IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "A" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

AND

SHRI GD PADMAHSHALI, ACCOUNTANT MEMBER

ITA.No.413/PUN./2022
Assessment Year 2017-2018

Bajaj Finance Limited, 3rd Floor, Panchshil Tech Park, Viman Nagar, Pune – 411 014 Maharashtra. PAN AABCB1518L	vs.,	The PCIT-3, 3rd Floor, Income Tax Office, PMT Bldg., Shankar Seth Road, Swargate, Pune
(Appellant)		(Respondent)

For Assessee :	Mr. Percy Pardiwalla & Ms. Vasanti B. Patel
For Revenue :	Shri B. Koteswara Rao

Date of Hearing :	28.04.2023
Date of Pronouncement :	15.05.2023

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for assessment year 2017-2018, arises against the PCIT, Pune-3, Pune's Din and Order No. ITBA/REV/F/REV5/2021-22/1042100179(1), dated 30.03.2022, involving proceedings u/s. 143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive ground in the instant appeal :

"1. Ground I: Challenging the validity of revision proceedings under section 263 of the Act

1.1. The learned PCIT failed to appreciate that the assessment order passed by the Assistant Commissioner of Income Tax, Circle 8, Pune (hereinafter referred to as learned AO) under section 143(3) of the Act was neither erroneous nor prejudicial to the interest of the revenue and thus, the order under section 263 of the Act is without jurisdiction and bad-in¬law.

1.2. The learned PCIT erred in initiating the proceedings under section 263 of the Act without appreciating that the learned AO during the course of original assessment proceedings had made necessary enquiry and verification, before allowing the claim in relation to both the issues under consideration viz. interest on non-performing asset ('NPA') and claim of deduction under section 36(1)(viii) of the Act.

1.3. The learned PCIT ought to have appreciated that the proceedings under section 263 of the Act cannot be initiated on interpretational issues based on mere difference in opinion from the position adopted by the learned AO.

2. Ground 2: Challenging taxability of Interest on NPA:

2.1. The learned PCIT erred in holding that interest on NPA is taxable on accrual basis disregarding the well-settled principle of real income theory as has consistently been upheld in the

Appellant's own case by the Appellate Authorities in the earlier years.

2.2. The learned PCIT erred in not appreciating that the contentions raised to hold that interest on NPA is taxable viz non-applicability of section 43D and accrual/mercantile method of accounting has been dealt in detail in the preceding years by the Appellate Authorities in the Appellant's own case and the issue has been put to rest since the Department has elected not to file further appeal against the favourable orders of the Appellate Authorities.

2.3. The learned PCIT erred in holding that the decision of the Hon'ble Bombay High Court in the Appellant's own case (ITA No. 237 and 485 of 2017) and the decision of the Hon'ble Supreme Court in the case of Vashisth Chay Vyapar Ltd (410 ITR 244) is not applicable post introduction of ICDS-IV.

2.4. The learned PCIT ought to have appreciated that the principle laid down by the Hon'ble Courts in the aforesaid decisions is based on the interpretation of the provisions of the Act and it is explicitly stated in the preamble to ICDS-IV that in case of any conflict, the provisions of the Act shall prevail.

2.5. The learned PCIT erred in ignoring the Department's position before the Hon'ble Delhi High Court in the case of Chamber of Tax Consultants v. Union of India [W.P.(C) 5595/2017 & CM APL 23467/2017], in relation to the Interest

on NPA vis-a-vis ICDS IV, wherein the Department has accepted that interest on NPA cannot be taxed basis the well-established principles of real income theory, even after introduction of ICDS IV.

2.6. Without prejudice to the above, if the interest on NPA is held to be taxable, the learned PCIT erred in not directing the learned AO to correspondingly allow deduction for the interest so taxed as bad debts under the proviso to section 36(1)(vii) in accordance with the amendments brought in light of ICDS-IV in the said provision.

3. Ground 3: Challenging re-verification of claim of deduction under section 36(1)(viii)

3.1. The learned PCIT erred in directing the learned AO to re-verify the claim of deduction under section 36(1)(viii) in relation to long-term infrastructure finance without appreciating that the learned AO specifically inquired into such claim and sought the basis as well as computation for arriving at the amount of deduction under the said provision.

3.2. The learned PCIT ought to have appreciated that the learned AO enhanced the amount of deduction under section 36(1)(viii) in the original assessment order in light of the income assessed at a higher amount and hence, the question of the learned AO having not applied his mind does not arise.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing of the appeal, so as to enable the Hon'ble Tribunal to decide this appeal according to law."

3. Learned senior counsel places on record the Assessing Officer's sec.143(3) r.w.s.263 consequential assessment dated 31.03.2023 not disallowing / adding its corresponding claim of sec.36(1)(viii) deduction. He therefore sought not to press the above latter issue subject to all just exceptions. Ordered accordingly.

4. Both the learned representatives next invited our attention to the PCIT's revision directions *qua* the instant former issue of accrual of income on assessee's non-performing assets "NPAs" as under :

4. The Objections raised by the Assessee Company to the proposed revision as mentioned in the written submissions and the Assessment record are verified and examined. The contention of the assessee dealt with as under.

a. **Verification made by the Assessing Officer during Assessment Proceedings** :

i. During the Personal hearing, the Senior Tax head of the Company drew attention to the Point no 4 in the Annexure to the Notice issued u/s 142(1) dated 11.11.2019, which reads as "Note on the Taxability of Interest accrued on NPA"

The reply filed by the Assessee dated 18.11.19 stated that

a. The Assessee being NBFC Governed by RBI is mandatorily required to follow the RBI directions. As per this The interest from defaulting customers is to be recognized only on receipt basis.

b. The issue is settled in favour of Assessee by

1. Hon'ble Supreme Court in the case of VasisthChayVyapar Ltd 410 ITR 244
2. Hon'ble Bombay High Court in the Assessee's Own Case for A Ys 2009-10 and 2011-12
3. Hon'ble ITAT Pune decisions in Assessee's own case.

The Issue raised by the AO and the reply given by the Assessee are totally silent on Why the ICDS guidelines for Income recognition should not be applied to the Case of the Assessee. Even in the reply filed on 19.12.19, the assessee only repeated the earlier submissions and claimed that the Interest income is Taxable on realisation basis only.

As can be seen from the above, the Assessing Officer has not taken a legally sustainable view with regard to the effect of ICDS which was brought in by the CBDTfor and from the AY 2017-18.

To be clear, during the hearing a Specific query was raised as to whether, the issue of applicability of ICDS IV was subject matter of the decisions rendered by the Hon'ble High Court of MUMBAI and ITAT Pune in the Case of the Assessee mentioned above. It was replied that this was not.

ii. Regarding eligibility u/s 36(1)(viii) no specific enquiry was made by the AO as could be seen from the various questionnaires issued during the Assessment proceedings.

In the Annexure to the 142(1) notice at Sl no 11, the AO only asked about working of the Deduction on account of Long term infrastructure finance. In the letter dated 18.11.19, at para 11, the assessee stated that being a NBFC inter-alia is engaged in providing Long term finance for Infrastructure Purposes and hence is entitled for deduction u/s 36(1)(viii). Neither the assessee mentioned under what clause it is entitled or what kind of Long term Infrastructure finance is being provided by it nor did the AO verify, inquire in to and examine the claim.

Hence, on the basis of the above, the only irresistible conclusion to be reached is that the plea of the Assessee that the AO has already examined the issues and arrived at a decision on the Two issues mentioned in the Show cause notice is not evident from the record.

The Assessing Officer has not raised any query on the Issues during the

Assessment proceedings and has not done the Assessment as per the Provisions of the Act, in so far as he did not apply the provisions of Section 145 correctly. Hence, Assessment order dated 27.12.2019 is erroneous and prejudicial to the Interest of revenue.

b. Decision in the Case of Vasisth Chay Vyapar has settled the Issue:

The Decision of Delhi High court in the Case of Vasisth Chay Vyapar was for Assessment Years prior to introduction of ICDS . Hence, the taxability of Interest on NPA as mandated by ICDS IV cannot be considered to have been decided by this decision.

c. Revision cannot be invoked by Change of Opinion:

As demonstrated above, the Assessing Officer has

i. Deviated from the Income Recognition method given by the ICDS IV brought in by the Income Tax Act,1961 to be effective from Y 17-18.

ii. Has not caused any verification about the eligibility of the Assessee under Section 36(1)(viii).

Hence, any view taken by him on these issues in the Assessment order is one which is unsustainable in the eyes of law and cannot be considered to be a legally valid opinion. Applying the Correct provisions of the Act cannot be considered as change of opinion.

In view of the above, the contentions raised by the Assessee about the assumption of jurisdiction u/s 263 are not tenable.

All the Case law Cited by the Assessee do not come to its rescue in view of the above.

5. Issues raised in the Revision Proceedings:

Having dealt with the Objections of the Assessee Company to the Revision Proceedings, now the Issues in the Revision are discussed.

5.1. Income from NPA to be Assessed on Accrual Basis:

5.1.1. Section 145 of the I T Act,1961 deals with the Method of Accounting and in the Sub section 2 provides for Income Computation and Disclosure Standards to be notified.

Method of accounting.

145. (1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2) The Central Government may notify in the Official Gazette from time to time income computation and disclosure standards to be followed by any class of assessees or in respect of any class of income.

(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in section 144.

5.1.2. As per Provisions of Section 145(2), the CBDT notified the Income computation and Disclosure standards (ICDS)for the purpose of computation of income chargeable to income Tax under the head "Profits and Gains of Business or Profession" or "Income from other SourcesVide Notification No 87/2016 dated 29.09.2016. This notification is applicable for A.Y 2017-18 and subsequent assessment years. The same is reproduced below.

NOTIFICATION

New Delhi, the 29th September, 2016

S.O. 3079 (E) In exercise of the powers conferred by sub-section (2) of section 145 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the income computation and disclosure standards as specified in the Annexure to this notification to be followed by all assessees (other than an individual or a Hindu undivided family who is not required to get his accounts of the previous year audited in accordance with the provisions of section 44AB of the said Act) following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head "Profits and gains of business or profession" or

"Income from other sources".

2. This notification shall apply to the assessment year 2017-18 and subsequent assessment years.

.3 ICDS –IV deals with revenue recognition.

Income Computation and Disclosure Standard IV relating to revenue recognition

Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purpose of maintenance of books of accounts. In the case of conflict between the provisions of the Income-tax Act, 1961 ('the Act') and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

Scope

1(1) This Income Computation and Disclosure Standard deals with the bases for recognition of revenue arising in the course of the ordinary activities of a person from

(i) the sale of goods;

(ii) the rendering of services;

(iii) the use by others of the person's resources yielding interest, royalties or dividends.

1(2) This Income Computation and Disclosure Standard does not deal with the aspects of revenue recognition which are dealt with by other Income Computation and Disclosure Standards.

Definitions

2(1) The following term is used in this Income Computation and Disclosure Standard with the meanings specified:

(a) ***"Revenue"*** *is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of a person from the sale of goods, from the rendering of services, or*

from the use by others of the person's resources yielding interest, royalties or dividends. In an agency relationship, the revenue is the amount of commission and not the gross inflow of cash, receivables or other consideration.

2(2) Words and expressions used and not defined in this Income Computation and Disclosure Standard but defined in the Act shall have the meanings assigned to them in that Act.

Sale of Goods

3. In a transaction involving the sale of goods, the revenue shall be recognised when the seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer and the seller retains no effective control of the goods transferred to a degree usually associated with ownership. In a situation, where transfer of property in goods does not coincide with the transfer of significant risks and rewards of ownership, revenue in such a situation shall be recognised at the time of transfer of significant risks and rewards of ownership to the buyer.

4. Revenue shall be recognised when there is reasonable certainty of its ultimate collection.

5. Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim for escalation of price and export incentives, revenue recognition in respect of such claim shall be postponed to the extent of uncertainty involved.

Rendering of Services

6. Subject to Para 7, revenue from service transactions shall be recognised by the percentage completion method. Under this method, revenue from service transactions is matched with the service transaction costs incurred in reaching the stage of completion, resulting in the determination of revenue, expenses and profit which can be attributed to the proportion of work completed. Income Computation and Disclosure Standard on construction contract also requires the recognition of revenue on this basis. The requirements of that Standard shall mutatis mutandis apply to the recognition of revenue and the associated expenses for a service transaction. However, when services are provided by an

indeterminate number of acts over a specific period of time, revenue may be recognised on a straight line basis over the specific period.

7. Revenue from service contracts with duration of not more than ninety days may be recognised when the rendering of services under that contract is completed or substantially completed.

The Use of Resources by Others Yielding Interest, Royalties or Dividends

8. (1) Subject to sub paragraph (2), interest shall accrue on the time basis determined by the amount outstanding and the rate applicable.

(2) Interest on refund of any tax, duty or cess shall be deemed to be the income of the previous year in which such interest is received.

(3) Discount or premium on debt securities held is treated as though it were accruing over the period to maturity.

9. Royalties shall accrue in accordance with the terms of the relevant agreement and shall be recognised on that basis unless, having regard to the substance of the transaction, it is more appropriate to recognise revenue on some other systematic and rational basis.

10. Dividends are recognised in accordance with the provisions of the Act.

The Relevant part is the para 8(1) of the above ICDS. In that it is specified that the interest income is to be recognized on accrual basis.

5.1.4. In the submission made dated 18.11.2019, the assessee mentioned that it has not recognized the "interest On NPA" amounting to Rs 41,86,00,000/- for the year on accrual basis and that it was recognizing the interest on NPAs only on receipt basis. . In view of the ICDS IV, the assessee was required to offer Interest on NPA on accrual basis which the assessee failed to do.

5.1.5. The CBDT vide Circular No. 10 of 2017 in answer to question no. 2 it has been clarified that

"The ICDS have been notified after due deliberations and after examining judicial views for bringing certainty on the issues covered by it. Certain judicial pronouncement were pronounced in absence of authoritative guidance on these

issues under the Act for computing income under the head Profit and Gains of Business and Profession or Income from Other Sources. Since certainty is now provided by notifying ICDS u/s 145(2), the provisions of ICDS shall be applicable to the transactional issues dealt therein in relation to AY 2017-18 at subsequent AY"

Thus, it is amply clear that the provisions of ICDS will prevail over the judicial precedents which were rendered prior to the introduction of ICDS.

5.1.6. The Assessee wanted to rely on the decision of the Hon'ble Delhi High Court in the Writ petition in the case of **Chamber of Tax Consultants Vs Union of India**to contend that the provisions of ICDS IV do not impact the settled position that interest income on NPAs is to be charged to tax only on realisation basis. From the reading of para 84 to 87 of the Hon'ble Delhi High Court order, it appears that the contention sought to be canvassed is not correct. The same is reproduced for clarity.

> **"84.** In ICDS-IV accrual of interest is dealt with as under:—
>
> "8. (1) Subject to sub-paragraph (2), interest shall accrue on the time basis determined by the amount outstanding and the rate applicable.
>
> (2) Interest on refund of any tax, duty or cess shall be deemed to be the income of the previous year in which such interest is received."
>
> **85.** This clause is applicable in myriad situations including for Banks, lenders, financial institutions, loan agreements etc., NBFCs are just one facet of business where this clause is applicable. This is challenged on the ground that non-performing assets of NBFCs would also become taxable on accrual basis even though such interest is not recoverable. The Respondent has clarified in Circular No. 10 of 2017 that such income has to be applied on accrual basis and deduction, if any, can be claimed only under Section 36 (1)(vii) of the Act. The Respondent further submits that this provision is in line with the recent amendments brought about by Finance Act, 2015 wherein a proviso was added to the following effect:
>
> "Section 36(1)- The deductions provided for in the following clauses shall be allowed in respect of matters dealt with therein, in computing the income referred to in section 28 –

(*vii*) subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year:

Provided that .....

Provided further that where the amount of such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof becomes irrecoverable or of an earlier previous year on the basis of income computation and disclosure standards notified under sub-section (2) of Section 145 without recording the same in the accounts, then, such debt or part thereof shall be allowed in the previous year in which such debt or part thereof becomes irrecoverable and it shall be deemed that such debt or part thereof has been written off as irrecoverable in the accounts for the purpose of this clause."

86. In its counter-affidavit the Respondent has clearly explained this aspect in the following manner:

"The Petitioners completely ignore the fact that this very provision of the ICDS have been given approval by the highest legislative body, i.e., the parliament by making an amendment to Section 36(1) (vii) of the Act with effect from 1.4.2016 by FA 2015. The Petitioners for furthering their point have erroneously mentioned that the Second Proviso to section 36(1) (vii) casts an additional burden on the Assessee prove that the debt is established to have become due. In fact, a provision which is for the benefit of the Assesses is being projected to be a provision which is against the interests of the Assessee.

The ICDS does not in any way wish to alter the well laid down principles of real income by the Hon'ble Supreme Court, but is actually ensuring that there is a trace available of the income which is foregone on this concept. Therefore, if there is an interest income which is not likely to be realised is written off by the assessee in the same very year immediately on its recognition (and even without passing through its books), then it would be first

recognised as revenue and then allowed as a deduction under S. 36(1)(vii) of the Act, including in the case of NBFCs. However, in this process, the tax department would have information about the income which is so written off and keep a track of the said sum then realised. Therefore, there is no enlargement of scope of income or any deviation from the principles laid down by the Hon'ble Supreme Court."

87. Since there is no challenge to Section 36(1) (vii), para 8 (1) ICDS-IV cannot be held to be *ultra vires* the Act. This is to create a mechanism of tracking unrecognized interest amounts for future taxability, if so accrued. In fact the practice of moving debts which the bank or NBFC considers irrecoverable to a suspense account is a practice which makes the organisations lose track of the same. The justification by the Respondent clearly demonstrates that this is a matter of a larger policy and has the backing of Parliament with the enactment of 36 (1) (vii). The reasoning given by the Respondent stands to logic. It has not been demonstrated by the Petitioner that para 8 (1) of ICDS IV is contrary to any judgment of the Supreme Court, or any otherCourt."

Hence, the Hon'ble Delhi HIgh Court has actually upheld the para 8(1) of ICDS I V.

5.1.7. In the light of this discussion, the assessee Company which is following mercantile system of Accounting is required to account for the Interest on NPAs on accrual basis. Not having done so and the Assessing officer not having passed the Assessment order in terms of the Provisions of the Income Tax Act,1961, the Assessment order dated 27.12.19 is rendered erroneous and prejudicial to the Interest of Revenue on this issue and needs to be set aside.

5.1.8. Coming to the Amount of Interest Income on NPA, in para 3.4 of the Written Submission mentioned as under

" , the amount of interest income on NPA as considered by Your Honours in the notice u/s 263 i.e. Rs. 6,866.96 lakhs is incorrect and the amount of interest income on NPA not recognized by the Assessee during AY 2017-18 is Rs. 4,186 lakhs, as was also submitted with the learned AO during the course of assessment proceedings."

However, as per Schedule 11 to the Balance Sheet, the amount moved to NPA

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during the year is 75983 Lakhs. The Interest accrued is calculated on this basis. The Assessing Officer may examine the issue of Quantum of NPA and the Rate of Interest to be adopted to determine the accrued interest to be considered on NPAs as per ICDS IV.

5. We find from a perusal of the case file that the instant sole issue of taxability of assessee's interest income regarding it's NPAs advances on accrual basis is no more *res integra* since the matter appears to have travelled up to hon'ble jurisdictional high court. Learned senior counsel invited our attention to pages 171 to 226 in assessee's paper book *inter alia* comprising of hon'ble jurisdictional high court's decision in it's case dated 02.04.2019 for assessment years 2009-2010 and 2011-12, and the tribunal's common orders dated 30.06.2014 in assessment years 2007-2008 and 2008-2009, dated 09.12.2022 in assessment years 2012-2013 and 2013-2014 and dated 23.12.2022 in assessment year 2014-15; respectively, wherein the Revenue's identical stand has been rejected. We deem it appropriate at this stage to reproduce the detailed discussion in our last order dated 23.12.2022 taking note of the instant issue as under :

> *"7. This leaves us with the Revenue's cross-appeal ITA.No.1722/PUN./2018 raising its sole substantive grievance of disallowance of interest income on Non Performing Assets (NPAs) on accrual basis involving*

Rs.9,29,57,036/-. It emerges during the course of hearing that the same is also no more res integra in light of hon'ble jurisdictional high court's recent common order involving assessment years 2009-10 to 2011-12 in assessee's case(s) itself dated 02-04-2019 declining the Revenue's Income Tax Appeal Nos.237 and 485/2017 as follows :

"2. The appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short) raising following questions for our consideration:-

> *"(i) Whether on the facts and circumstances of the case and in law, the Tribunal was correct in disregarding the judgment of the Hon'ble Supreme Court given in the case of Southern Technologies Ltd Vs. JCIT 320 ITR 577 (SC) which says that provisions of RBI Act cannot override the provision of Section 145 of the Income Tax Act, 1961, since both the Acts operate in different fields and therefore, assessee cannot recognize interest income on NPA and yet not offer it in Profit and Loss account?*
>
> *(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in deleting the disallowance of Rs.71,13,261/- made by AO u/s. 14A r/w Rule 8D after treating the disallowance of Rs.57,600/- offered by assessee as insufficient on the ground that the AO has not recorded the error in the offer of the assessee before invoking Rule 8D, without any such explicit requirement of law?"*

3. Question No. (i) arose in following background:-

3.1 Respondent assessee is a Non Banking Finance Company ("NBFC" for short). Respondent filed return of income for the assessment year 2009-10 in which the assessee had claimed deduction of interest on advances which had become non performing assets ("NPA" for short). The Assessing Officer disallowed the claim relying on such disallowance for the earlier assessment years which were on the ground that the assessee which was following the mercantile system of banking had to pay tax on interest on accrual basis.

3.2 The issue eventually reached the Tribunal. The Tribunal, by the impugned judgment, allowed the assessee's claim, upon which, the Revenue has filed this appeal.

4. Learned counsel for the Revenue submitted that the assessee had to offer the interest income to tax on accrual basis. The special provision for taxing interest income on NPAs on the basis of receipt has been made under Section 43D of the Income Tax Act, 1961 ("the Act" for short) which does not apply to NBFC. By necessary implication, therefore, the legislature desired that such benefit would be restricted only to such of the entities as are referred to in Section 43D of the Act.

5. On the other hand, learned counsel for the assessee brought to our notice several judgments of the different High Courts holding that on the principle of real income theory, interest on NPAs cannot be charged on accrual basis.

6. Gujarat High Court in case of Principal CIT Vs. Mahila Sewa Sahakari Bank Ltd. had held that in case of a co-operative bank, the interest on NPAs would not be chargeable to tax on mere accrual. The Court referred to and relied upon the decision of the Supreme Court in the case of Southern Technologies Ltd vs. Joint CIT. We may note that the decision concerns the assessment year 2010-11 when a co-operative bank was not included under Section 43D of the Act which was inserted by Finance Act, 2017 w.e.f 1.4.2018.

7. In case of CIT Vs. Deogiri Nagari Sahakari Bank Ltd & Ors., this Court had expressed a similar view. We may further clarify that in the said case, the Court was concerned with a similar claim raised by the co-operative bank and the Court did record that the assessee was a co-operative bank and not NBFC. However, this distinction may not have much significance now in view of the fact that this Court in case of CIT Vs. M/s. KEC Holdings Ltd (Income Tax Appeal No. 221 of 2012 decided on 11.6.2014) held and observed as under:-

> *"8. The assessee had credited only an amount of Rs.38,57,933/- as interest on loans. The Assessing Officer was of the view that the interest accrued on the entire loans should have been shown as income. The details as to how the interest income on accrual basis should have been disclosed are, therefore, referred to by the Tribunal. The Tribunal held that the said income was not realized. It held that the assessee follows the mercantile system of accounting. The Tribunal held that the loan advanced by the assessee which was in NBFC had become*

non-performing asset. That is how following judgments rendered by the Hon'ble Supreme Court and the Delhi High Court, the Tribunal has eventually held that once there is no dispute that the interest considered as accrued was a non-performing asset as per Reserve Bank of India guidelines, then, the income from this interest did not accrue to the assessee. It is in such circumstances, that this income in question was not and cannot be assessed on accrual basis.

9. We do not find that the Tribunal has either mis-directed itself in law or its order can be termed as perverse warranting interference in our appellate jurisdiction. We find that the view taken by the Tribunal accords with the Reserve Bank of India guidelines and which are not in any way in conflict with the Income Tax Act, 1961, the Hon'ble Supreme Court has held in the case of UCO Bank that the interest income would have been brought to the Profit and Loss Account provided it was actually realized, that in case of Nationalized Bank it treated something which is doubtful, and therefore, kept it in a suspense account, was held to be a permissible exercise. In respect of the loans which are advanced, recovery of some of them if considered doubtful, then, even the interest on the loans advanced may not be realized. That is how the amount is not brought to the profit and loss account because they are not likely to be realized by the bank or a NBFC as well. It is permissible therefore to disclose or to show them as income in assessment year in which either the interest amount or part of it is recovered. The

Tribunal in this case, namely, of the assessee before us, has precisely followed this course. We do not find that the course permitted and upheld by the Tribunal is in any way in conflict with any legal provisions or the settled principles. Rather as held by us, it is in accordance with the same. Once the view taken by the Tribunal was possible and in the given facts and circumstances the income has not been realized by the assessee, the addition was rightly deleted. We, therefore, do not find that the appeal raises any substantial question of law. It is accordingly dismissed. No costs."

8. Delhi High Court in case of CIT Vs. Vasisth Chay Vyapar Ltd held that interest on NPAs cannot be taxed on accrual basis. It was noted that NBFC would be governed by the directions issued by the Reserve Bank of India and RBI directives provided that under certain circumstances, a loan or advance would be treated as NPA. The Court on the real income theory held that such interest would not be taxable. We notice that the decision of the Delhi High Court in case of Vasisth Chay Vyapar Ltd (supra) was carried in the appeal by the Revenue before the Supreme Court. The Supreme Court in the judgment reported in [2018] 253 Taxman 401 (SC) approved the decision of the High Court and dismissed the appeal. Under these circumstances, this question is not entertained."

8. Learned DR could hardly pinpoint any distinction on facts or law, as the case may be, in the assessment year under consideration. Faced with this situation, we adopt judicial consistency to affirm the CIT(A)'s detailed discussion

relating to the impugned sole disallowance of accrued interest income on NPAs. Ordered accordingly. This Revenue's cross appeal ITA No.1722/PUN./2018 fails therefore."

6. Learned DR is fair enough in not disputing all the foregoing intervening developments. He has strongly supported the PCIT's above extracted revision directions on two counts i.e., the Assessing Officer had failed to carry-out detailed enquiries for the purpose of assessing the assessee's interest income on NPAs on accrual basis in light of the recently introduced Income Computation and Disclosure Standards [in short "ICDS"] applicable from the impugned assessment year onwards. He quoted sec.263 Explanation-2 (a) and (b) inserted in the Act vide Finance Act 2015 w.e.f. 01.06.2015 that the Assessing Officer's impugned failure indeed attracts the prescribed authority(ies)' exercise of sec.263 revision jurisdiction as are the facts in the instant case. He placed strong reliance on Malabar Industrial Co. Ltd. vs. CIT [2000] 243 ITR 83 (SC) and PCIT vs. Paville Projects Pvt. Ltd. [2023] 149 taxmann.com 115 (SC) that the PCIT has rightly invoked sec.263 revision jurisdiction in the facts and circumstances of the case.

7. Mr. Koteswara Rao further quoted the applicability of "ICDS" i.e., Income Computation and Disclosure Standards from the impugned assessment year onwards that the Assessing Officer had admittedly not examined the taxability of assessee's interest income on NPAs advances on accrual basis not only in light thereof as well as going by CBDT's circular no.10/2017 dated 23.03.2017.

8. We have given our thoughtful consideration to the vehement rival stands and find no merit in the Revenue's arguments. We first of all note from a perusal of the case file with the able assistance coming from the assessee's side represented by the learned senior counsel that the Assessing Officer had indeed issued his sec.143(2) notice dated 27.09.2019 as well as sec.142(1) notice dated 11.11.2019 specifically raising the issue of Income Computation and Disclosure Standards "ICDS" compliance. The assessee had duly replied the same highlighting the fact before the Assessing Officer that the interest income regarding the impugned NPA advances amounting to Rs.41,86,00,000/- could neither be assessed on accrual principle nor as per the recently introduced "ICDS". All these show cause notices as well as the assessee's response(s) duly form part of the case record before us. This certainly is not a case of "no enquiry" during scrutiny therefore. This is indeed coupled with the

clinching fact that a perusal of Income Computation and Disclosure Standards "ICDS No.IV" dealing with "Revenue Recognition" itself makes it clear that *"In case of conflict between the provisions of Income tax Act, 1961 [in short the "Act"] and this Income Computation and Disclosure Standards "ICDS"; the provisions of the Act shall prevail to that extent."* Learned DR could hardly dispute that all these standards uniformly contain this uniform clause thereby paving way for applicability of the provisions of the Act wherein the assessee has already succeeded on the instant issue of accrual of interest on NPAs right up to hon'ble jurisdictional high court having attained finality (supra). That being the case, we hold that the CBDT's circular issued in tune with the foregoing Income Computation and Disclosure Standards "ICDS" also would not apply once the assessee is not required to recognize its accrued interest on NPAs as income on accrual basis. Faced with the situation, we conclude that the PCIT has erred in law and on facts in terming the Assessing Officer's sec.143(3) regular assessment dated 27.12.2019 as an erroneous one causing prejudice to interest of the Revenue. Ordered accordingly.

8.1. We make it clear before parting that both the learned representatives had thrown sufficient light on the issue of applicability of sec.145(2) of the Act as well as The

Chamber of Tax Consultants & Anr. vs., Union of India & Ors. [2018] 400 ITR 178 (Del.). We find that once the foregoing exclusion clause in the Income Computation and Disclosure Standards "ICDS" itself is clear enough yielding the space in favour of the provisions of the Act having overriding effect, there is hardly much a need for us to deal with the same at this stage.

9. This assessee's appeal is allowed in above terms.

Order pronounced in the Open Court on 15.05.2023.

Sd/-	**Sd/-**
(G.D. PADMAHSHALI)	**(SATBEER SINGH GODARA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Pune, Dated 15th May, 2023

VBP/-

Copy of the Order is forwarded to:

1. The Appellant;
2. The Respondent;
3. The PCIT, Pune-3, 3rd Floor, Income Tax Office, PMT Bldg., Shankar Seth Road, Swargate, Pune – 411 037. Maharashtra.
4. The Addl.CIT, Range-8, Circle-8, Pune
5. The DR 'A', ITAT, Pune
6. Guard File

BY ORDER,

Senior Private Secretary : ITAT Pune Benches : Pune