

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

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 6690/Mum/2025
Assessment Year : 2017-18

Deputy Commissioner of Income Tax, Central Circle-5(4), Room No. 427, Kautilya Bhawan, G Block, BKC, Bandra (E), Mumbai-400051.	vs.	Prithvi Realtors and Hotels Private Limited, 3 rd Floor, Dheeraj Arma, Anant Kanekar Marg, Bandra (East), Mumbai-400051. PAN : AACCP6911E
(Appellant)		(Respondent)

For Assessee :	NONE
For Revenue :	Shri R.A. Dhyani, CIT-DR

Date of Hearing :	12-02-2026
Date of Pronouncement :	23-02-2026

ORDER

PER VIKRAM SINGH YADAV, A.M :

This is an appeal filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-53, Mumbai ['Ld.CIT(A)'], dated 31-08-2025, pertaining to Assessment Year (AY) 2017-18, wherein the Revenue has taken the following grounds of appeal:

"a) The Ld. CIT(A) erred in deleting disallowance made u/s 43B of the Act without appreciating the fact that assessee company have failed to make interest payment to Punjab and Maharashtra Co-operative Bank on or before the due date of filing of return of income which was disallowable u/s 43B of the Act.

b) The Ld. CIT(A) erred in deleting disallowance made u/s 43B of the Act by holding that interest payable to a co-operative bank which was brought within the ambit of Section 43B of the Act with effect from A.Y. 2018-19 without appreciating the fact that Punjab and Maharashtra Co-operative bank was included in the Second Schedule to the Reserve Bank of India Act, 1934 and thus comes under definition of Scheduled Bank as per Explanation 4 to Section 43B of the Act

c) The Appellant craves, leave to add, alter, amend or modify any or all grounds of appeal on or before the date of hearing."

2. None appeared on behalf of the assessee nor was any adjournment application filed. From the perusal of records, it is noted that the appeal was filed by the Revenue way back in October, 2025 and, thereafter, the matter has been adjourned from time to time and there has been no compliance on the part of the assessee in spite of the notices being issued from time to time, the assessee been informed telephonically on 15-12-2025 and thereafter service of notice were done through e-mail and speed post also. The Ld. DR was also asked to serve notice physically on the assessee at its last known address. However, as per the report of the AO which has been placed on record, the assessee was not found at the last known address and, therefore, we find that the all requisite efforts have been taken to serve the notices on the assessee i.e., telephonically, through e-mail as well as through physical mode of communication, however, in spite of best efforts made by the Registry and the Revenue, there has been no compliance on the part of the assessee and, therefore, it was decided that no useful purpose would be served in adjourning the matter any further and to decide the matter based on material available on record.

3. Briefly, the facts of the case are that the assessee is engaged in the business of real estate activities. It filed its return of income on 31-10-2017, declaring gross total income at Rs. NIL and current year loss at

Rs. (-) 44,025/-. The case was selected for scrutiny and notices u/s. 143(2) and 142(1) of the Act were issued calling for necessary information and documentation and in particular, the assessee vide notice u/s. 142(1) of the Act, dt. 20-12-2019 was asked a show cause by the AO to furnish the details of interest payment on overdraft from Punjab and Maharashtra Co-operative Bank and whether the interest was actually paid on or before the due date of filing of return of income and in case of failure of outstanding interest payment to Punjab and Maharashtra Co-operative Bank before the due date of filing of return, the assessee was show caused as to why the same be not reduced from the work-in-progress as per the provisions of section 43B of the Act.

4. In response, the assessee filed its submission on 21-12-2019, stating that the provisions of section 43B of the Act are not applicable on the interest payment to Punjab and Maharashtra Co-operative Bank. The submission so filed by the assessee was considered, but not found acceptable by the AO. The AO held that since the assessee did not make the outstanding interest payment on overdraft from Punjab and Maharashtra Co-operative Bank on or before the due date of filing of return, interest expenses of Rs. 14,29,87,746/-, debited to the Profit & Loss Account and its capitalization to the work-in-progress, was disallowed u/s. 43B of the Act and as against the closing work-in-progress as per the return of income of Rs. 101,98,56,030/-, the AO disallowed interest on loan u/s. 43B of the Act amounting to Rs. 14,29,87,746/-, closing work-in-progress to be carried out was determined at Rs. 87,68,68,284/-. There was however no adjustment to the returned loss and the assessed loss was determined as returned by the assessee at Rs 44,025 vide order passed u/s 143(3) dated 22-12-2019.

5. The assessee thereafter carried the matter in appeal before the Ld.CIT(A). During the appellate proceedings, the assessee submitted that it has opening over draft amount from Punjab and Maharashtra Co-operative Bank to the tune of Rs. 73,11,29,045/- and closing overdraft amount to the tune of Rs. 87,38,16,791/- resulting into net interest on overdraft during the year to the tune of Rs. 14,26,87,746/- and, therefore, the said interest is nothing but towards finance/interest expense of Rs. 14,26,87,746/- minus Rs. 3,00,000/- dividend receipt. It was submitted that there is no additional overdraft facility utilized during the year under consideration. It was submitted that the matter is covered by the decision of the Tribunal in case of assessee's associate company in the case of Awas Developers & Constructions Private Limited for the AY. 2016-17 (*in ITA No. 551/Mum/2021, dt. 20-07-2022*) wherein it was held that interest payment to co-operative bank is not included in the provisions of section 43B for assessment year 2016-17 as clause(d) whereby cooperative bank has been included in section 43B was made effective from 01.04.2018 i.e, assessment year 2018-19. It was further submitted that the said interest expenditure of Rs. 14,29,87,746/- was debited to Profit & Loss Account and capitalized in work-in-progress by crediting Rs. 14,29,87,746/- to the Profit & Loss Account and being changes in inventories of work-in-progress, the said interest expenses were in effect not charged to the Profit & Loss Account. It was further submitted that the disallowance u/s. 43B of the Act cannot be made since interest expenses not debited/charged to the Profit & Loss Account, thereby not forming part of computation of total income as referred in section 28 i.e., Income from business or profession and in this regard, the assessee-company also relied on the decision Coordinate Bench of the Tribunal in the case of Vipin Madanlal Thapar vs. DCIT (*ITA No. 472/Mum/2022, dt. 30-11-2022*).

6. The submissions so filed by the assessee were considered and the relevant findings of the Ld.CIT(A) directing the deletion of disallowance of Rs. 14,29,87,746/- u/s. 43B of the Act read as under:

“7. Ground No.1: During the course of assessment proceedings, the AO has made addition of Rs. 14,29,87,746/- by making disallowance u/s.43B of the IT Act. The AO in his order has mentioned that the assessee has not made outstanding interest payment of Rs.14,29,87,746/- on overdraft from Punjab and Maharashtra Co-operative Bank on or before due date of filing of the return and hence, provisions of section 43B applies. Accordingly, AO has disallowed interest expenses of Rs. 14,29,87,746/- u/s 43B of the IT Act as the same was not paid before due date of filing of return and further WIP was reduced by an amount of Rs.14.29,87,746/-.

7.1 The assessee during the course of appellate proceedings has submitted that the similar issue has been decided in its favour by the Hon'ble ITAT Mumbai in the case of Awas Developers & construction Pvt. Ltd vide order (ITA No. 551/Mum/2021) dated 20.07.2022 for the AY 2016-17. Relevant portion of order of the ITAT is as under:

“4. I have heard learned DR and perused the record. I noticed that the provisions of section 43B, as per which certain deductions are to be allowed only on actual payments, is made applicable to the interest payable to a Cooperative bank by the Finance Act, 2017 w.e.f. 1.4.2018. The word "co-operative bank other than primary agricultural credit society or primary co-operative agricultural and rural development bank was inserted in Clause (d) of sub-section 43B w.e.f. 1.4.2018, meaning thereby, interest payable to a cooperative bank which is not paid on or before the due date prescribed for filing of return of income under section 139(1) of the Act shall be liable to be disallowed under section 43B of the Act only w.e.f. A.Y 2018-19. I notice that the year under consideration is A.Y. 2016-17 For this year, interest payable to a co-operative bank has not been included in the provisions of section 43B of the Act. Accordingly, disallowance made by the Assessing Officer and confirmed by learned CIT(A) is not in accordance with law Accordingly. I set aside the order passed by learned CIT(A) on this issue and direct the Assessing Officer to delete the disallowance of interest payable to M/s Punjab and Maharashtra Co-operative Bank made under section 43B of the Act.”

7.2 Facts of the case have ITAT in the above referred decision has held that provisions of section 43B, as per which certain deductions are to be allowed only on actual payments, is made applicable to the interest payable to a Cooperative bank by the Finance Act, 2017 w.e.f. 1.4.2018 (i.e. A.Y.2018-19). Since the assessment year involved in respect of the appeal under consideration is A.Y.2017-18, provisions of section 43B are

not applicable to the assessee for that year. In view of the facts of the case and decision of ITAT as referred above, disallowance of Rs. 14,29,87,746/- u/s. 43B of the IT Act made by the AO is deleted.

Accordingly, ground no.1 of the appeal of the assessee is Allowed.”

