

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13<sup>TH</sup> DAY OF NOVEMBER 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

**I.T.A. NO.137 OF 2015**

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX  
PARK VIEW BUILDING  
No.284/1, 4TH MAIN  
P.J. EXTENSTION, DAVANGERE-577002.
2. THE ASST. COMMISSIONER OF INCOME-TAX  
CIRCLE-1, PARK VIEW BUILDING  
No.284/1, 4TH MAIN, P.J. EXTENSION  
DAVANGERE-577002.

... APPELLANTS

(BY SRI. K.V. ARAVIND, ADV.,)

AND:

M/S. DAVANGERE DISTRICT CENTRAL  
CO-OPERATIVE BANK LIMITED  
D.C. OFFICE CIRCLE  
CHITRADURGA-577501  
PAN: AAATD 6617N.

... RESPONDENT

(BY SMT. R. PRATIBHA, ADV., FOR  
SRI. S. PARTHASARATHI, ADV.,)

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THIS ITA IS FILED UNDER SECTION 260-A OF I.T. ACT,  
1961 ARISING OUT OF ORDER DATED 10.10.2014 PASSED IN ITA

NO.889/BANG/2012 FOR THE ASSESSMENT YEAR 2007-08,  
PRAYING TO:

(I) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW  
STATED ABOVE.

(II) ALLOW THE APPEAL AND SET ASIDE THE ORDERS  
PASSED BY THE ITAT, BANGALORE IN ITA NO.889/BANG/2012  
DATED 10-10-2014 CONFIRMING THE ORDER OF THE APPELLATE  
COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE ASST.  
COMMISSIONER OF INCOME TAX, CIRCLE-1, DAVANAGERE.

THIS ITA COMING ON FOR HEARING, THIS DAY,  
**ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

### **JUDGMENT**

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the revenue. The subject matter of the appeal pertains to the Assessment year 2007-08. The appeal was admitted by a bench of this Court vide order dated 10.08.2015 on the following substantial questions of law:

*(i) Whether on the facts and circumstances of the case, the Tribunal is right in law in deleting the interest accrued on non performing assets from the computation of taxable income for the assessment year under consideration*

*despite the assessee maintaining mercantile system of accounting.*

*(ii) Whether on the facts and circumstances of the case, the Tribunal is right in law in holding that the provision for non performing assets made by assessee is proper as it is done as per RBI guidelines without appreciating that RBI guidelines cannot override the mandatory provision of Section 145 of the I.T. Act which is a specific provision dealing with the method of accounting for determining income of particular year and the decision in the case of UCO Bank Vs. CIT (reported in 237 ITR page 889), the Supreme Court has not given findings regarding this issue and as such the Tribunal is not right in relying on this ruling of Apex Court.*

2. Facts leading to filing of this appeal briefly stated are that the assessee is a co-operative bank. The co-operative Banks became taxable entity like the commercial banks from the Assessment Year 2007-08. The assessee therefore, filed the return of income for

the Assessment Year 2007-08. The return of income was processed under Section 143(1) of the Act and the case of the assessee was selected for scrutiny and notice under Section 143(2) of the Act was issued. The Assessing Officer by an order dated 23.12.2009 made an addition of Rs.6,99,73,139/- on account of interest income following the mercantile system of accounting, provision made for non performing assets to the extent of Rs.1,50,00,000/-. The Assessing Officer also made an addition of Rs.4,00,000/- and Rs.17,38,222/- on account of provision for audit cost and addition under Section 40(a)(ia) of the Act.

3. Being aggrieved, the assessee challenged the aforesaid order in an appeal before the Commissioner of Income Tax (Appeals) who by an order dated 29.12.2011 inter alia held that effective rate of interest on the amount of advances was 7.5%, whereas, Assessing Officer has considered the same to be 9%, which is on the higher side. It was further held that the

Assessing Officer has to correctly work out the opening and closing balances after giving reasonable opportunity to the assessee and after verification of books of accounts and work out the correct income accruing from interest and to decide the issue in the light of the decision of the Supreme Court in the case of UCO Bank Vs. CIT, 237 ITR 889. The Commissioner of Income Tax (Appeals) allowed the provision made for non performing assets to the extent of RS.1,50,00,000/- by following the decision of the Supreme Court in UCO Bank supra and with regard to addition made under Section 40(a)(ia) of the Act of Rs.17,38,222/-, the Commissioner of Income Tax (Appeals) has given direction to the Assessing Officer to call details of previous payment and to check the return. Accordingly, the appeal was partly allowed the appeal preferred by the assessee. The revenue thereupon approached the Income Tax Appellate Tribunal (hereinafter referred to as 'the tribunal' for short). The tribunal by an order

dated 10.10.2014 dismissed the appeal preferred by the revenue. In the aforesaid factual background, the revenue has filed this appeal.

4. When the matter was taken up today, learned counsel for the assessee submitted that first substantial question of law has already been answered by a bench of this court vide judgment dated 30.06.2014 passed in I.T.A.No.471/2013 (Commissioner of Income Tax vs. The Urban Co-operative Bank Ltd) and Special Leave Petition against the aforesaid order has been dismissed by Supreme Court vide order dated 12.01.2015 keeping the question of law open. The aforesaid aspect of the matter could not be disputed by the learned counsel for the revenue. For the reasons assigned in the judgment dated 30.06.2014 passed by this court in I.T.A.No.471/2013, the first substantial question of law is answered against the revenue and in favour of the assessee.

5. With regard to the second substantial question of law, learned counsel for the revenue submitted that the assessee had claimed the benefit under Section 36(1)(viia) of the Act and the assessee has to first set off the bad debt written off against the provision made under Section 36(1)(viia) of the Act. It is further submitted that if actual write off is in excess of provision made under Section 36(1)(viia) of the Act, then as per proviso to Section 36(1)(vii), actual write off in excess of provision of Section 36(1)(viia) would alone be allowed under Section 36(1)(vii). It is also argued that allowing the provision under Section 36(1)(viia) of the Act and on actual write off under Section 36(1)(vii) of the Act would amount to double deduction and the same is in contravention of the law laid down by the Supreme Court in CATHOLIC SYRIAN BANK LTD. VS. CIT (SC) 343 ITR 270. It is further submitted that the principle laid down in the aforesaid decision has not been taken note of by the tribunal and therefore, the

matter requires re consideration. It is also urged that reliance placed on decision of this court in COMMISSIONER OF INCOME-TAX VS. CANFIN HOMES LTD., 347 ITR 382 is of no assistance to the assessee as in the aforesaid decision, the effect of Section 36(1)(viiia) of the Act has not been considered.

6. On the other hand, learned counsel for the assessee submitted that tribunal was justified in holding that accounting interest income on non performing asset on cash basis by the assessee though it was following mercantile system of accounting was correct since, once a particular asset is shown to be a non performing asset then the assumption is that it is not yielding any revenue and therefore, the question of showing that revenue and paying tax would not arise. In support of aforesaid submissions, reliance has been placed on decisions in **'UCO BANK VS. CIT', 237 ITR 889 SC, 'CIT VS. CANFIN HOMES LTD.', 347 ITR 382 (KAR), CIT VS. THE URBAN CO-OPERATIVE BANK IN ITA**



**NO.471/2013 (KAR), CIT VIS THE URBAN CO-OPERATIVE BANK IN SLP NO.1066/2015 (SC) and 'UCO BANK VS. CIT', 360 ITR 567 (KOL).**

7. We have considered the submissions made by learned counsel for the parties and have perused the record. In the course of assessment proceedings, it was noticed that assessee had debited Rs.1.5 Crores as provision for non performing asset but in the income computation sheet the same has not been added. The assessee was given an opportunity to explain why non performing asset provision has not added back to the total income, in the income computation sheet and again deduction 7.5% under Section 36(1)(viiia) has not been claimed. The assessee thereupon submitted that a provision has been made as per the norms of the Reserve Bank of India and the details of non performing assets as well as provisions made were provided. The Commissioner of Income Tax (Appeals) held that deduction for provision for bad and doubtful debt is

allowed under Section 36(1)(viiia) of the Act in the light of the decision of the Supreme Court in UCO Bank Ltd. supra. The tribunal in its order dated 10.10.2014 inter alia has held that though the assessee has used the nomenclature as provision for non performing assets but in pith and substance, the provision has been created for bad and doubtful debts and in doing so the assessee has followed the guidelines framed by Reserve Bank of India. The tribunal has therefore, affirmed the finding recorded by the Commissioner of Income Tax (Appeals).

8. This court in Canfin Homes Ltd. supra after taking note of Section 145 of the Act has held that once a particular asset is shown as non performing asset then the assumption that it is not yielding any revenue. When an asset is not yielding any revenue, the question of showing that revenue and paying tax would not arise. The contentions, which are sought to be raised by learned counsel for the revenue do not arise for consideration in the context of substantial question of

law, which has been framed by this court. The concurrent findings have been recorded by the Commissioner of Income Tax (Appeals) as well as tribunal in this regard, which cannot be termed as perverse.

In view of preceding analysis, the second substantial question of law is answered against the revenue and in favour of the assessee. In the result, we do not find any merit in this appeal, the same fails and is hereby dismissed.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**