

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.4/Nag./2019
(Assessment Year : 2014-15)

Income Tax Officer
Ward-1(5), Nagpur Appellant

v/s

Vidarbha Konkan Gramin Bank
2nd & 3rd Floor, Chandraprastha
Deendayal Nagar, Nagpur 440022 Respondent
PAN – AABAV3583F

ITA no.5/Nag./2019
(Assessment Year : 2015-16)

Income Tax Officer
Ward-1(5), Nagpur Appellant

v/s

Vidarbha Konkan Gramin Bank
2nd & 3rd Floor, Chandraprastha
Deendayal Nagar, Nagpur 440022 Respondent
PAN – AABAV3583F

Assessee by : Shri C. Naresh
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 11/11/2024

Date of Order – 06/12/2024

ORDER

PER K.M. ROY, A.M.

These appeals by the Revenue are directed against the impugned orders of even date 09/10/2018, passed by the learned Commissioner of Income Tax (Appeals)-1, Nagpur, [“learned CIT(A)”], for the assessment year 2014-15 and 2015-16.

2. The grounds of appeal raised by the Revenue in the assessment year 2014-15, are as under:-

Assessment Year - 2014-15

"1. Whether under the facts and circumstances of the case, the Ld. CIT(Appeals), Nagpur is justified in deleting the addition made on account of disallowance of deduction claimed under the head "interest accrued but not due on securities", despite the assessee is following mercantile system of accounting.

2. Whether under the facts and circumstances of the case, the Ld. CIT(Appeals), Nagpur is justified in deleting the addition made on account of disallowance of deduction claimed under the head "interest accrued but not due on securities" ignoring the ratio laid down by Supreme Court in the case of CIT vs Woodward Governor India (P.) Ltd. [(2009) 312 ITR 254] which states that under mercantile system of accounting what is receivable is brought into credit before its actually received.

3. Any other ground which may be raised with the permission of the Hon'ble ITAT. Nagpur."

Assessment Year - 2015-16

"1. Whether under the facts and circumstances of the case, the Ld. CIT(Appeals), Nagpur is justified in deleting the addition made on account of disallowance of deduction claimed under the head "interest accrued but not due on securities", despite the assessee is following mercantile system of accounting.

2. Whether under the facts and circumstances of the case, the Ld. CIT (Appeals), Nagpur is justified in deleting the addition made on account of disallowance of deduction claimed under the head "interest accrued but not due on securities" ignoring the ratio laid down by Supreme Court in the case of CIT vs Woodward Governor India (P.) Ltd. [(2009) 312 ITR 254] which states that under mercantile system of accounting what is receivable is brought into credit before its actually received.

3. Whether under the facts and circumstances of the case, the Ld. CIT(Appeals), Nagpur is justified in deleting the addition made on account of profit on sale of assets, without appreciating the fact that the assessee has not submitted supporting documents to prove that claim is made properly.

4. Any other ground which may be raised with the permission of the Hon'ble ITAT, Nagpur."

3. Since the core issue that arose out of the aforesaid grounds of appeals for both the years relate to the issue of interest accrued but not due on

securities amounting to ₹ 17,39,54,837, for the assessment year 2014-15 and ₹ 1,92,31,029 for assessment year 2015-16, are identical, hence, we take up appeal for the assessment year 2014-15, the decision of which shall apply mutatis mutandis to the other appeal for the assessment year 2015-16 as well.

4. Facts in Brief:- The assessee is a Co-operative Society (AOP) was engaged in the business of running Regional Rural Bank under the name of Vidarbha Konkan Gramin Bank, filed its return of income on 30/09/2015 disclosing total loss of ₹ 34,78,26,846. The Assessing Officer processed the said return of income under section 143(1) of the Income Tax Act, 1961 ("*the Act*") and selected for scrutiny under CASS. The Assessing Officer made assessment on a total income of ₹ 50,81,436, by making following additions:-

1.	<i>Disallowance of provision for BDDR u/s 36(1)(vii)</i>	₹ 97,06,79,200
2.	<i>Interest accrued but not due on Govt. and other securities</i>	₹ 17,39,54,837
3.	<i>Deduction u/s 36(1)(vii)</i>	₹ 2,68,07,020
4.	<i>Addition in respect of bad debts written-off u/s 41(4)</i>	₹ 2,77,22,160
5.	<i>Disallowance of interest accrued</i>	₹ 1,92,31,029
6.	<i>Disallowance</i>	₹ 10,87,720

5. The Assessing Officer dealt with the issue of interest accrued but not due which are as under:-

"5. Interest accrued but not due:

On verification of computation of income of the assessee bank it was observed that the assessee has claimed deduction of Rs. 17,39,54,837/- on account of interest accrued but not due on Government Securities. Vide submission dated 26.12.2016; the assessee submitted that the bank doesn't have a right to

receive the income before the due date of interest. The owner of the security on due date gets the interest for the entire period from the last due date of interest. Accordingly, even though for the purpose of books of accounts the interest from last due date to the date of balance sheet is recognized as income, it is offered to tax on the next due date of security. The submission of the assessee was considered, however not found acceptable. The assessee is following mercantile system of accounting regularly and there is no change in the system of accounting as compared to previous Assessment Year. Therefore, the interest accrued on Government Securities is the income of the assessee bank and the assessee bank has to account for and offer it to tax even if it is not due. The interest income is the main source of business income of the assessee bank and there should be similar treatment to interest income from various sources. There can be different methods of accounting for different heads of income but there cannot be different methods of accounting for single head of income but different sources. Further, the case laws produced by the assessee bank are not applicable in the case of the assessee as the facts of the case of the assessee are totally different. Considering the above, the deduction of 17,39,54,837/- on account of interest accrued but not due on Government Securities claimed by the assessee bank is disallowed and added back to the total income of the assessee under the head income from business and profession. The penalty proceeding under section 271(1)(c) read with section 274 of the Income Tax Act, 1961 initiated separately for concealment and furnishing inaccurate particulars of income.

6. On appeal, the learned CIT(A), vide Para-7.0 to 7.5, deleted the addition in respect of interest accrued but not due on securities and while coming to the conclusion, the learned CIT(A) held as under:-

"7.0 Ground No. 2: Addition of the interest accrued but not due on securities amounting to Rs.17.39,54,837/-. The appellant had claimed deduction in respect of the interest accrued but not due on the Government and other approved securities. It is argued that the interest on these securities are payable only on respective due dates and therefore they accrue only on the said due dates. The appellant contended that it does not have a right to claim the interest before the due dates specified in the bonds and hence the interest on these securities become income only on the said due dates. Therefore, the interest accrued but not due cannot be taxed.

7.1 The AO had disallowed the claim on the basis that since the appellant is following accrual basis, the interest accrued is chargeable to tax. Further this issue has been decided by the various High Courts and Income Tax Appellate Tribunals in a number of cases. It is also noted that SLP filed by the department on this issue has been rejected by the Hon'ble Supreme Court. Therefore, the action of the AO to rely on mercantile system of accounting for making the addition is unsustainable and liable to be deleted.

7.2 In E.D. Sassoon & Co. Ltd. v. Commr. Of Inc.-Tax (1954) 26 ITR 27, the Supreme Court held at page 51 that income can be said to accrue or arise

when there is a right to receive the same. At page 52, the Supreme Court held:

"..... A debt must have come into existence and he must have acquired a right to receive the payment. Unless and until his contribution or parenthood is effective in bringing into existence a debt or a right to receive the payment or in other words a debitum in prasenti, solvendum in futuro it cannot be said that any income has accrued to him. The mere expression "earned" in the sense of rendering the services etc. by itself is of no avail."

The Supreme Court further held at page 55 ".....

What has however got to be determined is whether the income, profits or gains accrued to the assessee and in order that the same may accrue to him it is necessary that he must have acquired a right to receive the same or that a right to the income, profits or gains has become vested in him though its valuation may be postponed or though its materialisation may depend on the contingency that the making up of the accounts would show income, profits or gains."

7.3 The question, therefore, is whether interest accrues to the holder of a security on a date other than the one stipulated in the instrument to be the date on which interest is payable. The answer to the question would be the same in respect of any transaction where interest is payable only on a particular date. It is not disputed that the securities in this case expressly provided for payment of interest in respect thereof only on the dates specified therein at three/six monthly intervals. It is also admitted that such dates did not fall on the last date of the appellant's financial year viz. 31st March.

7.4 The judgment in the E.D. Sassoon's case was confirmed by the Supreme Court again in *Vijaya Bank Limited v. Additional Commissioner of Income Tax 1991 Supp. (2) SCC 147; 1987 ITR 541* as it held:

"In the instant case, the assessee purchased securities. contended that the price It is paid for the securities was determined with reference to their actual value as well as the interest which had accrued on them till the date of purchase. But the fact is, whatever was the consideration which prompted the assessee to purchase the securities, the price paid for them was in the nature of a capital outlay and no part of it can be set off as expenditure against income accruing on those securities. Subsequently, when these securities yielded income by way of interest, such income attracted Section 18." (emphasis supplied).

7.5 In the nutshell, the right to receive interest on the Government securities vested in the appellant only on the due date mentioned in the securities. Consequently, interest accrued on the securities is only on the due dates and cannot be said to have accrued to the appellant on any date other than the date stipulated therein. The contention of the AO that interest accrues for broken periods between two consecutive dates stipulated in the agreement/instrument for payment of interest is without any basis in law. Following the Apex Court's decision on this issue, the addition made by the AO is deleted. Ground no 2 is allowed."

7. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. The matter has been considered by the Hon'ble Apex Court and moreover it is not the case that income has escaped assessment, because the income has been consistently recognised in the books of account and the method of accounting has never been rejected. The order of the learned CIT(A) needs no interference as it is based on sound legal principles. In this view of the matter, we have no hesitation to uphold the order passed by the learned CIT(A) by dismissing the grounds of appeal raised by the Revenue for both the years under appeal.

8. In the result, appeals filed by the Revenue for A.Y. 2014-15 and 2015-16 are dismissed.

Order pronounced in the open Court on 06/12/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 06/12/2024

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