7. Against the said findings and direction of the Ld.CIT(A), the Revenue is in appeal before us.

8. During the course of hearing, the Ld.DR submitted that the assessee company had not made the outstanding interest payment of Rs.14,29,87,746/- to the Punjab and Maharashtra Co-operative Bank on or before the due date of filing of return. However, the interest expenses of Rs.14,29,87,746/- was debited to the Profit & Loss Account and it was capitalized in work-in-progress. It was submitted that as per the provisions of section 43B of the Act, the interest expense which was not paid on or before filing of return of income is not allowable. Therefore, the AO had rightly disallowed outstanding interest expense Rs. 14,29,87,746/- u/s. 43B of the Act. It was further submitted that as per section 43B of the Act, any sum payable by the assessee as interest on any loan or advances from a “Scheduled Bank” is to be allowed only if it is actually paid on or before the due date applicable in its case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred. It was submitted that as per Explanation 4 to Section 43B of the Act, “Scheduled Bank” shall have the meaning assigned to it in the Explanation to clause (iii) of sub section (5) of Section 11 of the Act. Further, Explanation to clause (iii) of sub section (5) of Section 11 of the Act defines “Scheduled Bank” as bank included in the Second Schedule to the Reserve Bank of India Act, 1934. It was submitted that during the year under consideration, Punjab and Maharashtra Co-operative bank was in the Second Schedule to the Reserve Bank of India Act, 1934 and thus comes under definition of

“Scheduled Bank” as per Explanation 4 to Section 43B of the Act. In this regard, a copy of RBI Gazette Notification dated 10/03/2022 was submitted and the contents thereof read as under:

“RESERVE BANK OF INDIA NOTIFICATION Mumbai, the 10th March, 2022, DOR.MON.No. 3764/12.01.000/2021-22.—In exercise of the powers conferred under clause (b) of sub-section (6) of section 42 of the Reserve Bank of India Act, 1934 (hereinafter referred to as “the RBI Act”), the Reserve Bank of India, hereby, directs the exclusion of Punjab and Maharashtra Co-operative Bank Limited from the second schedule of the RBI Act. JAYANT KUMAR DASH, Executive Director [ADVT.-III/4/Exty./179/2022-23]”

9. It was submitted that as evident from the aforesaid notification, Punjab and Maharashtra Co-operative bank was part of second schedule of the RBI Act and it was subsequently removed from that list vide the said notification dated 10/03/2022. It was thus submitted that though Punjab and Maharashtra Co-operative bank was a Co-operative Bank, it was already included in the Second Schedule to the Reserve Bank of India Act, 1934 and hence it was a Scheduled Bank as well and it will thus suffer the necessary consequences in terms of section 43B for the impugned assessment year 2017-18 even though the interest payment to Co-operative Banks was included in the section 43B of the Act from AY. 2018-19. It was further submitted that the department has filed appeal bearing No. ITXAL/28903/2023 before the Hon'ble High Court on similar issue in the case of M/s. Dinshaw Trapinex Builders Pvt. Ltd., vs. ACIT for AY. 2017-18. In view of the above, the Ld. DR submitted that the decision of the Ld. CIT(A) is not acceptable and the same be set-aside and that of the AO be sustained.

10. We have heard the Ld.DR and perused the material available on record. The issue under consideration relates to disallowance u/s. 43B of

the Act in respect of outstanding interest payment on loan overdraft facility taken by the assessee from Punjab and Maharashtra Co-operative Bank. In this regard, we refer to the relevant provisions and in particular, clause (e) of section 43B of the Act. It provides that notwithstanding anything contained in any other provisions of this Act, a deduction otherwise allowable under this Act, in respect of any sum payable by the assessee as interest on any loan or advances from a scheduled bank or a Co-operative bank other than a primary agricultural credit society or a primary Co-operative agricultural and Rural Development Bank in accordance with the terms and conditions of the agreement governing such loan or advances, shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him.

11. Here, it is relevant to note that clause (e) to section 43B of the Act was introduced by the Finance Act No. 2, 1996 w.e.f. 01-04-1997 and which was amended to include interest payable to Co-operative Banks by the Finance Act, 2017 w.e.f. 01-04-2018. Therefore, for the impugned assessment year i.e., A.Y. 2017-18, wherein the assessee qualifies as a scheduled bank it would be covered by clause (e) of Section 43B, where, however, the assessee qualifies as a Co-operative bank alone (and not a scheduled bank), then given that the said amendment has been made effective from 01-04-2018, the same would not be applicable for the impugned assessment year 2017-18.

12. For the purposes, it is necessary to examine the definition of the "Scheduled bank" and the "Co-operative bank" which are provided in explanation-4 to section 43B of the Act. It has been provided therein that

the term “Scheduled Bank” shall have the meaning assigned to it in the Explanation to clause (iii) of sub section (5) of Section 11 of the Act and the same reads as under:

*“Explanation – In this clause, “scheduled bank” means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or **any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934):”***

13. The said explanation talks about State Bank of India, a subsidiary bank as so defined, a corresponding new bank or any other bank, being a bank included in the Second schedule to the Reserve Bank of India Act, 1934. It is the claim of the Revenue that the Punjab and Maharashtra Co-operative Bank, even though being a Co-operative Bank is also a scheduled bank by virtue of inclusion in the Second schedule to the Reserve Bank of India Act, 1934 for the year under consideration and copy of the Gazette Notification dated 10/03/2022 placed on record supports the claim of the Revenue. The said notification dated 10/03/2022 though talks about the removal of the Punjab and Maharashtra Co-operative Bank from the second schedule, at the same time, given that the said removal is effective from the date of the said notification, for the year under consideration, the Punjab and Maharashtra Co-operative Bank was part of the second schedule of the RBI Act and there is nothing on record to disprove the said fact. We, therefore, have a situation where the assessee, being a Co-operative Bank, is also notified and included in the Second schedule to the Reserve Bank of India Act, 1934 for the year under consideration and, therefore, qualifies as a scheduled bank for the purposes of section 43B of the Act. Therefore, even though the Co-operative Banks were specifically included in terms of clause (e) to section

43B for the first time by the Finance Act, 2017 w.e.f. 01-04-2018, the scheduled banks and the assessee which has been notified as a scheduled bank is covered by the provisions of section 43B of the Act even prior to amendment by the Finance Act, 2017 w.e.f. 01-04-2018. We, therefore, find force in the contentions advanced by the Ld. DR that since the assessee has not paid the interest due to Punjab and Maharashtra Co-operative Bank on or before the due date of filing of the return of income u/s. 139(1) of the Act, the same shall be liable to be disallowed u/s. 43B of the Act.

14. Coming to the decision of the Co-ordinate Bench of the Tribunal in the case of Awas Developers & Constructions Private Limited (*supra*), which has been relied upon by the Ld.CIT(A), we find that apparently, the fact that Punjab and Maharashtra Co-operative Bank also qualifies as a scheduled bank was not brought to the notice of the Coordinate Bench and thus, not been considered and the Coordinate Bench relied on the amendment brought in by Finance Act, 2017 w.e.f. 01-04-2018 wherein the Co-operative Banks were specifically included in terms of clause (e) to section 43B of the Act and has decided the matter. Similarly, in case of M/s. Dinshaw Trapinex Builders Pvt. Ltd., vs. ACIT, (*ITA(TP) No. 2097/Mum/2016 (AY.2011-12 and others) dated 06-03-2023*), we find that the Coordinate Bench relied on the amendment brought in by Finance Act, 2017 w.e.f. 01-04-2018 wherein the Co-operative Banks were specifically included in terms of clause (e) to section 43B of the Act and has held that interest payable to Punjab and Maharashtra Co-operative Bank is not required to be deducted from value of work-in-progress. In view of the same, we find that the said decisions do not support the case of the assessee.

15. Further, we have gone through the decision in the case of Vipin Madanlal Thapar vs. DCIT (*in ITA No. 472/Mum/2022 (AY. 2011-12), dt. 30-11-2022*) relied upon by the assessee during the course of appellate proceedings before the Ld.CIT(A). Though the Ld.CIT(A) has not considered the said decision while adjudicating the matter, since the said decision has been relied upon by the assessee, we deem it appropriate to examine the relevance thereof in the facts of the present case. In the said case, we find that the relevant facts before the Co-ordinate Bench of the Tribunal were that the AO has made certain additions on account of bogus purchases in the hands of the assessee, which was also engaged in the business of real estate development and the Co-ordinate Bench of the Tribunal after taking into consideration the relevant facts and the material on record observed that since the assessee has not claimed these expenses as revenue expenses during the year under consideration and the same were capitalized as work-in-progress, any disallowance if it is to be made will be made to reduce the work-in-progress since the expenses were capitalized in work-in-progress and accordingly, the additions made by the AO were deleted. We find that in the instant case, the said decision rather support the case of the Revenue rather than the assessee as the AO has not made any separate addition in the hands of the assessee and has only reduced the amount on account of disallowances u/s 43B from the capital work-in-progress.

16. In the result, the order of the Ld.CIT(A) is set-aside and the appeal filed by the Revenue is allowed.

Order pronounced in the open court on 23-02-2026

Sd/-
[SANDEEP SINGH KARHAIL]
JUDICIAL MEMBER

Sd/-
[VIKRAM SINGH YADAV]
ACCOUNTANT MEMBER

Mumbai, Dated: 23-02-2026

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai