

आयकर अपीलिय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.907 & 908/PUN/2018
निर्धारण वर्ष / Assessment Years : 2009-10 & 2010-11

The Assistant Commissioner of Income Tax,
Circle – 2, Solapur

.....अपीलार्थी / Appellant

बनाम / V/s.

Solapur Nagari Audyogik
Sahakari Bank Niyamit,
340-A, Sakhar Peth,
Solapur – 413005

PAN : AAATS5386B

.....प्रत्यर्थी / Respondent

Assessee by : N O N E
Revenue by : Shri Mahadevan A.M. Krishnan

सुनवाई की तारीख / Date of Hearing : 06-07-2021

घोषणा की तारीख / Date of Pronouncement : 26-07-2021

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

Both these appeals by the Revenue against the separate common order dated 23-01-2018 passed by the Commissioner of Income Tax (Appeals)-7, Pune [‘CIT(A)'] for assessment years 2009-10 and 2010-11.

2. We note that these two appeals were filed with a delay of 24 days and to that effect the Revenue filed affidavit stating reasons to condone the said

delay. Upon hearing ld. DR and on perusal of the affidavit, we find that the appellant revenue made out sufficient reasons to condone the delay of 24 days, accordingly, delay of 24 days is condoned.

3. We find no representation on behalf of the assessee nor any application filed seeking adjournment. The assessee called absent and set ex-parte. Therefore, we proceed to hear the ld. DR and pass order basing on the material available on record.

4. We find the issues raised in both the appeals are similar basing on the same identical facts. The ld. DR requested to hear both the appeals together. On perusal of the record we note that the submissions of ld. DR are correct to the extent the issues raised in both the appeals are similar and based on the same identical facts. Therefore, we proceed to hear both the appeals together and to pass a common order for the sake of convenience.

5. First, we shall take up appeal in ITA No. 907/PUN/2018 for A.Y. 2009-10.

6. The Revenue raised 6 grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) justified in deleting the addition made on account of interest on non performing assets and interest accrued on liquidation in the facts and circumstances of the case.

7. Brief facts relating to the issue on hand are that the assessee is a Co-operative Bank engaged in the banking business. The assessee filed

return of income declaring loss. In scrutiny assessment proceedings, the AO on verification of Balance sheet noticed that that the assessee has shown opening balance of Rs.4,61,33,655/- as on 01-04-2008 and the closing balance of Rs.5,55,04,075/- as on 31-03-2009 under the head "Overdue Interest Reserve" (SDIC). The AO noted an amount of Rs.93,70,420/- on account of accrued interest on deposit with Solapur District Industrial Co-op. Bank Ltd. (SDIC) as income of assessee and also overdue interest on other loans amounting to Rs.90,41,977/- as income and added the above said two amounts to the income of the assessee. Thereby, he observed the total income of the assessee at Rs.13,08,863/- and effected set off of loss to that extent and carried forward unabsorbed loss, determining the total income at Nil vide this order dated 28-11-2011 passed u/s. 143(3) of the Act. The CIT(A) deleted both the above said additions made by the AO by placing reliance in the case of M/s. Deogiri Nagari Sahakari Bank Ltd. reported in 128 DTR 209 by the Hon'ble High Court of Bombay by holding that that the interest from non performing assets on accrual basis are not taxable vide this order dated 31-03-2018.

8. Heard ld. DR and perused the material available on record. Let us examine the addition of Rs.93,70,390/- alleged to have been accrued interest on fixed deposit with Solapur District Industrial Co-op. Bank Ltd. (for short "SDIC"). During the course of scrutiny assessment proceedings, the AO asked the assessee to furnish details of interest accrued in respect of Solapur District Industrial Co-op. Bank Ltd. It was submitted the assessee made investment in Solapur District Industrial Co-op. Bank Ltd. in the form of fixed deposit. The said bank has gone into liquidation and it is unable to refund fixed deposits, pay interest and the said investment has been blocked without any remuneration. The statutory inspection by the

Reserve Bank of India instructed to treat the said investment of Rs.15.02 crores as NPA and enabling to make 100% provision to that effect. The AO held, since the assessee follows mercantile system of accounting, said amount is liable for tax on account of accrued interest on deposit. The CIT(A) in the impugned order held that such accrued interest is not chargeable to tax. We note that the amount receivable from the SDIC has become bad and no interest income has been received by the assessee in the year under consideration. Further, we note that the alleged accrued interest receivable is not credited to profit and loss account in view of the RBI guidelines treating the fixed deposits as non performing assets. Therefore, in our opinion, since it is not realized on account of the SDIC not in a position to pay interest to assessee on its being on liquidation, the said accrued interest is not chargeable to tax. We find that no interest in actual fact received by the assessee in the year under consideration and there is uncertainty in receiving the same from the said SDIC due to liquidation. When there is no realization, the said accrued interest in the year under consideration, which is not travelled through profit and loss account, in our opinion, is not an income chargeable to tax due to non crystallization in the year under consideration.

9. The Hon'ble High Court of Bombay in the case of Solapur District Central Co-op. Bank Ltd. reported in (2019) 102 taxmann.com 440 (Bombay) confirmed the order of Tribunal on identical facts relying upon the principle of real income theory enunciated by the Hon'ble Supreme Court in the case of Shoorji Vallabhdas & Co. reported in (1962) 46 ITR 144. The brief facts therein are that the assessee is a Co-operative Bank. The AO noticed that the assessee transferred an amount of Rs.7.80 Crores to Overdue Interest Reserve (OIR) by debiting the interest received in Profit

and Loss Account. According to the AO, the said interest due is liable to be taxed on accrual basis and accordingly held the same is chargeable to tax. The CIT(A) confirmed the decision of AO. The Tribunal deleted the said addition by relying on its earlier orders in the case of assessee itself. The Hon'ble High Court of Bombay discussed the issue in detail and was pleased to refer identical issues examined by the Hon'ble High Court of Punjab and Haryana in the case of Ludhina Central Co-operative Bank Ltd. reported in (2018) 99 taxmann.com 81. The Hon'ble High Court of Punjab and Haryana in turn referred the case of Shri Mahila Sewa Sahakari Bank Ltd. reported in (2017) 395 ITR 324 of Hon'ble High Court of Gujarat and noted the appeal arising out of Hon'ble High Court of Gujarat was dismissed by the Hon'ble Supreme Court which held the taxability of interest on NPA is chargeable to tax in the year of receipt. In the present case, the AO proceeded to hold that the interest accrued on NPA chargeable to tax, but it is taxable in the year of receipt, for the reason there is an uncertainty as to the recovery of fixed deposits as well as interest. When interest was not received and the possibility of recovery almost Nil, the interest could not be treated to have accrued. Therefore, the taxability of accrued interest on NPA is not justified on the real income theory. Thus, we find no infirmity in the order of CIT(A) and it is justified. Similarly, the Overdue Interest on other loans amounting to Rs.90,41,977/- is not chargeable to tax in view of discussion made by us in the aforementioned paragraphs. Thus, the grounds raised by the Revenue are dismissed.

10. In the result, the appeal of Revenue in ITA No. 907/PUN/2018 is dismissed.

ITA No. 908/PUN/2018, A.Y. 2010-11

11. That the issues raised in the appeal and the facts in ITA No. 908/PUN/2018 are identical to ITA No. 907/PUN/2018. Since, the facts in ITA No. 908/PUN/2018 are similar to ITA No. 907/PUN/2018, the findings given by us while deciding the appeal of Revenue in ITA No. 907/PUN/2018 would *mutatis mutandis* apply to ITA No. 908/PUN/2018, as well. The appeal of Revenue is dismissed, accordingly.

12. To sum up, both the appeals of Revenue are dismissed.

Order pronounced in the open court on 26th July, 2021.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 26th July, 2021.

RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-7, Pune
4. The Pr. CIT-6, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.
//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune