IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

INCOME TAX APPEAL NO. 53 OF 2014

THE COMMISSIONER OF INCOME TAX, AURANGABAD
VERSUS
M/S. DEOGIRI NAGARI SAHAKARI BANL LTD., AURANGABAD
...
Advocate for Appellant : Mr. Alok Sharma
Advocate for Respondent : Mr. L.D.Vakil
...

INCOME TAX APPEAL NO. 54 OF 2014

THE COMMISSIONER OF INCOME TAX AURANGABAD
VERSUS
M/S PEOPLES COOPERATIVE BANK LTD.
...
Advocate for Appellant : Mr. Alok Sharma
Advocate for Respondent : Mr. L.D.Vakil
...

INCOME TAX APPEAL NO. 57 OF 2014
WITH
ITA/58/2014

THE COMMISSIONER OF INCOME TAX AURANABAD
VERSUS
THE NANDED DISTRICT CENTRAL CO OP BANK LTD. NANDED
...
Advocate for Appellant : Mr. Alok Sharma
Advocate for Respondents : Mr. K.J. Suryawanshi
...

INCOME TAX APPEAL NO. 68 OF 2014

THE COMMISSIONER OF INCOME TAX , AURANGABAD
VERSUS
VASANTADADA NAGARI SAHAKARI BANK LTD. , OSMANABAD
...
Advocate for Appellant : Mr. Alok Sharma
Advocate for Respondent : Mr. M.B.Kolpe
...

CORAM : A.V. NIRGUDE & V.K. JADHAV, JJ.

...
DATE OF RESERVING THE ORDER :06.01.2015
DATE OF PRONOUNCING THE ORDER :22.01.2015

....

ORDER :- (Per V.K.Jadhav, J.)

1. The issues involved in these appeals are similar hence all appeals are decided by this common order.

2. The assessee in all these appeals are the Co-operative Banks registered under section 9(1) of the Maharashtra Co-operative Societies Act, 1960. The assessee banks are engaged in the Banking business by following Mercantile system of accounting. The assessee Co-operative banks have furnished its return of income for the year under consideration declaring their total income. The Assessing Officer passed the order under section 143 (3) of the Income Tax Act on different dates by making additions on various issues. The same is showed below in a tabular form.

Tax Appeal Nos.	Name of the Assessee/Co-operative Bank.	Assessment Year	Total income as per computation	Deletions of additions which is challenged in the writ petition by the revenue
53 of 2014	M/s Devgiri Nagari Sahakari Bank Ltd., Aurangabad	2009-2010	Rs.9,39,57,223/-	Rs.1,06,36,000/-
54 of 2014	M/s Peoples Co-operative Bank Ltd.,Hingoli	2009-2010	Rs.5,15,43,200/-	Rs.1,19,77,000/-
57 of 2014 & 58 of 2014	The Nanded District Central Co-operative Bank Ltd., Nanded.	2007-2008 & 2009-2010	Return income : 27,61,76,504/- Total computation of income : Rs.22,63,61,000/-	Rs.25,02,63,000/-
68 of 2014	M/s Vasantdada Nagari Sah. Bank Ltd., Osmanabad	2009-2010	Rs.37,80,596	Rs.1,09,27,419/-

3. The common issue involved in all these appeals relating to the assessment year as mentioned in the aforesaid table about deletion of the additions on account of interest on sticky advances. In all these cases, the Assessing officer, during the assessment proceeding has observed that the provisions of Section 43 (D) of The Income Tax Act cannot be applied to the assessee as it is not a scheduled Bank but a Co-operative Bank. In the opinion of the Assessing officer, considering the provisions of section 43-D of the Income Tax Act, non scheduled Co-operative banks are specifically excluded from the special provisions of the 43-D of the Income Tax Act, regarding interest on sticky advances. The Assessing officer has also held that CBDT circular No.F-201/81/84 ITA-II dated 09.10.1984 is applicable only to banking companies and not to non-scheduled banks and co-operative banks.

4. Being aggrieved by the same, the assessee/above co-operative Banks preferred appeals separately before the CIT(A). The CIT(A) vide his orders in all the appeals has directed to delete the additions on the interest of sticky advances, on the NPA made by the Assessing officer.

5. Being aggrieved by the order of CIT(A), the Revenue preferred separate appeals in each case before the Income Tax Appellate Tribunal, Pune Bench "A", Pune. The learned I.T.A.T. has confirmed the decision of the CIT(A) and dismissed the appeals of the Revenue. Thus, Revenue has filed the aforesaid appeals challenging the legality and correctness of the order passed by the Income Tax Appellate Tribunal.

6. The learned counsel Mr. Alok Sharma, appearing for the appellants/Revenue submits that, the assessee in all these cases are the co-operative Banks and not a Scheduled Bank, therefore, special provisions of Section 43-D of the Income Tax will not be applicable to them. Learned counsel further submits that, in view of the provisions of Section 145 of the Income Tax Act, the assesseee/Co-operative banks have to follow either Mercantile system of accounting or Cash system. They cannot have mix system of account. The learned counsel also submits that, the RBI directions under the RBI Act are prudential norms, but have nothing to do with the computation or taxability of the provision of the NPA under the IT Act. Learned counsel further submits that though the RBI directions deviate from the accounting practice as provided by the Companies Act, but they do not

override the provisions of the IT Act and they are operating in different fields. The learned counsel for appellants/revenue lastly submits that, the learned Tribunal ought to have held that the assessee cooperative bank does not satisfy the conditions of CBDT circular No.F.201/81/84/ITA-II dated 09.10.1984 and therefore could not avail the benefits of the circular. On the basis of aforesaid submissions, the learned counsel further submits that substantial question of law involved in the above appeals and thus order passed by the Assessing Officer under section 143 (3) of the Income Tax Act, 1961 are required to be confirmed. Learned counsel for the appellants submits that, the Tribunal ought to have allowed the appeal by relying on the judgment in the matter of **Southern Technologies Ltd. Vs. Joint Commissioner of Income Tax, Coimbtore Reported in 2010 (2) SCC 548.**

7. The learned counsel for respondent/Co-operative banks submit that, the issues involved in the above appeals are no more res-integra in view of the decision rendered by the Hon'ble Supreme Court in the case of **Uco Bank, Calcutta Vs. Commissioner of Income Tax, West Bengal reported in (1999) 4 Supreme Court Cases 599.**

8. Learned counsel for respondent submits that, learned Tribunal has rightly dismissed the appeals of the revenue by confirming the order passed by the CIT(A). There is no substantial question of law involved in these appeals and thus all the appeals are liable to be dismissed.

9. The Income Tax Appellate Tribunal has referred the case of M/s. Vasisth Chay Vyapar Limited 330 ITR 440 (Delhi). In this case, the revenue relied upon the decision of the Hon'ble Supreme Court in the case of Southern Technologies Ltd. supra. The learned Income Tax Appellate Tribunal has reproduced the observations made by the Delhi High Court while referring the said case of M/s Southern Technologies Limited supra. The assessee herein being a Co-operative Bank also governed by the Reserve Bank of India and thus the directions with regard to the prudential norms issued by the Reserve Bank of India are equally applicable to the Co-operative banks. The Hon'ble Supreme Court in the case of Southern Technologies Limited supra held that, provisions of Section 45Q of Reserve Bank of India Act has an overriding effect vis-a-vis income recognition principle under the Companies Act. Hence, Section 45Q of the RBI Act shall have overriding effect over the income recognition principle followed by cooperative banks. Hence, the

Assessing Officer has to follow the Reserve Bank of India directions 1998, as held by the Hon'ble Supreme Court.

10. The Honourable Apex Court in the case of Uco Bank case (supra) had an occasion to consider the nature of CBDT circular and Hon'ble Apex Court has thus held that Board has power, *inter alia,* to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circular in exercise of its statutory powers under section 119 of act which are binding on the authorities in the administration of the Act, it is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Further a similar issue was raised about interest accrued on a 'sticky' loan which was not recovered by the assessee-bank for the last three years and transferred to the suspense account, would or would not be included in the income of the assessee for the particular assessment year. Hon'ble Apex Court has observed that :-

> "The method of accounting which is followed by the assessee-bank is Mercantile system of accounting. However, the assessee considers income by way of interest pertaining to doubtful loans as not real income in the year in which it accrues, but only when it is realized. A mixed method of accounting is thus followed by the assessee-bank. This method of accounting adopted by the assessee is in

accordance with accounting practice. The assessee's method of accounting, transferring the doubtful debt to an interest suspense account and not treating it as profit until actually received, is in accordance with accounting practice up to assessment year 1978-79 the taxability of interest on doubtful debts credited to suspense account will be decided in the light of the Board's earlier Circular dated 6-10-1952, as the said circular was withdrawn only in June,1978. The new procedure under the Circular of 9-10-1984 will be applicable for and from the assessment year, 1979-80. All pending disputes on the issue should be settled in the light of these instructions. Therefore, up to the assessment year 1978-79, the CBDT's Circular of 6-10-1952 would be applicable; while from the assessment year 1979-80, the CBDT's Circular of 9-10-1984 is made applicable. In the present case, the assessment was made on the basis of the CBDT's Circular on 9-10-1984, since the assessment pertains to the assessment year 1981-82 to which the Circular of 9-10-1984 is applicable. If, the Board has considered it necessary to lay down a general test for deciding what is a doubtful debt, and directed that all Assessing Officer's should treat such amounts as not forming part of the income of the assessee until realized, this direction by way of a circular cannot be considered as traveling beyond the powers of the Board under section 119 of the Income Tax Act. Such a circular is binding under section 119. The Circular of 9-10-1984, therefore, provides a test for recognizing whether a claim for interest can be treated as a doubtful claim unlikely to be recovered or not. The test provided by the said circular is to see whether, at the end of three years, the amount of interest has, in fact, been recovered by the bank or not. If it is not recovered for a period of three years, then in the fourth year and onwards the claim for interest has to be treated as doubtful claim which need not be included in the income of the assessee until it is actually recovered. In the present case, the circulars which have been in force are meant to ensure that while assessing the income accrued by way of interest on a "sticky" loan, the

notional interest which is transferred to a suspense account pertaining to doubtful loans would not be included in the income of the assessee, if for three years such interest is not actually received. The very fact that the assessee, although generally using a mercantile system of accounting, keeps such interest amounts in a suspense account and does not bring these amounts to the P&L a/c goes to show that the assessee is following a mixed system of accounting by which such interest is included in its income only when it is actually received. Looking to the method of accounting so adopted by the assessee in such cases, the circulars which have been issued are consistent with the provisions of section 145 and are meant to ensure that assessees of the kind specified who have to account for all such amounts of interest on doubtful loans are uniformly given the benefit under the circular and such interest amounts are not included in the income of the assessee until actually received if the conditions of the circular are satisfied. The Circular of 9-10-1984, also serves another practical purpose of laying down a uniform test for the assessing authority to decide whether the interest income which is transferred to the suspense account is, in fact, arising in respect of a doubtful or "sticky" loan. This is done by providing that non-receipt of interest for the first three years will not be treated as interest on a doubtful loan. But if after three years the payment of interest is not received, from the fourth year onwards it will be treated as interest on a doubtful loan and will be added to the income only when it is actually received. There is no inconsistency or contradiction between the circular so issued and section 145 of the Income Tax Act. In fact, the circular clarifies the way in which these amounts are to be treated under the accounting practice followed by the lender. The circular, therefore, cannot be treated as contrary to section 145 of the Income Tax Act or illegal in any form. It is meant for a uniform administration of law by all the Income-tax authorities in a specific situation and, therefore, validly issued under section 119 of the Income Tax Act. As such, the

> circular would be binding on the department. The relevant circulars of CBDT cannot be ignored. The question is not whether a circular can override or detract from the provisions of the Act; the question is whether the circular seeks to mitigate the rigour of a particular section for the benefit of the assessee in certain specified circumstances. So long as such a circular is in force it would be binding on the departmental authorities in view of the provisions of section 119 to ensure a uniform and proper administration and application of the Income Tax Act."

11. The learned counsel for respondent has placed reliance in a case of **Mercantile Bank Ltd., Bombay Vs. The Commissioner of Income Tax, Bombay City-III** reported in (2006) 5 SCC 221, where similar question was raised before the Apex Court. The question was whether the assessee is liable to be taxed under Income Tax Act, 1961 in respect of the interest on doubtful advances credited to the interest suspense account. In this case, the Uco Bank's Case (supra) was also referred and the Hon'ble Apex Court has allowed the appeal to the extent of question raised as aforesaid. Furthermore, the respondent Co-operative banks, as understood by Section 43 C of the Income Tax Act on the Scheduled Bank.

12. Learned counsel for the appellants/revenue placed reliance on the judgment in the case of **Southern**

Technologies Ltd. Vs. Joint Commissioner of Income Tax, Coimbtore reported in 2010 (2) SCC 548. However, this judgment pertains to non Banking financial companies. Uco Bank case (supra) and Mercantile Bank (supra) case squarely applies to the facts of the present case and issues involved. We therefore, do not find it necessary to interfere in the judgment of the Appellate Tribunal. We hold that no substantial question of law arises in these appeals.

13. So far as income Tax Appeal Nos.53/2014 and 54/2014 are concerned, the issue was also raised in the appeals before the Tribunal with regard to the addition made by the Assessing Officer representing the forfeited dividend. The learned Tribunal has rightly dealt with this issue and observed that, unclaimed dividend in question amounts to excess provisions for dividend made by the Assessee on an earlier occasion which has been reversed by the Assessee in the year under consideration and transferred to a reserve account. The provisions for dividend made earlier was not a charge action profits but it was appropriation of the profits available post-taxation. We find no error in the aforesaid observations. Furthermore, in the appeals as mentioned above, the Revenue has only challenged the deletion of the additions on account of the interest on sticky advances

alone. In view of this, we proceed to pass the following order.

O R D E R

1. Income Tax Appeal Nos.53/2014, 54/2014, 57/2014, 58/2014, 68/2014 are hereby dismissed.

2. In the facts and circumstances, there shall be no order as to costs.

(V.K. JADHAV, J.) **(A.V. NIRGUDE, J.)**

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