

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1000 OF 2016

The Pr. Commissioner of Income Tax-6, Pune .. Appellant.
v/s.
The Solapur District Central Co-op. Bank Ltd., .. Respondent.

WITH
INCOME TAX APPEAL NO.1003 OF 2016
WITH
INCOME TAX APPEAL NO.1016 OF 2016

The Pr. Commissioner of Income Tax-6, Pune .. Appellant.
v/s.
The Laxmi Co-operative Bank Ltd. .. Respondent.

Mr. Tejveer Singh, for the Appellant in all the Appeals.
Mr. Mihir Naniwadekar with Mr. Rohan Deshpande and Mr. Ruturaj Gurjar, for the Respondent in Income Tax Appeal No.1000 of 2016.

**CORAM: AKIL KURESHI &
M.S.SANKLECHA, JJ.
DATE : 29th JANUARY, 2019.**

P.C:-

These Appeals arise in similar back-ground. We may record the facts from Income Tax Appeal No.1000 of 2016. Facts are as under:-

2 The Appeal is filed by the Revenue to challenge the judgment of Income Tax Appellate Tribunal (for short "the Tribunal"). The following question was pressed before us at the time of arguments:-

“ Whether the Tribunal erred in law in failing to appreciate the fact that the assessee is a co-operative bank and not a scheduled bank and that the provisions of section 43D are applicable to the financial institutions and not to co-operative societies?”

3 Respondent-Assessee is a Co-operative Bank. The Bank had filed return of income for the Assessment Year 2009-10 on 31st March, 2011, declaring loss of Rs.34.11 Crores (rounded of). During the assessment of the return, the Assessing Officer noticed that the Assessee-Bank had transferred an amount of Rs.7.80 Crores (rounded of) to Overdue Interest Reserve (OIR) by debiting the interest received in Profit and Loss Account. The Assessing Officer was of the opinion that, Assessee-Bank had to offer the interest due to tax on accrual basis. He referred to and relied upon the provisions contained in Sections 145 and 43D of the Income Tax Act,1961 (for short "the Act"). He did not accept the explanation of the Assessee-Bank that, the Reserve Bank of India guidelines provide that income on Non Performing Assets (for short "NPA") is not be credited to Profit and Loss Account but instead to be shown as receivable in the balance sheet. It is to be taken as income in the Profit and Loss Account only when the interest is actually received. It was pointed out that, as per the Reserve Bank of India norms, interest on assets not received in 180 days, is taken to OIR account. Similarly, interest which was not received for the earlier years, was also taken into OIR account. The Assessee pointed out that, in this manner, only the interest received during year was credited to Profit and Loss Account and offered to tax. As noted, the Assessing Officer discarded the explanations of the Assessee, principally on the basis of accrual of interest income.

4 The Assessee carried the matter in Appeal. The Commissioner of Income Tax (Appeals) [for short “CIT(A)”] confirmed the decision of the Assessing Officer. Upon which, the Assessee filed further appeal before the Tribunal. The Tribunal by the impugned judgment reversed the decisions of the Revenue Authorities. The Tribunal relied on its earlier decision in case of this very assessee for earlier Assessment Years, in which, the issue was discussed at length. The Tribunal broadly relied upon the principle of real income theory and referred to the decision of the Supreme Court in case of *CIT v/s. Shoorji Vallabhadras & Co.*, reported in **46 ITR 144**. Thereupon, the Revenue has preferred this appeal.

5 Having heard the learned Counsel for the parties, we notice that the issue is squarely covered by the judgments of Gujarat High Court and Punjab & Haryana High Courts. The Gujarat High Court in case of *Pr. CIT v/s. Shri Mahila Sewa Sahakari Bank Ltd.*, reported in **395 ITR 324** had undertaken the detailed exercises to examine an identical situation. The Court held that, the Co-operative Banks were acting under the directives of the Reserve Bank of India with regard to the prudential norms set out. The Court was of the opinion that, taxing interest on NPA cannot be justified on the real income theory. The decision of the Gujarat High Court in *Shri Mahila Sewa Sahakari Bank Ltd.*, (supra) was carried in Appeal by the Revenue to the Supreme Court and such appeal was dismissed. Later on, similar issue came up before Gujarat High Court in case of *Pr. CIT v/s. Sarangpur Co-operative Bank Ltd.*, reported in **406 ITR 302**, the Court followed the earlier decision in case of *Shri Mahila Sewa Sahakari Bank Ltd.*, (supra) and dismissed the Revenue's appeal. Once again, the issue was carried to the Supreme Court by the Revenue. The Appeal was dismissed by an order dated 28th April, 2018.

6 Identical issue was also examined by the Punjab & Haryana High Court in case of **Pr. CIT v/s. Ludhiana Central Co-op. Bank Ltd.**, reported in **410 ITR 72**. The decision of the Gujarat High Court in Shri Mahila Sewa Sahakari Bank Ltd., (supra) was cited before the Court. The Court noted that appeal against such judgment of the High Court, was dismissed by the Supreme Court. The Court concluded as under:-

“ Adverting to the factual matrix, it may be noticed that the Tribunal while relying upon the various pronouncements had decided the issue regarding taxability of interest on NPA in favour of the assessee as being taxable in the year of receipt. The Tribunal had upheld the deletion made by the CIT(A) on account of addition of Rs.3,02,82,000 regarding interest accrued on NPA. No illegality or perversity could be demonstrated by learned counsel for the Revenue in the aforesaid findings recorded by the Tribunal.”

7 The issue is thus, covered by the decisions of two High Courts as noted above - wherein identical situation came up for consideration. Against the judgment of the Gujarat High Court, the appeals have been dismissed by the Supreme Court. Thus, the Supreme Court can be seen to have approved the decision of the Gujarat High Court in case of Shri Mahila Sewa Sahakari Bank Ltd., (supra). We, therefore, do not see any reason to entertain these Appeals, since no question of law can be stated to have arisen. For the reference, we also notice that subsequently, legislature has amended Section 43D of the Act. Section 43D essentially provides for charging of interest on actual basis in case of certain special circumstances, in the hands of the public financial institutions, public companies etc. Explanation to Section 43D of the Act defines certain terms for the purpose of said section. Clause (g) was inserted in the said explanation by Finance Act, 2016 w.e.f. 1.04.2018 which provides that for

the purpose of such Section, Co-operative Banks, Primary Agricultural Credit Society and Primary Agricultural and Rural Development Bank shall have meanings respectively assigned in Explanation to sub-section 4 of Section 80B of the Act. By virtue of such insertion, the Co-operative Banks would get the benefit of 43D of the Act. One way of looking at this amendment, can be that, the same is curative in nature and would, therefore, apply to pending proceedings, notwithstanding the fact that, the legislature has not made the provision retrospective. In this context, we may refer to the memorandum explaining the provision, the relevant portion of which reads as under:-

“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 assessee 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-a-vis scheduled banks and to rationalize the scope of 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.

Consequently, 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 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.”

8 As per this memorandum, the insertion of clause (g) to the Explanation was to provide for a level playing field to the Co-operative Banks. This may be one more indication to hold a belief that, the legislature in order to address a piquent situation and to obviate unintended hardship to the Assessee, has introduced the amendment. However, in the present case, we need not conclude this issue and leave it to be judged in appropriate proceedings. We are conscious that, few of the Appeals have been admitted on this question. However, the decisions of the Gujarat High Court and Punjab & Haryana High Court and the fact that the Supreme Court has dismissed the Appeals against the judgment of the Gujarat High Court, was not before the Court at the time of admission of Appeals.

9 We notice that in Income Tax Appeal No. 1003 of 2016, the Revenue has pressed one more question which reads as under:-

“ Whether on the facts and in the circumstances of the case the amortized premium on investment in Govt. Securities held under the category “Held to Maturity” (HTM) can be allowed as revenue expenditure?”

10 Counsel for the Revenue, however, very fairly points out that such a question came to be dismissed by the Division Bench of this Court by order dated 17th March, 2015 passed in Writ Petition No.1117 of 2013.

11 In the result, all the **Appeals** are **dismissed**.

(M.S.SANKLECHA,J.)

(AKIL KURESHI,J.)