision in the case of *CIT vs. Durga Urban Cooperative Bank Ltd. (supra)* which read as under:

"9. The Hon'ble Supreme Court in the case of *M/s Southern Technologies Ltd (Supra)* dissected the matter into two parts viz.. a) Income Recognition and b) permissible deduction/exclusions under the Income Tax Act. In so far as income recognition is concerned, the Hon 'ble Supreme Court held that Section 145 of the Income Tax Act has no role to play and the Assessing Officer has to follow Reserve Bank of India directions 1998, since by virtue of 45Q of the Reserve Bank of India Act, an overriding effect is given to the directions of Reserve Bank of India vis-a-vis income recognition principles in the Companies Act 1956. In so far as computation of income under the Income Tax Act is concerned, (which involves deduction of permissible deductions and exclusions) the admissibility of such deductions shall be governed by the provisions of the Income Tax

Act. The relevant observations of the Hon'ble Supreme Court are extracted below:

"Applicability of Section 145

40. At the outset, we may state that in essence RBI Directions 1998 are Prudential/Provisioning Norms issued by RBI under Chapter 'I' of the RBI Act, 1934. These Norms deal essentially with Income Recognition. They force the NBFCs to disclose the amount of NPA in their financial accounts. They force the NBFC to reflect "true and correct" profits. By virtue of Section 45Q, an overriding effect is given to the Directions 1998 vis-a-vis "Income Recognition" principles in the Companies Act, 1956. These Directions constitute a code by itself. However, these Directions 1998 and the IT Act operate in different areas. These Directions 1998 have nothing to do with computation of taxable income. These Directions cannot overrule the 'permissible deductions' or 'their exclusion' under the IT Act. The inconsistency between these Directions and Companies Act is only in the matter of Income Recognition and presentation of Financial Statements. The Accounting policies adopted by an NBFC cannot determine the taxable income. It is well settled that the Accounting Policies followed by a company can be changed unless the AO comes to the conclusion that such change would result in understatement of profits. However, here is the case where the AO has to follow the Reserve Bank of India Directions 1998 in view of Section 45Q of the Reserve Bank of India Act. Hence, as far as Income Recognition is concerned, Section 145 of the IT Act has no role to play in the present dispute".

10. Turning to the facts of the case before us, the assessee herein is a cooperative bank and it is not in dispute that it is also governed by the Reserve Bank of India. Hence the directions with regard to the prudential norms issued by the Reserve Bank of India are equally applicable to the assessee as it is applicable to the companies registered under the Companies Act. The Hon 'ble Supreme Court has held in the case of Southern Technologies Ltd (Supra), that the provision of 45Q of Reserve Bank of India Act has an overriding effect vis-a-vis income recognition principle under the Companies Act. Hence Sec.45 Q of the RBI Act shall have overriding effect over the income recognition principle followed by cooperative banks also. Hence the Assessing Officer has to follow the Reserve Bank of India directions 1998, as held by the Hon 'ble Supreme Court.

10.1 Based on the prudential norms, the assessee herein did not admit the interest relating to NPA advances in its total income. The Hon'ble Delhi High Court in the case of Vasisth Chay Vyapar Ltd (Supra) has held that the interest on NPA assets cannot be said to have accrued to the assessee. In this

regard, the following observations of Hon'ble Delhi High Court in the above cited case are relevant:

"What to talk of interest, even the principle amount itself had become doubtful to recover. In this scenario it was legitimate move to infer that interest income thereupon has not "accrued". The said decision of the Hon 'ble Delhi High Court is equally applicable to the issue in our hands. Accordingly we do not find any infirmity with the decision of the learned CIT (A) in holding that the interest income relatable on NPA advances did not accrue to the assessee. Accordingly we uphold his order.

11. In the result the appeal of the revenue is dismissed."

11. Considering the above, learned CIT(Appeals) held as under:

"On perusal of the above judgment clearly establishes that the facts of the case are identical to the case law quoted above. The Hon'ble Tribunal has also taken into consideration the ratio of the Apex Court in Southers Technologies Ltd., and that of the Delhi High Court in the case of Vasishta Chay Vyapar Ltd. (supra) reported in 330 CTR 440 (Del.) Respectfully following the above judicial pronouncements, I hold that the AO has not justified in disallowing 27,03,083/- as income of the appellant being interest accrued on NPAs. This ground is therefore allowed."

Against the above order, Revenue is in appeal before us.

12. Having heard both the counsel and perusing the record, we find that the ratio from the above Tribunal decision is clearly applicable on the facts of this case. We further note that Hon'ble Delhi High Court in similar case has duly expounded that the assessee is correct in not recognizing interest accrued on the NPA. The ratio has been followed by the Tribunal in the order as above. We further note that similar view was taken by Hon'ble jurisdiction High Court in the case of CIT v/s M/s. Deogiri Nagari Sahakari Bank Ltd., ITA no.53 OF 2014, judgment dated 22nd January 2015. Since the facts are identical, respectfully following the precedents, we hold that interest on NPA had not accrued to the assessee. Accordingly, we do not find any infirmity in the order of learned CIT(Appeals). Accordingly we uphold the same.

13. In the result, the appeals filed by the Revenue stand dismissed."

11. Since the issue for our adjudication is covered by the aforesaid decision of the Co-ordinate Bench of the Tribunal wherein the Tribunal while relying upon the judgments of the Hon'ble Bombay High Court,

Aurangabad Bench cited supra, have decided the issue in favour of the assessee, respectfully following the same, we decline to interfere with the well-reasoned and cogent order passed by the learned CIT(A) and dismiss the ground no.2, raised by the Revenue. The learned Departmental Representative failed to bring into light any distinguishing facts leading us to take a different view from the above judgments.

12. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 29/05/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 29/05/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur