आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

IN THE INCOME TAX APPELLATE TRIBUNAL INDORE BENCH, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.47/Ind/2014
Assessment Year: 2010-11

The District Central Co-operative Bank Ltd., Sahakari Bank, Sagar Road, Arjun Nagar, Raisen (M.P.)464551 (Appellant)	**बनाम**/ Vs.	ACIT-3(1) Bhopal (Revenue)
P.A. No.AAAAD1685K		

Appellant by	Shri Ashish Goyal & Shri N.D. Patwa, A.Rs
Respondent by	Shri Lalchand, DR
Date of Hearing:	**30.08.2018**
Date of Pronouncement:	**26.09.2018**

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal by the assessee is directed against the order of CIT(A)-2, Bhopal dated 21.10.2013 pertaining to the assessment year 2010-11.

2. The assessee has raised following grounds of appeal:

1. *In passing the appellate order by maintaining the two additions which is contrary to the facts on record and against the provisions of the law and, therefore, the order is unjust, not maintainable and bad in law.*
2. *In maintaining the addition of Rs.3,24,30,000/- claimed as deduction by the appellant as provision for overdue interest as per direction of the Reserve Bank of India. The addition may kindly be deleted.*
3. *In maintaining the addition of Rs.25,73,378 claimed as deduction by the appellant for Cadre Fund contribution for cadre employees as statutorily provided u/s 55(1) of Cooperative Societies Act, 1960 read with Jila Sahakari Kendriya Bank Karamchari Service Rules (Niyojan, Nibandhan and Karya Isthiti), 1982. The addition may kindly be deleted.*

3. At the outset, Ld. Counsel for the assessee submitted that Ground No.1 is general in nature and needs no separate adjudication. The facts giving rise to the present appeal are that case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter called as 'the Act') was framed vide order dated 18.2.2013. While framing the assessment, the A.O. made addition by disallowing the provisions for overdue interest amounting to Rs.3,24,30,000/-, expenditure claimed as cadre expenses

of Rs.25,73,378/- and the expenditure provision for bonus of Rs.3,64,039/-. Against this, the assessee preferred an appeal before the Ld. CIT(A), who after considering the submissions, partly allowed the appeal, thereby the Ld. CIT(A) sustained the addition in respect of provision for overdue interest and the cadre expenses. However, bonus expenses were deleted. Now the assessee is in present appeal.

4. Ground No.1 is general in nature needs no separate adjudication. Ground No.2 is against sustaining the addition in respect of provision for overdue interest. Ld. Counsel for the assessee submitted that the issue is squarely covered in favour of the assessee by the judgement of the Hon'ble High Court of Gujarat in the case of CIT Vs. Kutch District Central Co-operative Bank (2018) 94 Taxman 298 (Guj). He submitted that the special leave petition preferred before the Hon'ble Supreme Court

against this judgement of Hon'ble Gujarat High Court has been dismissed. Therefore, he submitted that ratio laid down by the Hon'ble Gujarat High Court has attained finality. He reiterated the submissions as made in the synopsis. The submissions of the assessee are reproduced for the sake of clarify as under:

"GROUND NO.2:
PROVISION FOR OVERDUE INTEREST RS.3,24,30,000/-
AO para 2.
CIT(A) pg 1 para 3.

1. *The appellant is doing banking business and is governed by the strict guidelines of RBI and the also the Directions of State Government through the Co-operative Department of the State Government.*

2. *The undisputed fact is that the appellant bank recognises the interest income including the unrealised interest income under the P & L Account. In respect of the interest income in respect of overdue loan accounts, which is un realised, a provision is made under the head "Provision for Overdue interest" at Rs. 3,24,30,000 under the P & L Account. PB 14-15 - under the head "Other Expenditure".*

3. *The provision is made in accordance with RBI Guidelines in respect of Income recognition, asset classification, Provisioning for Co-operative Banks. At PB 17 (back) it is provided by RBI as under in respect of INCOME RECOGNITION:*

   " ••••• the SCBs/ CCBs which are charging interest to all overdue loan and if such interest remains unrealised the same may be taken to income account provided matching provision is fully made for the same by charging to P & L Account. Accrued interest taken to income account in the previous year should also be provided in full in case the same becomes overdue. II

4. *The appellant being governed by RBI norms has been consistently making a provision for overdue interest.*

5. *The allowability of such "Provision for overdue interest" was considered by the Hon'ble Gujarat High Court in Pro CIT vs Kutch District Central Cooperative Bank Ltd in (2018) 94 taxmann.com 298 (Guj.).In that case assessee had created "Reserve for Overdue Interest" following the RBI Norms dated 22.06.1996 (referred supra). It was held that the interest on such overdue interest does not constitute income at all u/s. 5 of the Income-tax Act and does not fall within the scope of taxability of income. This judgment was delivered after consideration the decisions various High Courts in favour of assessee. The judgments in favour of assessee as quoted therein are as under:*

    a. *CIT vs Vasisth Chay Vyapar Ltd. 330 ITR 440 (Del.)*

    b. *CIT vs Deogiri Nagar Sahakari Bank Ltd. 379 ITR 24 (Bom.)*

    c. *Pro CIT vs Shri Mahila Sewa Sahakari Bank Ltd. 395 ITR 324 (Guj.)*

   Further, it is a pertinent fact that the SLP against the judgment of Gujarat High Court in Pro CIT vs Kutch District Central Co-op. Bank (supra) has been dismissed by the Hon'ble Supreme Court as reported as CIT vs Jamnagar District Co-operative Bank Ltd. (2018) 94 taxmann.com 300 (SC).

   The appellant relies on the judgments as above and prays that the ground being squarely covered by aforesaid judgments may kindly be allowed.

GROUND NO.3: CADRE FUND RS.25,73,378/-

AO para 3

CIT(A) pg. 4 para 4.

1. *There were directions dated 23.01.2003 (PB 28) by Department of Co-operatives for payment of salary of the Employees of Primary Co-operative Society by the Co-operative banks as under:*

   - *75% to be borne by PACS*

   - *20% to be borne by Distt. Central Coop. Bank 5% to be borned by Apex Bank*

   This payment was called as "Cadre Fund" [also called as "Samwarg Nidhi"].

2. *The appellant bank is a District Central Co-operative Bank. The share of the appellant was 20%.*

3. *The allowability of the expenditure is covered by the judgment in M.P. Rajya Sahakari Bank by the Hon'ble ITAT, Indore Bench (Pg.No. 30-33) It was held that this payment was necessary business expenditure. The --findings are reproduced as*

under:

"3. We have heard both the parties, the assessee is an apex Cooperative Bank and it provides credit facilities to District Central Cooperative banks which in turn provide funds to the Primary Agriculture Credit Societies. Thus, this was the business structure of the activities of the assessee and its societies. These District Central Cooperative Banks are separate entities and are assessed to tax. The income of the assessee and District Central Cooperative Banks generates from the basic activities done at the level of primary agricultural societies. Thus, the sharing of the salary of the staff in a manner as provided in the Government instruction can be said to be well related to business of the assessee. Therefore, the same is allowable as per the provisions of section 37 of the Act. Considering this, we direct to allow the same."

The only difference in the facts of that case and the case of the assessee is that, that was a case of Apex Bank, our case is that of Distt. Central Co-op. Bank. The same notification dated 23.1.2003 is relied by the assessee, placed at PB 28.

It is therefore submitted that the payment towards the Cadre fund may be allowed as a necessary business expenditure.

Submitted."

5. Ld. D.R. opposed the submissions and supported the order of the authorities below.

6. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. The Ld. CIT(A) sustained addition on the ground that the same is uncertained contingent liability, therefore, is not allowable. The Ld. CIT(A) rejected the submission of the assessee on the ground that the RBI directions are only disclosure norms. Their primary object

is precedence, transparency and disclosure. They have nothing to do with computation of total taxable income under the Income Tax Act or accounting treatment. Ld. Counsel has relied upon the judgement of Hon'ble Gujarat High Court, wherein the Hon'ble Gujarat High Court under the identical facts considering the submissions observed as under:

11. From the rival submissions advanced by the learned counsel for the respective parties, it is evident that there is no dispute that the RBI Guidelines are applicable to the assessee. It is the case of the assessee that in view of the RBI Guidelines, it cannot charge interest on accrual basis and that following the theory of real income, taxability of any notional income like accrued interest on NP As would not arise. It has also been contended that even otherwise in view of the CBDT Circular bearing F No.201l21/84-lTA-li, dated 09.1 0.1984, interest on accrual basis is not taxable if not received for three years even though credited to the suspense account.

12. Thus, though the assessee follows the mercantile system of accounting, in terms of the RBI Guidelines which the assessee is bound to follow, certain assets were required to be declared as non-performing assets, accordingly, the income pertaining to such assets has not been considered as income by the assessee. In this background the question as to whether in view of the guidelines of the Reserve Bank of India, interest on non-performing assets is taxable on accrual basis, is required to be considered.

13. The law in respect of various aspects touching the controversy in issue has been extensively dealt with in the above decisions on which reliance has been placed by the learned counsel for the parties. The earlier decisions are on the question of real income theory and the applicability of the CBDT Circular to the NBFCs and Banking Companies, etc. The decision on which both the learned counsel have placed strong reliance is in the case of Southern Technologies Ltd. (supra) wherein the applicability of the RBI Guidelines vis-a-vis the provisions of Income-tax Act, 1961 has been discussed. As noted hereinabove the Delhi High Court in Vasisth Chay Vyapar Ltd. (supra) has interpreted the said decision in favour of the assessee by placing reliance upon the observations made in paragraph 40 of the decision, whereas the Madras High Court in

Sakthi Finance Ltd. (supra) has interpreted the said decision against the assessee.

14. Before adverting to the above decisions, it may be germane to refer to the historical background in respect of the controversy in issue. It appears that right from August, 1924 the distinction between an irrecoverable loan and a sticky loan was recognised by the Central Board of Revenue as also by the Reserve Bank of India in their diverse circulars in the case of banks, financial institutions and money lenders regularly following the mercantile system of accounting and instructions had been issued not to treat the unrealized interest on such sticky loans as income by carrying it to 'Profit and Loss Account' so that the figure of distributable profits should not get inflated and preferably to credit the same to a special account such as 'Interest Suspense Account' and if the banks, financial institutions and money lenders, who kept their accounts on mercantile system, maintained a suspense account in which the unrealized interest was entered, the Same should not be included in the assessee's taxable income, if the Income Tax Officer was satisfied, that there was little probability of the loans being repaid. In State Bank of Travancore IS case (supra) the assessee a subsidiary of the State Bank of India, used to maintain accounts on mercantile system making entries on accrual basis. The assessee adopted the calendar year as its previous year and the calendar years 1964, 1965 and 1966 were respectively the relevant previous years for Assessment Years 1965-66, 1966-67 and 1967-68 to which the question related. In the course of its banking business the assessee charged interest on advances considered doubtful of recovery otherwise called sticky advances by debiting the concerned parties but instead of carrying it to its "Profit and Loss Account" credited the same to a separate account styled 'Interest "suspense account" as the principal amounts of these sticky advances themselves had become, not bad or irrecoverable but extremely doubtful of recovery. However, in its returns the assessee disclosed such interest separately and claimed that the same was not taxable in its hands as income for the concerned years. The contention of the assessee was rejected at all levels principally on two grounds (a) since admittedly the assessee was following the mercantile system of accounting such interest had accrued to it at the end of each accounting year and (b) the assessee had itself shown the accrual of such interest by charging the same to the concerned parties by making debit entries in their accounts. The Supreme Court held that the concept of reality of the income and the actuality of the situation are relevant factors which go to the making up of the accrual of income but once accrual takes place and income accrues, the same cannot be defeated by any theory of real income. The court observed that with a problem like the present one, it is better to adhere to the basic fundamentals of the law with clarity and consistency than to be carried away by common cliches. The concept of real income certainly is well-accepted one and must be applied in appropriate cases but with circumspection and must not be called in aid to defeat the fundamental principles of law of income tax as developed.

15. In UCO Bank! (supra) the Supreme Court was called upon to consider whether interest on a loan whose recovery is doubtful and which has not been recovered by the assessee-bank for the last three years but has been kept in a suspense account, can be included in the income of the assessee for the assessment year 1981-82. The court observed that:-

'5. The method of accounting which is followed by the assessee-bank is the 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 realised. 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. Xxxx"

6. The assessee's method of accounting, therefore, transferring the (sic interest on) doubtful debt to an interest suspense account and not treating it as profit until actually received is in accordance with accounting practice.

7. Under Section 145 of the Income-tax Act, 1961, income chargeable under the head "profits and gains of business or profession or income from other sources" shall be computed in accordance with the method of accounting regularly employed by the assessee; provided that in a case where the accounts are correct and complete but the method employed is such that in the opinion of the Income Tax Officer, the income cannot properly be deduced there from, the computation shall be made in such manner and on such basis as the Income Tax Officer may determine. In the present case the method employed is entirely for a proper determination of income."

10. The question whether interest earned, on what have come to be known as "sticky" loans, can be considered as income or not until actual realization, is a question which may arise before several Income Tax Officers exercising jurisdiction in different parts of the country. Under the accounting practice, interest which is transferred to the suspense account and not brought to the profit and loss account of the company is not treated as income. The question whether in a given case such "accrual" of interest is doubtful or not, may also be problematic. If, therefore, the Board has considered it necessary to lay down a general test for deciding what is a doubtful debt, and directed that all Income Tax Officers 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 travelling 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 recognising 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 a doubtful claim which need not be included in the income of the assessee until it is actually recovered.

14. There are, however, two decisions of this Court which have been strongly relied upon by the respondents in the present case. The first decision is the majority judgment in State Bank of Travancore v. CITI decided by a Bench of three Judges of this Court by a majority of two to one. This judgment directly deals with interest on "sticky advances" which have been debited to the customer but taken to the interest suspense account by a banking company. The majority judgment has referred to the circular of 6-10-1952 and its withdrawal by the second circular of 20-6-1978. The majority appears to have

proceeded on the basis that by the second circular of20-6-1978 the Central Board had directed that interest in the suspense account on "sticky" advances should be includible in the taxable income of the assessee and all pending cases should be disposed of keeping these instructions in view. The subsequent circular of 9-10-1984 by which, from Assessment Year 1979-80 the banking companies were given the benefit of the circular of9-10-1984, does not appear to have been pointed out to the Court. What was submitted before the Court was, that since such interest had been allowed to be exempted for more than half a century, the practice had transformed itself into law and this position should not have been deviated from. Negativing this contention, the Court said that the question of how far the concept of real income enters into the question of taxability in the facts and circumstances of the case, and how far and to what extent the concept of real income should intermingle with the accrual of income, will have to be judged "in the light of the provisions of the Act, the principles of accountancy recognised and fo!!owed and the feasibility". The Court said that the earlier circulars being executive in character cannot alter the provisions ofthe Act. These were in the nature of concessions which could always be prospectively withdrawn. The Court also observed that the circulars cannot detract from the Act. The decision of the Constitution Bench of this Court in Navnit Lal C. Javeri v. K.K. Sen, [1965] 56 ITR 198or the subsequent decision in K.P. Varghese v. ITO, [1981] 4 SCC 172 also do not appear to have been pointed out to the Court. Since the latter circular of 9-10-1984 was not pointed out to the Court, the Court naturally proceeded on the assumption that the benefit granted under the earlier circular was no longer available to the assessee and those circulars could .not be resorted to for the purpose of overcoming the provisions of the Act. Interestingly, the concurring judgment of the second Judge has not dealt with this question at all but has decided the matter on the basis of other provisions of law.

15. The said circulars under Section 119 of the Income-tax Act were not placed before the Court in the correct perspective because the latter circular continuing certain benefits to the assessees was overlooked and the withdrawn circular was looked upon as in conflict with law. Such circulars, however, are not meant for contradicting or nullifying any provision of the statute. They are meant for ensuring proper administration of the statute, they are designed to mitigate the rigours of the application of a particular provision of the statute in certain situations by applying a beneficial interpretation to the provision in question so as to benefit the assessee and make the application of the fiscal provision, in the present case, in consonance with the concept of income and in particular, notional income as also the treatment of such notional income under accounting practice.

16. In the premise the majority decision in State Bank of Travancore v. CIT cannot be looked upon as laying down that a circular which is properly issued under Section 119 of the Income-tax Act for proper administration of the Act and for relieving the rigour of too literal a construction of the law for the benefit of the assessee in certain situations would not be binding on the departmental authorities. This would be contrary to the ratio laid down by the Bench of five Judges in Navnit Lal C. Javeri v. K.K. Sen

17. We do not see any 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 oflaw 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.'

16. In Mercantile Bank Ltd. (supra) the Supreme Court, after considering the above two decisions of the Supreme Court held thus:

"6. Although the 1952 circular was withdrawn in June 1978 in view of the decision of the Kerala High Court to the contrary in State Bank of Travancore v. CIT the principle was reintroduced by the Central Board of Direct Taxes by another circular dated 9-10-1984. The 1984 circular clarified that up to Assessment Years 1978-79 the taxability of interest on doubtful debts credited to the suspense account would 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. With effect from 1979-80 the new procedure prescribed under the 1984 circular would apply. The procedure prescribed is not relevant for our purposes. But it is clear that the circular issued in 1978 was effectively set aside and rendered ineffective.

7. The Court in UCO Bank case was of the view that these circulars dated 6-10-1952 and 9-10-1984 were binding on the authorities under section 119(1) of the Act. The Court was also of the view that the Judges in State Bank of Travancore did not have the occasion to consider the 1984 circular and proceeded on the assumption that the 1978 circular was in force. The Court did not agree with the conclusion expressed by the majority in State Bank of Travancore and said: "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."

8. Therefore, the assessment year in question in this appeal should have been dealt with by the Department in accordance with the 1952 circular under which the interest on doubtful loans could not be brought to tax.

9. The decision of the High Court on the first question, having been based on the decision in State Bank of Travancore must be held to be incorrect in view of the subsequent judgment of this Court in UCO Bank v. CIT."

17. In Southern Technologies Ltd. (supra), the Supreme Court was considering a case where categorisation of assets into doubtful, sub-standard and loss was not in dispute. The financial year of the appellant was July to June and the P&L account and the balance sheet were drawn as on 30th June. The P&L account and balance sheet was

for the shareholders, Reserve Bank of India (RBI) and Registrar of Companies (ROC) under the Companies Act, 1956. However, for the IT Act, a separate P&L account was made Out for the year ending 31 st March and the balance sheet as on that date was prepared and submitted · to the Assessing Officer for computing the total income under the IT Act, which was not ~I or ROC. For the accounting year ending 31.3.l998, the assessee debited Rs.81 ,68,516 as provision against NP A in the P&L account on three counts viz. hire-purchase of Rs.57,38,980, bill discounting of Rs.l2,79,500 and loans and advances of Rs.31,84,701, in all totalling Rs.l,02,03,121 from which the Assessing Officer allowed deduction ofRs.20,34,605 on account of hire-purchase finance charges leaving a balance provision for NPA of Rs 81,68,516. Before the Assessing Officer, the assessee claimed deduction in respect ofRs.81 ,68,516 under section 36(1)(vii) being provision for NPA in terms of the RBI Directions, 1998 on the ground that the assessee had to debit the said amount to the P&L account [in terms of Para 9(4) of the RBI Directions] reducing its profits, contending it to be a write-off. In the alternative, the assessee submitted that consequent upon the RBI Directions, 1998 there has been diminution in the value of its assets for which the assessee was entitled to deduction under section 37 as a trading loss. This led to matters going in appeai(s). Following the judgment of the Gujarat High Court in Vithaldas H. Dhanjibhai v. CIT [19811130 ITR 95/6 Taxman 105,ITAT held that since the assessee had debited the said sum of Rs.81,68,516 to the P&L account it was entitled to claim deduction as a write-off under section 36(l)(vii) which view was not accepted by the High Court, hence, civil appeal(s) came to be filed before the Supreme Court by the NBFCs. The court, on an analysis of the RBI Directions, 1998 observed thus:

'Analysis of Para 9 of the RBI Directions, 1998

34. Vide' Para 9, RBI has mandated that every NBFC shall disclose in its balance sheet the provision without netting them from the income or from the value of the assets and that the provision shall be distinctly indicated under the separate heads of account as: (i) provisions for bad and doubtful debts, and (ii) provisions for depreciation in investments in the balance sheet under "current liabilities and provisions" and that such provision for each year shall be debited to the P&L account so that a true and correct figure of "net profit" gets reflected in the financial accounts of the company. The effect of such disclosure is to increase the current liabilities by showing the provision against the possible loss on assets classified as NPA. An NPA continues to be an asset- "debtors/loans and advances" in the books of NBFC. For creating a provision the only yardstick is default in terms of the loan under the RBI norms, a provision is mathematical calculation on time lines. The entire exercise mentioned in the RBI Directions, 1998 is only in the context of presentation of NPA provisions in the balance sheet of an NBFC and it has nothing to do with computation of taxable income or accounting concepts.

35. It is important to note that the net profit shown in the P&L account is the basis for NBFCs to accept deposits and declare dividends. Higher the profits, higher is the NOF and higher is the increase in the public making deposits in NBFCs. Hence, the object of the NBFCs is disclosure and provisioning. NBFCs have to accept the concept of

"income" as evolved by RBI after deducting the provision against NP A, however, as stated above, such treatment is confined to presentation/disclosure and has nothing to do with computation of taxable income under the IT Act.

Scope of the Finance Act (No.2) of 2001 w.e.f. 1-4-1989 insofar as Section 36(1)(vii) is concerned

36. Prior to 1-4-1989, the law, as it then stood, took the view that even in cases in which the assessee(s) makes only a provision in its accounts for bad debts and interest thereon and even though the amount is not actually written-off by debiting the P&L account of the assessee and crediting the amount to the account of the debtor, the assessee was still entitled to deduction under Section 36(1)(vii). (See CIT v. lwala Prasad Tiwari, (1953) 24 ITR 537 Born.and Vithaldas H. Dhanjibhai Bardanwa1a, 1981 (130) ITR 95. Such state of law prevailed up to and including Assessment Year 1988-1989. However, by insertion (w.e.f. 1-4-1989) ofa new Explanation to Section 36(1)(vii), it has been clarified that any bad debt written off as irrecoverable in the account of the assessee will not include any provision for bad and doubtful debt made in the accounts of the assessee. The said amendment indicates that before 1-4-1989, even a provision could be treated as a write-off. However, after 1-4-1989, a distinct dichotomy is brought in by way of the said Explanation to Section 36(l)(vii). Consequently, after 1-4-1989, a mere provision for bad debt would not be entitled to deduction under Section 36(1)(vii).

37. To understand the above dichotomy, one must understand "how to write-off'. If an assessee debits an amount of doubtful debt to the P&L account and credits the asset account like sundry debtor's account, it would constitute a write-off of an actual debt. However, if an assessee debits "provision for doubtful debt" to the P&L account and makes a corresponding credit to the "current liabilities and provisions" on the liabilities side of the balance sheet, then it would constitute a provision for doubtful debt. In the latter case, the assessee would not be entitled to deduction after 1-4-1989.

38. We have examined the P&L account of First Leasing Company of India Ltd. for the year ending 31- 3-2003. On examination of Schedule J to the P&L account which refers to operating expenses, we find two distinct heads of expenditure, namely, "provision for non-performing assets" and "bad debts/advances written-off'. It is for the appellant(s) to explain the difference between the two to the Assessing Officer. Which of the two items will constitute expenditure under the IT Act has to be decided according to the IT Act. In the present case, we are not concerned with taxability under the IT Act or the accounting treatment. We are essentially concerned with presentation of financial statements by NBFCs under the 1998 Directions. The point to be noted is that even according to the assessee 'bad debts/advances written-off' is a distinct head of expenditure vis-a-vis "provision for bad debt".

39. One more aspect needs to be highlighted. It is true that under Part I of Schedule VI to the Companies Act, 1956 an amount could be first included in the list of sundry debtors/loans and then deducted from the list as "provision for doubtful debts". However, these are matters of presentation of provisions for doubtful debts even under

the Companies Act and have nothing to do with taxability under the IT Act.

43. As stated above, the Companies Act allows an NBFC to adjust a provision for possible diminution in the value of assets or provision for doubtful debts against the assets and only the net figure is allowed to be shown in the balance sheet, as a matter of disclosure. However, the said RBI Directions, 1998 mandate all NBFCs to show the said provisions separately on the liability side of balance sheet i.e. under the head "current liabilities and provisions". The purpose of the said deviation is to inform the user of the balance sheet the particulars concerning quantum and quality of the diminution in the value of investment and particulars of doubtful and sub-standard assets. Similarly, the 1998 Directions do not recognise the "income" under the mercantile system and insist that NBFCs should follow cash system in regard to such incomes.

44. Before concluding on this point, we need to emphasise that the 1998 Directions have nothing to do with the accounting treatment or taxability of "income" under the IT Act. The two viz. the IT Act and the 1998 Directions operate in different fields.

45. As stated above, under the mercantile system of accounting, interest/hire charges income accrues with time. In such cases, interest is charged and debited to the account of the borrower as "income" is recognised under accrual system. However, it is not so recognised under the 1998 Directions and, therefore, in the matter of its presentation under the said Directions, there would be an add back but not under the IT Act necessarily. It is important to note that collectibility is different from accrual. Hence, in each case, the assessee has to prove, as has happened in this case with regard to the sum of Rs 20,34,605, that interest is not recognised or taken into account due to uncertainty in collection of the income. It is for the Assessing Officer to accept the claim of the assessee under the IT Act or not to accept it in which case there will be add back even under real income theory as explained herein below.

47. Prior to the RBI Directions, 1998, advances were stated net of provisions for NPAs/bad and doubtful debts. They were shown at net figure (advances less provisions for NPAs) and the amount of provision for NP A was shown in the notes to the accounts only. Such presentation of NPA provision warranted disclosure. Therefore, Para 9(1) of the RBI Directions, 1998 stipulates that every NBFC shall separately disclose in its balance sheet the provision for NP As without netting them from the income or against the value of assets. That, the provision for NPA should be shown separately on the "liabilities side" of the balance sheet under the head "current liabilities and provisions" and not as a deduction from "sundry debtors/advances". Therefore, RBI has taken a position as a matter of disclosure, with which we agree, that if an NBFC deducts a provision for NPA from "sundry debtorslloans and advances", it would amount to netting from the value of assets which would constitute breach of Para 9 of the RBI Directions, 1998. Consequently, NPA provisions should be presented on the "liabilities side" of the balance sheet under the head "current liabilities and provisions" as a disclosure norm and not as accounting or computation of income norm under the IT Act.

48. At this stage, we may clarify that the entire thrust ofthe RBI Directions, 1998 is on presentation of NPA provision in the balance sheet of an NBFC. Presentation/disclosure is different from computation/taxability of the provision for NPA. The nature of expenditure under the IT Act cannot be conclusively determined by the manner in which accounts are presented in terms of the 1998 Directions. There are cases where on facts courts have taken the view that the so-called provision is in effect a write-off. Therefore, in our view, the RBI Directions, 1998-, though deviate from the accounting practice as provided in the Companies Act, do not override the provisions of the IT Act.

50. The question still remains as to what is the nature of "provision for NPA" in terms of the RBI Directions, 1998. In our view, provision for NPA in terms of the RBI Directions, 1998 does not constitute expense on the basis of which deduction could be claimed by NBFCs under Section 36(l)(vii). Provision for NPAs is an expense for presentation under the 1998 Directions and in that sense it is notional. For claiming deduction under the IT Act, one has to go by the facts of the case (including the nature of transaction), as stated above.

51. One must keep in mind another aspect. Reduction in NPA takes place in two ways, namely, by recoveries and by write-off. However, by making a provision for NPA, there will be no reduction in NPA. Similarly, a write-off is also of two types, namely, a regular write-off and a prudential write-off. (See Advanced Accounts by Shukla, Grewal and Gupta, Ch. 26, p. 26.50.) If one keeps these concepts in mind, it is very clear that the RBI Directions, 1998 are merely prudential norms. They can also be called as disclosure norms or norms regarding presentation of NPA provisions in the balance sheet. They do not touch upon the nature of expense to be decided by the AO in the assessment proceedings.

55. The point to be noted is that the IT Act is a tax on "real income" i.e. the profits arrived at on commercial principles subject to the provisions of the IT Act. Therefore, ifby Explanation to Section 36(1)(vii) a provision for doubtful debt is kept out of the ambit of the bad debt which is written-off then, one has to take into account the said Explanation in computation of total income under the IT Act failing which one cannot ascertain the real profits. This is where the concept of "add back" comes in. In our view, a provision for NPA debited to P&L account under the 1998 Directions is only a notional expense and, therefore, there would be add back to that extent in the computation of total income under the IT Act.

56. One of the contentions raised on behalf of NBFCs before us was that in this case there is no scope for "add back" of the provision against NPA to the taxable income of the assessee. We find no merit in this contention. Under the IT Act, the charge is on profits and gains, not on gross receipts (which, however, has profits embedded in it). Therefore, subject to the requirements of the IT Act, profits to be assessed under the IT Act have got to be real profits which have to be computed on ordinary principles of commercial accounting. In other words, profits have got to be computed after deducting losses/expenses incurred for business, even though such losses/expenses may not be admissible under Sections 30 to 43-D of the IT Act, unless such losses/expenses are

expressly or by necessary implication disallowed by the Act. Therefore, even applying the theory of real income, a debit which is expressly disallowed by Explanation to Section 36(1) (vii), if claimed, has got to be added back to the total income of the assessee because the said Act seeks to tax the "real income" which is income computed according to ordinary commercial principles but subject to the provisions of the IT Act. Under Section 36(1)(vii) read with the Explanation, a "write-off' is a condition for allowance. If "real profit" is to be computed one needs to take into account the concept of "write-off' in contradistinction to the "provision for doubtful debt".

Applicability of Section 145

57. At the outset, we may state that in essence the RBI Directions, 1998 are prudential/provisioning norms issued by RBI under Chapter III-B of the RBI Act, 1934. These norms deal essentially with income recognition. They force the NBFCs to disclose the amount of NP A in their financial accounts. They force the NBFCs to reflect "true and correct" profits. By virtue of Section 45-Q, an overriding effect is given to the RBI Directions, 1998 vis-a-vis "income recognition" principles in the Companies Act, 1956. These Directions constitute a code by itself. However, these RBI Directions, 1998 and the IT Act operate in different areas. These RBI Directions, 1998 have nothing to do with computation of taxable income. These Directions cannot overrule the "permissible deductions" or "their exclusion" under the IT Act. The inconsistency between these Directions and the Companies Act is only in the matter of income recognition and presentation of financial statements. The accounting policies adopted by an NBFC cannot determine the taxable income. It is well settled that the accounting policies followed by a company can be changed unless the AO comes to the conclusion that such change would result in understatement of profits. However, here is the case where the AO has to follow the RBI Directions, 1998 in view of Section 45-Q of the RBI Act. Hence, as far as income recognition is concerned, Section 145 of the IT Act has no role to play in the present dispute.'

On a close reading of the above decision it appears that in the facts of the said case, the assessee, after making provision for NPA had sought deduction of such amount under section 36(1) (vii) of the Act and alternatively claimed deduction under section 37 of the Act. Clearly, therefore, deduction was sought of an amount which was shown as income in the earlier years. In the present case, we are not concerned with any claim for deduction of provision made for NPA. It is the case of the assessee that in view of the income recognition norms laid down by the RBI, interest on NPA is not to be shown as income and is not to be charged to tax. Thus, this is a case of recognition of income under section 145 of the Act and not a case of deduction under any provision of the Income-tax Act, 1961.

18. It is in the light of the above distinguishing feature, that the controversy in issue is required to be considered by this court.

19. Section 45Q of the RBI Act, which is relevant for the present purpose, reads thus:

"45-Q. Chapter Ill-B to override other laws.- The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

20. Section 45Q finds place in Chapter IIIB of the RBI Act. Thus, the provisions of Chapter IIIB of the RBI Act have an overriding effect qua other enactments to the extent the same are inconsistent with the provisions contained therein. In order to reflect a bank's actual financial health in its balance sheet, the Reserve Bank has introduced prudential norms for income recognition, asset classification and provisioning for advances portfolio of the co-operative banks. The guidelines provided thereunder are mandatory and it is incumbent upon all co-operative banks to follow the same. Insofar as income recognition is concerned, clause 4.1.1 of the circular provides that the policy of income recognition has to be objective and based on the record of recovery. Income from non-performing assets (NPA) is not recognised on accrual basis but is booked as income only when it is actually received. Therefore, banks should not take to income account interest on non-performing assets on accrual basis. Thus, in view of the mandate of the RBI Guidelines the assessee cannot recognise income from non-performing assets on accrual basis but can book such income only when it is actually received. Thus, this is a case where at the threshold, the assessee, in view of the RBI Guidelines, cannot recognise income from NP A on accrual basis. This is, therefore, a case pertaining to recognition of income and not computation of the income of the assessee.

21. The Supreme Court in Southern Technologies Ltd. (supra) has held that the 1998 Directions are only disclosure norms and have nothing to do with computation of total income under the IT Act or with the accounting treatment. The 1998 Directions only lay down the manner of presentation ofNP A provision in the balance sheet of an NBFC. The court has referred to the deviations between the RBI Directions and the Companies Act as follows:

'42. Broadly, there are three deviations:

(I) in the matter of presentation of financial statements under Schedule VI to the Companies Act;

(il) in not recognising the "income" under the mercantile system of accounting and its insistence to follow cash system with respect to assets classified as NPA as per its norms;

(iiI) in creating a provision for all NPAs summarily as against creating a provision only when the debt is doubtful of recovery under the norms of the accounting standards issued by the Institute of Chartered Accountants of India.

These deviations prevail over certain provisions of the Companies Act, 1956 to protect the depositors in the context of income recognition and presentation of the assets and provisions created against them. Thus, the P&L account prepared by NBFC in terms of

the RBI Directions, 1998 does not recognise "income from NPA" and, therefore, directs a provision to be made in that regard and hence an "add back". It is important to note that "add back" is there only in the case of provisions." [Emphasis supplied]

22. Therefore, in terms of the above decision, where an assessee makes provision for NP A and seeks deduction of such amount under section 36(l)(vii) or section 37 of the Act, then in the computation of income, the RBI Guidelines would have no role to pay, and hence, an add back. Insofar as income recognition is concerned, the Supreme Court has held thus:

"Applicability of Section 145

57. At the outset, we may state that in essence the RBI Directions, 1998 are prudential/provisioning norms issued by RBI under Chapter III-B of the RBI Act, 1934. These norms deal essentially with income recognition. They force the NBFCs to disclose the amount of NPA in their financial accounts. They force the NBFCs-to reflect "true and correct" profits. By virtue of Section 45-Q, an overriding effect is given to the RBI Directions, 1998 vis-a-vis "income recognition" principles in the Companies Act, 1956. These Directions constitute a code by itself. However, these RBI Directions, 1998 and the IT Act operate in different areas. These RBI Directions, 1998 have nothing to do with computation of taxable income. These Directions cannot overrule the "permissible deductions" or "their exclusion" under the IT Act. The inconsistency between these Directions and the Companies Act is only in the matter of income recognition and presentation of financial statements. The accounting policies adopted by an NBFC cannot determine the taxable income. It is well settled that the accounting policies followed by a company can be changed unless the AO comes to the conclusion that such change would result in understatement of profits. However, here is the case where the AO has to follow the RBI Directions, 1998 in view of Section 45-Q of the RBI Act. Hence, as far as income recognition is concerned, Section 145 of the IT Act has no role to play in the present dispute."

Thus, insofar as income recognition is concerned, the court has held that even the Assessing Officer has to follow the RBI Directions, 1998 in view of section 45Q of the RBI Act and that as far as income recognition is concerned, section 145 of the Income-tax Act, has not role to play.

23. In the light of the above discussion what emerges is that while determining the tax liability of an assessee, two factors would come into play. Firstly, the recognition of income in terms of the recognised accounting principles and after such income is recognised, the computation thereof, in terms of the provisions of the Income-tax Act, 1961. Insofar as the computation of taxability is concerned, the same is solely governed by the provisions of the Income-tax Act and the accounting principles have no role to play. However, recognition of income stands on a different footing. Insofar as income recognition is concerned, it would be the RBI Directions which would prevail in view of the provisions of section 45Q of the RBI Act and section 145 would have no role to play. Hence, the Assessing Officer has to follow the RBI Directions.

24. The Delhi High Court in Vasisth Chay Vyapar Ltd., (supra), has in the context of a similar issue arising in the case of a non-banking financial company has held thus:

"17. In this scenario, we have to examine the strength in the submission of learned counsel for the Revenue that whether it can still be held that income in the form of interest though not received had still accrued to the assessee under the provisions of Income-tax Act and was, therefore, exigible to tax. Our answer is in the negative and we give the following reasons in support-

(1) First of all we would discuss the matter in the light of the provisions of Income-tax Act and to examine as to whether in the given circumstances, interest income has accrued to the assessee. It is stated at the cost of repetition that admitted position is that the assessee had not received any interest on the said ICD placed with Shaw Wallace since the assessment year 1996-97 as it had become NPAs in accordance with the Prudential norms which was entered in the books of accounts as ITA 139/2008,ITA 466/2008, ITA 537/2008, ITA 408/2003 well. The assessee has further successfully demonstrated that even in the succeeding assessment years, no interest was received and the position remained the same until the assessment years 2006-07. Reason was adverse financial circumstances and the financial crunch faced by Shaw Wallace. So much so, it was facing winding up petitions which were filed by many creditors. These circumstances, led to an uncertainty insofar as recovery of interest was concerned, as a result of the aforesaid precarious financial position of Shaw Wallace. What to talk of interest, even the principal amount itself had become doubtful to recover. In this scenario it was legitimate move to infer that interest income thereupon has not "accrued". We are in agreement with the submission of Mr. Vohra on this count, supported by various decisions of different High Courts inciuding this court which has already been referred to above.

(2) In the instant case, the assessee-company being NBFC is governed by the provisions of RBI Act.

In such a case, interest income cannot be said to have accrued to the assessee having regard to the provisions of section 45Q of the RBI and Prudential Norms issued by the RBI in exercise of its statutory powers. As per these norms, the ICD had become NPA and on such NPA where the interest was not received and possibility of recovery was almost nil, it could not be treated to have been accrued in favour of the assessee. .

No doubt, in first blush, reading of the judgment gives an indication that the Court has held that RBI Act does not override the provisions of the Income-tax Act. However, when we examine the issue involved therein minutely and deeply in the context in which that had arisen and certain observations of the Apex Court contained in that very judgment, we find that the proposition advanced by Mr. Sabharwal may not be entirely correct. In the case before the Supreme Court, the assessee a NBFC debited Rs. 81,68,516 as provision against NPA in the profit and loss account, which was claimed as deduction in terms of section 36 (1) (vii) of the Act. The Assessing Officer did not allow the deduction claimed as aforesaid on the ground that the provision of NPA was

not in the nature of expenditure or loss but more in the nature of a reserve, and thus not deductible under section 36(i) (vii) of the Act. The Assessing Officer, however, did not bring to tax Rs. 20,34,_{}05 as income (being income accrued under the mercantile system of accounting). The dispute before the Apex court centered around deductibility of provision for NPA. After analyzing the provisions of the RBI Act, their Lordships of the Apex Court observed that insofar as the permissible deductions or exclusions under the Act are concerned, the same are admissible only if such deductions/exclusions satisfy the relevant conditions stipulated therefore under the Act. To that extent, it was observed that the Prudential Norms do not override the provisions of the Act. However, the Apex Court made a distinction with regard to "Income Recognition" and held that income had to be recognized in terms of the Prudential Norms, even though the same deviated from mercantile system of accounting and/or section 145 of the Income-tax Act. It can be said, therefore, that the Apex Court approved the 'real income' theory which is engrained in the Prudential Norms for recognition of revenue by NBFC."

25. The distinction drawn by the Delhi High Court is that while the accounting policies of adopted by the NBFC cannot determine the taxable income. However, insofar as income recognition is concerned, the Assessing Officer has to follow the RBI Directions, 1998 in view of section 45Q of the RBI Act. That insofar as income recognition is concerned, section 145 of the Income-tax Act, 1961 has not role to play.

26. In Sakthi Finance Limited, (supra), the Madras High Court was dealing with a similar issue in relation to a non-banking financial institution. The court did not agree with the view adopted by the Delhi High Court in Vasisth Chay Vyapar (supra) and held thus:

"16. In Paragraphs 31 and 34, the Hon'ble Supreme Court in no uncertain terms held that the collectibility of interest is different from accrual and in each and every case, the assessee has to prove that the income interest is not recognised or not taken into account due to uncertainty in collection of the income. It is for the Assessing Officer to accept the claim of the assessee under the Income-tax Act or not to accept. In case of Southern Technologies Limited, (2010) 320 ITR 577, the Assessing Officer accepted the assessee's case towards non-recognition of interest for Rs.20.34 lakhs as would be apparent from a reading of Paragraph No.31 of the Judgment of the Hon'ble Supreme Court in case of Southern Technologies Limited, [2010] 320 ITR 577. By a careful reading of the case of Southern

Technologies Limited, [2010] 320 ITR 577, we are of the view that the assessee has to' prove in each case that interest not recognised or not taken into account was in fact due to' uncertainty in collection of interest and it is for the Assessing Officer to' examine facts of each individual case.

18. Mere characterisation of an account as a NP A would not by itself be sufficient to' say that there is uncertainty as regards realizability of income or interest income thereon. Accrual of interest is a matter of fact to' be decided separately for each case On the basis of examination of the facts and circumstances. The same would require an assessment of the relevant facts and circumstances of each case. Only by assessment

of facts and circumstances, the Authority could arrive at a decision whether there is uncertainity of the interest accrued on NPA. Only when there is uncertainity of realizability of income or interest income then it is nQt chargeable to' tax. The system of accounting followed only recognises it bringing the income to' books. The adopted accounting policy i.e., recognising income on NPA accounts only subject to' realisation does not serve as a standard category."

27. For the reasons stated hereinabove, this court is in agreement with the view taken by the Delhi High Court.

28. In the light of the view adopted by the court, it is not necessary to' enter into any detailed discussion as regards the applicability or otherwise of the CBDT Circular to' the facts of the present case. The Supreme Court in UCO Bank, (supra) has held that such circulars are not meant for contradicting or nullifying any provision of the statute. They are meant for proper administration of the statute, they are designed to' mitigate the rigours of the application of a particular provision of the statute in certain situations by applying a beneficial interpretation to' the provision in question SO' as to' benefit the assessee and make the application of the fiscal provision, in that case, in consonance with the concept of income and in particular, notional income as also the treatment of such notional income under the accounting practice. The court, accordingly, did not find any inconsistency or contradiction between the circular SO' issued and section 145 of the Income-tax Act. In the aforesaid premise, until the circular is revoked, the same continues to be in force and the same having been issued to' mitigate the hardships caused to' the class of asses sees covered by the circular, such assessees would be entitled to' the benefit thereof, Merely because by virtue of the provisions of section 43D of the Act, a certain class of assessees is given benefit under the provisions of the Act would not mean that the same would override the circular.

29. On behalf of the appellant it has been contended that section 43D of the Act itself recognises recognition of taxability of such interest and that when a specific provision in the nature of section 43D of the Act has been made, and entities like the assessee are excluded from the purview thereof, the assessee cannot indirectly claim benefit which would amount to' a benefit similar to' that under section 43D of the Act. In this regard, it may be noted that the benefit claimed by the assessee is not under any provision of the Income-tax Act, 1961. The assessee being bound by the RBI Guidelines which are issued under the provisions of the RBI Act has not shown the interest on NPA as income. By virtue of the provisions of section 45Q of the RBI Act, the provisions of Chapter IIIB thereof have an overriding effect over other laws including the Income-tax Act, 1961. Therefore, notwithstanding the provisions of section 43D of the Act, since the provisions of section 45Q of the RBI Act have an overriding effect vis-a-vis income recognition principles in the Companies Act, the Assessing Officer is bound to' follow the RBI Directions SO' far as income recognition is concerned. The contention that the assessee cannot indirectly claim the benefit which would amount to' a benefit similar to' that under section 43D of the Act, therefore, does not merit acceptance.

30. As can be seen from the assessment order, before the Assessing Officer the assessee had inter alia submitted that interest on NPA was not charged as- mandatorily stipulated under Income Recognition and Asset Classification norms of the Reserve Bank of India. It has also been submitted that the CBDT circular bearing F.No.201/21/84-ITA-II, dated 9.10.1984 issued under section 119 of the Act for all banking and non-banking financial companies stating that if the interest has not been received for three years, the same will not be taxed as an income even on accrual basis even if interest has been credited to "Interest Suspense Account" would be applicable in its case. The Assessing Officer brushed aside the submission based upon the circular of 1984, on the ground that the same is applicable only to banking companies and not to co-operative banks, on a misconception of law that a co-operative bank is not a banking company. In this regard it may be noted that the expression "banking company" has been defined under section 5(c) of the Banking Regulation Act, 1949 to mean any company which transacts the business of banking in India. Part V of the Banking Regulation Act bears the heading "Application of the Act to Co-operative Societies". Section 56 thereof provides that the provisions of the Act, as in force for the time being, shall apply to, or in relation to co-operative societies as they apply to, or in relation to banking companies subject to the modifications stated thereunder. Clause (a) of section 56, to the extent the same is relevant for the present purpose, provides that throughout the Act, unless the context otherwise requires, - (i) references to a "banking company" or "the company" or "such company" shall be construed as references to a co-operative bank. Section 2(i) of the RBI Act provides that "co-operative bank", "co-operative credit society", "director", "primary agricultural credit society", "primary co-operative society" and "primary credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949. Evidently therefore, the expression "banking company" would take within its sweep a co-operative bank. The Assessing Officer has thereafter entered into a discussion on the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, which provides for enforcement of security interest of banks and financial institutions and has observed that in the instant case, no material has been brought on record by the assessee to prove its efforts made in a bid to recover such debts which are classified as NP A and other categories. The Assessing Officer has also entered into a discussion as Tegards the 'quality of management, etc., without even examining as to whether or not there was any probability of interest being received on the NPAs. The Commissioner (Appeals) has placed reliance upon the decision of the Supreme Court in the case of Southern Technologies Limited (supra) and held that there is no merit in the contention of the assessee that under commercial accounting, interest on NPAs cannot be charged. On the question of applicability of the CBDT Circular dated 9.10.1984, the Commissioner (Appeals) held that the same would not be applicable for the reason that the provisions of section 43D of the Act are clear and cannot be overridden through delegated legislation viz. circulars and notifications. The Commissioner (Appeals) was further of the opinion that the statutory provisions were brought on the Act much later than the said circular (which was issued in 1984) and therefore the said circular would not have any effect or binding force upon the Assessing Officer. The view adopted by the Assessing Officer and the Commissioner (Appeals) is clearly contrary to the view expressed by this court hereinabove. The Tribunal was therefore, wholly justified in

setting aside the order passed by the Commissioner (Appeals) confirming the assessment order."

6. Respectfully following the same, we hereby direct the assessing officer to delete the addition.

7. Ground No.3 is against sustaining the cadre expenses. Ld. Counsel for the assessee reiterated the submissions as made in the written submissions.

8. On the contrary, Ld. D.R. opposed the submissions.

9. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. It is stated by the Ld. Counsel for the assessee that the coordinate bench of this Tribunal has allowed the expenditure as business expenditure in the case of Madhya Pradesh Rajya Sahkari Bank Maryadit, Bhopal Vs. DCIT-1(1), Bhopal vide ITA No.296/Ind/2015 dated 14.3.2016, wherein the coordinate bench has decided the issue in para-3 as under:

"We have heard both the parties. The assessee is in Apex Cooperative Bank and it provides credit facilities to District Central Cooperative Banks which in turn provide funds to the Primary Agriculture Credit Socieites. Thus, this was the business structure of the activities of the assessee and its societies. These District Central Cooperative Banks are separate entities and are assessed to tax. The income of the assessee and District Central Cooperative Banks generates from the basic activities done at the level of primary agricultural societies. Thus, the sharing of the salary of the staff in a manner as provided in the Government instructions can be said to be well related to business of the assessee. Therefore, the same is allowable as per the provisions of section 37 of the Act. Considering this, we direct to allow the same."

10. The facts are identical. The revenue has not pointed out any change in the facts and also has not brought to our notice any contrary binding precedent. We, therefore, following the coordinate bench decision in ITA No.296/Ind/2015, direct the A.O. to delete the addition.

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

Order was pronounced in the open court on 26 .09.2018.

Sd/-	Sd/-
(MANISH BORAD)	(KUL BHARAT)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Indore; दिनांक Dated : 26/09/2018

VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Sr. Private Secretary, Indore