

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1525 & 1526/Mds/2016

निर्धारण वर्ष / Assessment Years : 2009-10 & 2010-11

The Assistant Commissioner of
Income Tax,
Non-Corporate Circle – 22,
No.7, Ramakrishna Street,
West Tambaram,
Chennai - 600 045.

v. M/s The Tambaram Co-op Urban
Bank Ltd.,
No.14, Venkatesan Street,
Tambaram West,
Chennai - 600 045.

(अपीलार्थी/Appellant)

PAN : AAAAT 0010 A

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Supriyo Pal, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri R. Subramanian, CA

सुनवाई की तारीख/Date of Hearing : 11.08.2016

घोषणा की तारीख/Date of Pronouncement : 23.09.2016

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the appeals of the Revenue are directed against the common order of the Commissioner of Income Tax (Appeals) – 10, Chennai, dated 25.02.2016 and pertain to assessment years 2009-10 and 2010-11. Since common issue arises for consideration in

both the appeals, we heard both the appeals together and disposing of the same by this common order.

2. The only issue arises for consideration in both the appeals is with regard to assessment of income on the non-performing assets.

3. Shri Supriyo Pal, the Ld. Departmental Representative, submitted that the assessee-co-operative bank has not offered interest to the extent of ₹1,49,76,159/- for the assessment year 2009-10 and ₹3,01,452/- for the assessment year 2010-11. The assessee claimed before the Assessing Officer that a sum of ₹7,49,25,165/- was overdue from the customers and the assessee could not recover the interest. Since the principal amount advanced by the assessee itself could not be recovered, the assessee has not recognized the interest on such advances. The Ld. D.R. further submitted that the Assessing Officer examined the contention of the assessee and found that under the scheme of Income-tax Act, the assessee deemed to have received the income on accrual basis. Moreover, the interest due was not written off in the books of account as irrecoverable. Therefore, according to the Ld. D.R., irrespective of the stand of the assessee that the accrued interest is not recognized, the same has to be treated as income of the

assessee. On appeal by the assessee, the CIT(Appeals) found that the advance made by the assessee was treated as non-performing asset as per the prudential norms framed by Reserve Bank of India for the purpose of recognizing interest income. The CIT(Appeals) has also found that the assessee was recognising the interest income on receipt basis continuously in respect of non-performing asset. Therefore, as per Accounting Standard-9, the CIT(Appeals) found that there was uncertainty in recovery of amount, hence, it cannot be taken as income of the assessee.

4. According to the Ld. D.R., when the assessee advanced loan, there cannot be any uncertainty in recovery of outstanding loan and interest accrued thereon. The assessee being a co-operative urban bank, following mercantile system of accounting, therefore, the interest on the amount advanced has to be recognized on accrual basis. According to the Ld. D.R., the prudential norms framed by Reserve Bank of India cannot override the provisions of Income-tax Act. On the basis of regulations framed by Reserve Bank of India, the assessee may plead that the interest on the non-performing asset was not accrued to the assessee. However, under the Income-tax Act, the assessee is

deemed to have received the income since the same was accrued to the assessee. In other words, the assessee has right to recover the money through court of law.

5. On the contrary, Shri R. Subramanian, the Ld. representative for the assessee, submitted that the assessee advanced loan in the course of its banking activity. A sum of ₹7,49,25,165/- was classified as non-performing asset as on 31.03,2009. The assessee was following mercantile system of accounting. However, in respect of interest accrued on non-performing asset, the bank consistently following the practice of recognising the income on receipt basis. The Ld. representative further submitted that when the assessee could not recover the principal amount advanced and classified the same as non-performing asset, the interest on such amount could not be accrued at all. The very object of classifying the advance as non-performing asset is to indicate that no interest was accrued and the recovery of principal amount itself is doubtful. According to the Ld. representative, as and when the assessee recovers the money together with interest, the same will be offered for taxation. In view of uncertainty in recovering the principal

amount, according to the Ld. representative, the CIT(Appeals) has rightly found that there cannot be any addition.

6. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that as on 31.03.2009, a sum of ₹7,49,25,165/- was classified as non-performing asset. The assessee claims that as per prudential norms framed by the Reserve Bank of India, the advances are classified as non-performing assets. It is a well settled principle of law that Income-tax Act being a special enactment for assessment of income, levy of tax thereon and collection of tax, the same would prevail over other legislations. In other words, Income-tax Act would prevail over the regulations framed by Reserve Bank of India. In the case before us, the assessee was systematically following the accounting method with regard to non-performing asset. When the advances are classified as non-performing assets, the assessee was continuously following a practice of recognising the interest on receipt basis. This method of accounting continuously followed by the assessee is not in dispute. When the advances were classified as non-performing assets and the assessee shifting to cash system of accounting in

respect of such advances which are classified as non-performing assets, this Tribunal is of the considered opinion that when the recovery of principal amount itself was doubtful, it cannot be said that the interest on such amount accrued to the assessee. Therefore, as per system of accounting continuously followed by the assessee, interest income on non-performing assets cannot be taken as income of the assessee. This Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

7. In the result, both the appeals of the Revenue are dismissed.

Order pronounced on 23rd September, 2016 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 23rd September, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)-10, Chennai-34

4. Principal CIT-7, Chennai

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF.