IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A No.2916/Mum/2024
(Assessment year 2017-18)

Indostar Capital Finance Limited, Unit No.301-A, Third Floor, Silver Utopia, Opposite P & G Plaza Cardinal Gracious Road, Chakala, Andheri (East), Mumbai-400 099 **PAN : AAECR4127Q**	**vs**	**Principal Commissioner of Income-tax (Central), Mumbai-1** Room No.1001, 10th Floor, Pratishtha Bhavan, Maharishi Karve Road, Mumbai-400 020
APPELLANT		**RESPONDENT**

Assessee by	:	Shri Vijay Mehta
Respondent by	:	Ms. Madhu Malati Ghosh (CIT- DR)
Date of hearing	:	30/07/2024
Date of pronouncement	:	01/08/2024

O R D E R

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee was filed against the order of theLearned Principal Commissioner of Income-tax (Central), Mumbai-1 [for brevity, 'Ld.PCIT'] passed under section 263 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2017-18, date of order27.03.2024.The impugned order was emanated from the order of the Ld.Assistant Commissioner of Income-tax

CentralCircle 2(1),Mumbai (in short, ‘the A.O.’) passed under section 143(3)of the Act date of order22/07/2021.

2. The assesseehas taken the following grounds of appeal:-

“All the grounds of appeal are independent and without prejudice to each other.

On the facts and under the circumstances of the case and in law, the Principal Commissioner of Income-tax (Central), Mumbai- 1 ('Learned PCIT') erred in initiating proceedings under section 263 of the Income-tax Act, 1961 ('Act') and passing an order against the Appellant.

2. On the facts and circumstances of the case, and in law, the Learned PCIT has erred in holding that the order dated 22 July 2021 passed under section 143(3) of the Act ('Order') by the Assistant Commissioner of Income-tax Central Circle 2(1), Mumbai ['Learned AO'] was erroneous in so far as it is prejudicial to the interests of revenue.

3. On the facts and under circumstances of the case and in law, the Learned PCIT erred in setting aside the assessment order passed by the Learned AO and directing him to pass a fresh assessment order.

The Appellant craves leave to add, amend, alteror withdraw any of the above grounds of appeal at or before the time of hearing of the appeal, so as to enable the Hon'ble Income Tax Appellate Tribunal to decide this appeal according to law.”

3. The brief facts of the case are that the assessment was completed under section 143(3) of the Act. The Ld.PCIT, by invoking provisions of section 263, had treated the assessment order as erroneous and prejudicial to the interest of the revenue on the ground that the details of sundry debtors were not verified. Even the order was passed without considering the **Circular No.10/2017 dated 23/03/2017** issued by CBDT. The entire assessment order was set aside on the groundby the order of the ld. PCIT U/s 263 of the Act. Being aggrieved on the revisional order, the assessee filed an appeal before us.

4. The ld.AR argued and submitted written submission, which is kept in the record (in short APB). The ld.AR stated that for invoking section 263, the ld.PCIT set aside the assessment order for non verification of the debtors. The assessee received the interest from NPA account. The same amount was duly deducted under section 36(1)(vii) of the Act. The ld. PCIT found that the ld.AO passed the assessment order without considering the Circular No.10 of 2017 issued by CBDT. But the circular itself in favour of the assessee which is not prejudicial to the interest of the revenue.

5. The ld.AR respectfully relied on the order of the Hon'ble **High Court of Judicature at Bombay** bearing **ITA No.221 of 2012** in the case of **CIT-8 vs M/s KEC Holdings Ltd**, date of order **11/06/2014**. The relevant part of the order is reproduced as below:-

> *"8] The assessee had credited only an amount of Rs.38,57,9337- as interest on loans. The Assessing Officer was of the view that the interest accrued on the entire loans should have been shown as income. The details as to how the interest income on accrual basis should have been disclosed are, therefore, referred to by the Tribunal. The Tribunal held that the said income was not realized. It was held that the assessee follows the mercantile system of accounting. The Tribunal held that the loanadvanced by the assessee which was in NBFC had become non-performing asset. That is how following judgments rendered by the Hon'ble Supreme Court and the Delhi High Court, the Tribunal has eventually held that once there is no dispute that the interest considered as accrued was a non-performing asset as per Reserve Bank of India guidelines, then, the income from this interest did not accrue to the assessee. It is in such circumstances that this income in question was not and cannot be assessed on an accrual basis.*

9] We do not find that the Tribunal has either misdirected itself in law or its order can be termed as perverse warranting interference in our appellate jurisdiction. We find that the view taken by the Tribunal accords with the Reserve Bank of India guidelines and which are not in any way in conflict with the Income Tax Act, 1961, the Hon'ble Supreme Court has held in the case of UCO Bank that the interest income would have been brought to the Profit and Loss Account provided it was actually realized that in case of Nationalized Bank it treated something which is doubtful, and therefore, kept it in a suspense account, was held to be a permissible exercise. In respect of the loans which are advanced, recovery of some of them if considered doubtful, then, even the interest on the loans advanced may not be realized. That is how the amount is not brought to the profitand loss account because they are not likely to be realized by the bank or a NBFC as well. It is permissible therefore to disclose or to show them as income in assessment year in which either the interest amount or part of it is recovered. The Tribunal in this case, namely, of the assessee before us, has precisely followed this course. We do not find that the course permitted and upheld by the Tribunal is in any way in conflict with any legal provisions or the settled principles. Rather as held by us, it is in accordance with the same. Once the view taken by the Tribunal was possible and in the given facts and circumstances the income has not been realized by the assessee, the addition was rightly deleted. We, therefore, do not find that the appeal raises any substantial question of law. It is accordingly dismissed. No costs."

6. The ld.AR further respectfully relied on the order of the Hon'ble **Delhi High Court** in the case of **Chamber of Tax Consultants And Another vs UOI & Others(2018) 40 ITR 178 (Del).** The relevant part of the order is reproduced as below:-

"In ICDS IV accrual of interest is dealt with as under :

"8. (1) Subject to sub-paragraph (2), interest shall accrue on the time basis determined by the amount outstanding and the rate applicable.

(2) Interest on refund of any tax, duty or cess shall be deemed to be the income of the previous year in which such interest is received/[7] This clause is applicable in myriad situations including for banks, lenders, financial institutions, loan agreements, etc. NBFCs are just one facet of business where this clause is applicable. This is challenged on the ground that non-performing assets of NBFCs would also become taxable onaccrual basis even though such interest is not recoverable. The respondent has clarified in Circular No. 10 of 2017 that such income has to be applied on accrual basis and deduction, if any, can be claimed only under section 36(1) (vii) of the Act. The respondent further submits that this provision is in line with the recent amendments brought about by the Finance Act, 2015, wherein a proviso was added to the following effect :

" 36(l). The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—..

(vii) subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year:

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Provided further that where the amount of such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof becomes irrecoverable or of an earlier previous year on the basis of income computation and disclosure standards notified under sub-section (2) of section 145 without recording the same in the accounts, then, such debt or part thereof shall be allowed in the previous year in which such debt or part thereof becomes irrecoverable and it shall be deemed that such debt or part thereof has been written off as irrecoverable in the accounts for the purposes of this clause."

In its counter-affidavit the respondent has clearly explained this aspect in the following manner:

"The petitioners completely ignore the fact that this very provision of the ICDS have been given approval by the highest legislative body, i.e., Parliament by making an amendment to section 36(1) (vii) of the Act with effect from April 1, 2016 by Finance Act, 2015. The petitioners for furthering their point have erroneously mentioned that the second proviso to section 36(1) (vii) casts an additional burden on the assessee to prove that the debt is established to have become due. In fact, a provision which is for the benefit of the assessees is being projected to be a provision which is against the interests of the assessee.

The ICDS does not in any way wish to alter the well laid down principles of real income by the Hon'ble Supreme Court but is actually ensuring that there is a trace available of the income which is foregone on this concept. Therefore, if there is an interest income which is not likely to be realised is written off by the assessee in the very same year immediately on its recognition (and even withoutpassing through its books), then it would be first recognised as revenue and then allowed as a deduction under section 36(l)(vii) of the Act, including in the case of NBFCs. However, in this process, the tax Department would have information about the income which is so written off and keep a track of the said sum then realised. Therefore, there is no enlargement of scope of income or any deviation from the principles laid down by the hon'ble Supreme Court"

Since there is no challenge to section 36(1) (vii), para 8(1) of ICDS IV cannot be held to be ultra vires the Act. This is to create a mechanism of tracking unrecognized interest amounts for future taxability, if so accrued. In fact, the practice of moving debts which the bank or NBFC considers irrecoverable to a suspense account is a practice which makes the organisations lose track of the same. The justification by the respondent clearly demonstrates that this is a matter of a larger policy and has the backing of Parliament with the enactment of section 36(1)(vii). The reasoning given by the respondent stands to logic. It has not been demonstrated by the petitioner that para 8(1) of ICDS IV is contrary to any judgment of the Supreme Court, or any other court."

7. The ld.DR argued and relied on the order of the Ld.PCIT. The relevant part of the order is reproduced as below:-

"2. On the perusal of the records for the year under consideration, it has been noticed that the interest accrued in respect of the bad and doubtful debts (NPA)

had not been offered to taxation. The Assessing officer during the assessment proceedings have called for the details regarding bad and doubtful debts and the assessee had submitted their reply and details. However, the AO did not examine and verify the same and completed the assessment. Thus the A.O. has passed the assessment order without making inquiries and verifications which should have been made.

3. This being so, the assessment order passed by the A.O. has rendered it erroneous in so far as it is prejudicial to the interest of revenue, for the reasons mentioned above since the revenue implications of the afore-mentioned order of the AO for the Department are likely to be substantial. Therefore, prima facie action under section 263 of the I.T. Act, 1961 is considered necessary.

4. In view of the above, records were called for and examined. Consequently, the proceedings u/s 263 were initiated and the assessee was provided opportunity by issuing a show cause notice dated 11/03/2024 to represent case on or before 18/03/2024.

5. In response to the notice, Shri Meet Mehta responded for the assessee and submitted the contention of the assessee and supporting financials and the same is placed on record. The assessee in his letter has contended that the assessee had given all the details regarding the interest accrued in respect of bad debts during the proceedings of143(3)ofthe Act. The contentions of the assessee is gone through thoroughly. I have perused the reply filed by the assessee. The assessee has stated that the order passed by the A.O. is not erroneous and prejudicial to the interest of the revenue. However, after the insertion of Explanation 2 to Section 263 w.e.f. 01.06.2015, if the A.O. passes an order without making necessary enquiries or verification should have been made or the A.O. allowsany relief without enquiring into the claim then the order shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue. The judicial

pronouncements relied upon by the assessee are prior to this amendment. Accordingly, the explanation given by the assessee is not found acceptable. During the hearing before me, the assessee placed reliance on judgement of Pune ITAT 'A' Bench in the case of Bajaj Finance Ltd Vs. Principal Commissioner of Income-tax. It is mentioned here that the department hasnot accepted the decision of the ITAT in the case of Bajaj Finance Ltd and has preferred appeal before the Hon'ble High Court vide ITXA/52/2024. Therefore, it can be rightly said that the matter in the case of Bajaj Finance Ltd has not reached its finality. With regard to the discussion on the Circular No. 10/2017 dated 23/03/2017, regarding Clarification on Income Computation and Disclosure Standards (ICDS) notified under section 145(2) of the Income-tax Act, 1961, during course of hearing, it is mentioned here that the circular is binding on theA.O. and also the A.O. was aware of the contents mentioned in the circular at the time of passing of assessment order.The assessee has also challenged the proceedings u/s. 263 of the Act."

8. We heard the rival submission and considered the documents available in the record. The assessment was completed without considering circularNo.10/2017 issued by CBDT. The relevant part of the circular (question No.13) is reproduced below:-

"Question 13 : The condition of reasonable certainty of ultimate collection is not laid down for taxation of interest, royalty and dividend. Whether the taxpayer is obliged to account for such income even when the collection thereof is uncertain?

Answer: As a principle, interest accrues on time basis and royalty accrues on the basis of contractual terms. Subsequent non-recovery in cases can be claimed as deduction in view of amendment to S.36 (1) (vii). Further, the provision of the Act (e.g., Section 43D) shall prevail over the provisions of ICDS."

We find that the circular allows the deduction under section 36(1)(vii) related to non recovery of the interest on the NPA account. The issue was squarely covered by the order of Hon'ble Delhi High Court in the case of**Chamber of Tax Consultants And Another** (supra). We respectfully follow the order of **KEC Holdings Ltd** (supra) and in the case of Chamber of Tax Consultants And Another (supra). So, the assessment order is not an erroneous order and the circular of the CBDT is not contrary to the AO's findings. So, the assessment order is not erroneous and prejudicial to the interest of the revenue. We set aside the revisional order passed U/s 263 of the Act. The appeal of the assessee succeeds.

9. In the result, appeal of the assessee **ITA No. 2916/Mum/2024** is allowed.

Order pronounced in the open court on 01st day of August, 2024.

Sd/-	sd/-
(BR BASKARAN)	(ANIKESH BANERJEE)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai,दिनांक/Dated: 01/08/2024
Pavanan

<u>Copy of the Order forwarded to</u>:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

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(Asstt. Registrar), **ITAT, Mumbai**