

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री एस.आर. रगुनाथा, लेखा सदस्य के समक्ष
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri S.R. Raghunatha, Accountant Member

आयकर अपील सं./I.T.A. No.3025/Chny/2024
निर्धारण वर्ष/Assessment Year: 2015-16

The Erode District Central
Co-operative Bank Ltd.,
1, Bhavani Main Road,
Karungalpalayam S.O., Erode 638 003.

Vs. The Assistant Commissioner of
Income Tax,
Circle 1,
Erode.

[PAN:AAAAT7251P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri S. Sridhar, Advocate (Erode)
प्रत्यर्थी की ओर से/Respondent by : Shri P. Krishna Kumar, JCIT
सुनवाई की तारीख/ Date of hearing : 07.05.2025
घोषणा की तारीख /Date of Pronouncement : 29.05.2025

आदेश /O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order dated 28.10.2024 passed by the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi for the assessment year 2015-16.

2. The assessee raised 5 grounds of appeal amongst which the only issue emanates for our consideration as to whether the Id. CIT(A) is justified in confirming the order of the Assessing Officer in making

addition under section 43D of the of the Income Tax Act, 1961 [“Act” in short].

3. Brief facts relating to the issue are that, according to the Assessing Officer, the assessee is an AOP engaged in banking business. He found that the interest income on non-performing assets was not considered/ booked in the profit and loss account. The Assessing Officer proceeded to disallow the amount of ₹.2,32,54,414/- taking into account the amendment to section 43D of the Act to include Co-operative Banks with effect from AY 2018-19 vide Finance Act, 2017 is prospective in nature. Accordingly, the said amount was added to the total income of the assessee by order dated 29.12.2017 passed under section 143(3) of the Act.

4. The assessee challenged the same before the Id. CIT(A). The Id. CIT(A), considering the amendment to section 43D of the Act is prospective from the AY 2018-19 and the assessment year under consideration in the present case is AY 2015-16, held that the amendment to section 43D of the Act is not applicable. Aggrieved by the findings of the Id. CIT(A), the assessee is in appeal before the Tribunal.

5. The Id. AR Shri S. Sridhar, Advocate drew our attention to the decision of the Hon’ble High Court of Himachal Pradesh in the case of

PCIT v. Kangra Central Co-op Bank Ltd. [2022] 145 taxmann.com 357 (Himachal Pradesh) and argued that the amendment to section 43D of the Act to be interpreted in terms of the objects, it sought to achieve and as the amendment was curative in nature to provide level playing field to the co-operative banks vis-à-vis scheduled bank and to rationalize the scope of section 43D of the Act. He drew our attention to para 21 of the above decision and submits that the Hon'ble High Court held that the amendment was brought in force with a view to cure the omission in section 43D of the Act, though 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. Further, he drew our attention to said para and submits that the Hon'ble High Court of Himachal Pradesh, taking support from the decision of the Hon'ble Supreme Court in the case of Allied Motors (P.) Ltd. v. CIT 224 ITR 677 (SC), affirmed the order of the ITAT Chandigarh Benches. The Id. AR also submits that there is no decision in this regard by the Hon'ble Jurisdictional High Court prayed to follow the decision of Hon'ble High Court of Himachal Pradesh.

6. The Id. DR Shri P. Krishna Kumar, JCIT relied on the provisions of section 43D of the Act.

7. Heard both the parties and perused the material available on record. The short point for our consideration is as to whether the amendment to section 43D of the Act vide Finance Act, 2017 is to be treated as retrospective or prospective in nature? Admittedly, the explanatory note, which is reproduced in page 9 of the assessment order, clearly says that the benefit of amendment to section 43D of the Act is available to co-operative bank vis-à-vis scheduled bank with a view to provide a level playing field, also a fact remains admitted that the said amendment came into effect from the AY 2018-19 [w.e.f. 01.04.2018]. the decision of the Hon'ble High Court of Himachal Pradesh in the case of PCIT v. Kangra Central Co-op Bank Ltd. (supra), as relied on by the Id. AR, on careful reading, we note that the Hon'ble Division Bench was pleased to hold that the object of amending the existing provisions under 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, with a view to provide level playing field to co-operative banks vis-à-vis scheduled banks and to rationalize the scope of section 43D of the Act. Further, it was proposed to introduce the amendment to section 43D of the Act so as to include co-operative banks. The omission was sought to be corrected by bringing at par the scheduled banks and non-scheduled banks. The Hon'ble High Court was

pleased to hold that the amendment sought to be made effective from 01.04.2018 is liable to be treated as retrospective in nature. In order to come to such conclusion, the Hon'ble High Court was pleased to rely on the decision of the Hon'ble Supreme Court in the case of Allied Motors (P.) Ltd. v. CIT (supra) which, held that when any addition is made in a provision to remedy unintended consequence and to make it workable and it supplies an obvious omission, then, reasonable interpretation would be that the said amendment is made retrospective in operation. For better understanding, the relevant para 18 to 21 are reproduced herein below:

18. *At the time of extension of scope of 43D to co-operative banks, following factors were taken in consideration while passing Finance Bill 2017:-*

“Extension of scope of section 43D to Co-operative Banks The existing provisions of section 43D of the Act, inter-alia, provides that interest income in relation to certain categories of bad or doubtful debts received by certain institutions or banks or corporations or companies, shall be chargeable to tax in the previous year in which it is credited to its profit and loss account for that year or actually received, whichever is earlier. This provision is an exception to the accrual system of accounting which is regularly followed by such assesseees for computation of total income. The benefit of this provision is presently available to scheduled banks, public financial institutions, State financial corporations, State industrial investment corporations and certain public companies like Housing Finance companies. With a view to provide a level playing field to co-operative banks vis-à-vis scheduled banks and to rationalise the scope of the section 43D, it is proposed to amend 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. Consequentially, as per matching principle in taxation, if the interest income on bad or doubtful debts is chargeable to tax on receipt basis, the interest payable on such bad or doubtful debts need to be allowed on actual payment. In view of this, it is proposed to amend section 43B of the Act to provide that any sum payable by the assessee as interest on any loan or advances from a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank shall be allowed as deduction if it is actually paid on or

before the due date of furnishing the return of income of the relevant previous year. These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.”

19. *In the present case, at the time of assessment years in question, Section 43D of the Act did not refer to non-scheduled banks and only referred to scheduled banks. However, by Finance Act 2017, Co-operative banks were also included in the definition of Section 43D w.e.f. 1st April, 2018. At the time of passing of the Bill, it was specifically mentioned that the amendment will take place w.e.f. 1st April, 2018 and will accordingly apply in relation to assessment year 2018-19 and subsequent years. Hence, the learned counsel for the revenue has vehemently argued that Section 43D was not retrospective in nature, but it was to take effect w.e.f. 1st April, 2018.*

20. *On the other hand, learned counsel for the assessee has submitted that the amendment was to be interpreted, in terms of the objects, it sought to achieve and as the amendment was curative in nature to provide level playing field to the co-operative banks vis-à-vis scheduled bank and to rationalize the scope of Section 43D, the amendment was liable to be read with effect from the date when Section 43D was introduced in the Act i.e. with effect from 1st April, 2000. In this regard, the observations made by the Hon'ble Supreme Court in Allied Motors (P.) Limited's case supra are relevant. It has been observed by the Hon'ble Supreme Court that when any addition is made in a provision to remedy unintended consequence and to make it workable and it supplies an obvious omission, then reasonable interpretation would be that the said amendment is made retrospective in operation.*

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 co-operative 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 non-scheduled 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. There is no quarrel with the preposition of law settled by the judgments relied upon by the learned counsel for the appellant, but in view of the decision given by the Hon'ble Supreme Court in Allied Motors' case supra, we are of the opinion that the view taken by the Tribunal that the assessee was required to tax the interest on the sticky loans/NPAs on receipt basis, is liable to be upheld.*

8. On careful reading of the above, we note that in the present case, there was no reference available to section 43D of the Act at the time of assessment year in question in respect of non-scheduled bank, we find vide Finance Act, 2017, the co-operative banks also included in the definition of section 43D of the Act with effect from 01.04.2018. at the time of passing bill, it was specifically mentioned that the amendment will take place from 01.04.2018 i.e., from AY 2019-20. However, the Hon'ble High Court of Himachal Pradesh was pleased to hold that the amendment was to be interpreted in terms of the objects, it is sought to achieve as the amendment was curative in nature to provide level playing field to the co-operative banks vis-à-vis scheduled bank. Further, it was held that when any addition is made in a provision to remedy unintended consequence and to make it workable and it supplies an obvious omission, then reasonable interpretation would be that the said amendment is retrospective in operation. Therefore, the said amendment was sought to be corrected by bringing at par the scheduled banks and non-scheduled banks. Therefore, the amendment was liable to be treated as retrospective in nature. Thus, respectfully following the decision of the Hon'ble High Court of Himachal Pradesh in the case of PCIT v. Kangra Central Co-op Bank Ltd. (supra), we hold that the amendment to section 43D of the Act, which came into effect from 01.04.2018 vide Finance Act,

2017 is applicable retrospectively, therefore, applicable to the year under consideration i.e., AY 2015-16. Thus, the disallowance made by the Assessing and as confirmed by the Id. CIT(A) is deleted. Thus, the grounds raised by the assessee are allowed.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 29th May, 2025 at Chennai.

Sd/-
(S.R. RAGHUNATHA)
ACCOUNTANT MEMBER

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Chennai, Dated, 29.05.2025

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.