
(2016) 06 KAR CK 0166

In the Karnataka High Court

Case No : I. T. A. Nos. 200002 of 2015, 200004 and 200005, 200006, 200007 and 200008 of 2014.

Commissioner of Income-Tax and another - Appellants @HASH Siddeshwar

Date of Decision : 22-06-2016

Acts Referred:

Income Tax Act, 1961 — Section 194A

Citation : (2016) 388 ITR 588 : (2016) 3 KCCR 309

Hon'ble Judges : Anand Byrareddy and L. Narayana Swamy, JJ.

Bench : Division Bench

Advocate : Ameet Kumar Deshpande and Y. V. Raviraj, Advocates, for the Appellants; C. Venkatesh for A. Shankar, Advocates, for the Respondents

Final Decision : Disposed Off

Judgement

Anand Byrareddy, J. - These appeals are heard and disposed of together.

2. There is one substantial question of law which is common in all the appeals namely :-

"Whether the interest paid to members of a co-operative bank above Rs. 10,000 should be added to tax or not?"

The point is squarely covered by a Division Bench judgment of this court in I. T. A. No. 100116 of 2014 between the CIT v. Bagalkot District Central Co-operative Bank, dated December 16, 2015 wherein, with reference to a circular of the Government of India bearing No. 19 of 2015 in F. No. 142/ 14/2015 TPL, it has been held as follows (see (2015) 379 ITR (St.) 19, 81) :

"42.5 In view of this, the provisions of the section 194A(3)(v) of the Income-tax Act have been amended so as to expressly provide that the exemption provided from deduction of tax from payment of interest to members by a co-operative society"under section 194A(3)(v) of the Income-tax Act shall not apply to the payment of interest on time deposits by the co-operative banks to its members. As this amendment is effective from the prospective date of June 1, 2015, the

cooperative bank shall be required to deduct tax from the payment of interest on time deposits of its members, on or after June 1, 2015. Hence, a co-operative bank was not required to deduct tax from the payment of interest on time deposits of its members paid or credited before June 1, 2015."

In view of the above circular, the said substantial question of law does not survive for consideration.

3. The further substantial question of law that arises for consideration in I.T. A. No. 200002 of 2015 and I. T. A. No. 200004 of 2014 is,

"Whether the gratuity payable to its employees is available for deduction?"

The Tribunal having held that it is so deductible, is sought to be questioned in the light of section 36(1)(v) of the Income-tax Act, 1961. However, even this has been answered by a Division Bench judgment of this court as early as in the case of Chief Commissioner (Admn) v. Karnataka Electricity Board (1992) 197 ITR 48 (Kam) wherein it was held that the mere fact that the contribution would not come within the ambit of the provisions of section 36(1)(iv) would not disentitle the assessee to claim the benefit under section 37(1) if the requirements thereunder were satisfied. Reference in the said judgment is also made to CIT v. Eastern Spinning Mills Ltd. (1980) 126 ITR 686 (Cal), a decision of the Calcutta High Court, wherein in pursuance of a statutory requirement under the West Bengal Employees' Payment of Compulsory Gratuity Act, 1971, a special liability was incurred by the assessee and the provision made to meet this liability was claimed as a deduction under section 37, and reasonable amount was allowed as a deduction by the Income-tax Officer. The High Court held that a prudent estimate of the liability was entitled to deduction under section 37; the contention that gratuity is a subject covered by section 36(1) and hence deduction could be claimed only on satisfying its provisions, was not accepted.

Similar was the view of the Gujarat High Court in CIT v. Chhotabhai Jethabhai Patel Tobacco Products Co. Ltd. (1981) 128 ITR 702 (Guj).

4. The learned counsel for the respondent would submit that notwithstanding that such deduction was permissible only in respect of an approved gratuity fund as laid down in section 36(1)(v), by the provision under section 40A sub-section (7) clause (a), it was permissible for the deduction to be made even in respect of gratuity fund, which is not an approved fund. If the provision was made, it would be sufficient to make a deduction.

However, the learned counsel for the Revenue would point out that the said sub-section has been substituted with effect from April 1, 2000 and therefore, even merely making a provision for payment of gratuity would not entitle the assessee to make a deduction.

The counsel for the assessee would be quick to point out that even if it is not permissible to make a deduction, in such an event, on making payment as provided under section 43B(b), it would be permissible if the actual payment is

made and these sections are mutually exclusive and therefore, the Karnataka Electricity Board case (supra) is no longer relevant, by virtue of the amendment to section 40A(7). Under section 43B, the assessee had not merely made a provision but payment was actually made and therefore, was entitled to deduction, would also answer this question as to whether the payment made towards a gratuity fund could be deducted.

5. One other substantial question of law framed is :

"Whether interest receivable from non-performing assets, bad and doubtful debts though the actual expression used is interest payable and not reflected in the profit and loss account, could be deducted?"

In this regard, the learned counsel for the assessee has produced a judgment of this court in CIT v. Canfin Homes Ltd. (2012) 347 ITR 382 (Kam) with reference to non-performing assets. The Division Bench of this court has held as follows (page 387) :

"Therefore, it is clear, if an assessee adopts the mercantile system of accounting and in his accounts he shows a particular income as accruing, whether that amount is really accrued or not is liable to bring the said income to tax. His accounts should reflect true and correct statement of affairs. Merely because the said amount accrued was not realised immediately cannot be a ground to avoid payment of tax. But, if in his account it is clearly stated though a particular income is due to him but it is not possible to recover the same, then it cannot be said to have been accrued and the said amount cannot be brought to tax. In the instant case, we are concerned with a non-performing asset. As the definition of non-performing asset shows an asset becomes non-performing when it ceases to yield income. Non-performing asset is an asset in respect of which interest has remained unpaid and has become past due. Once a particular asset is shown to be a non-performing asset, then the assumption is-it is not yielding any revenue. When it is not yielding any revenue, the question of showing that revenue and paying tax would not arise. As is clear from the policy guidelines issued by the National Housing Bank, the income from non-performing asset should be recognised only when it is actually received. That is what the Tribunal held in the instant case. Therefore, the contention of the Revenue that in respect of non-performing assets even though it does not yield any income as the assessee has adopted a mercantile system of accounting he has to pay tax on the revenue which has accrued notionally is without any basis. In that view of the matter, the second substantial question framed is answered against the Revenue and in favour of the assessee."

At this, the learned counsel for the Revenue would submit that the decision only refers to non-performing assets and it is not evident that nonperforming assets would also cover other classification of loans and advances. In this regard, the learned counsel for the assessee would point out that non-performing assets would include the other categories of substandard assets, doubtful assets, loss

assets, etc., all of which would come within the purview of non-performing assets. In this regard, he would draw attention to the prudential norms for income recognition, asset classification and provisioning pertaining to advances.

Volume I of "Tanna's Banking Law and Practise in India", has extracted these prudential norms in line with the international practices and as per the recommendations of the Narasimham Committee on the financial system, the Reserve Bank of India has introduced, in a phased manner, prudential norms for income recognition, asset classification and provisioning for the advances portfolio of the banks so as to move towards greater consistency and transparency in the published accounts.

The definition of non-performing assets is as follows :

"1. Non-performing assets :

An asset, including a leased asset, becomes non-performing when it ceases to generate income for the bank.

A "non-performing asset" (NPA) is a loan or an advance where :

(i) the interest and/or instalment of principal remain overdue for a period of more than 90 days in respect of a term loan ;

(ii) the account remains "out of order" for a period of more than 90 days as indicated below, in respect of an overdraft/cash credit (OD/ CC);

(iii) the bill remains overdue for a period of more than 90 days in the case of bills purchased and discounted;

(iv) the instalment of principal or interest thereon remains overdue for two crop seasons for short duration crops;

(v) the instalment of principal or interest thereon remains overdue for one crop seasons for long duration crops.

Banks should, classify an account as non-performing asset (NPA) only if the interest charged during any quarter is not serviced fully within 90 days from the end of the quarter."

Further, asset classification which is separately dealt with reference to categories of non-performing assets, as follows :

"Banks are required to classify non-performing assets further into the following three categories based on the period for which the asset has remained non-performing and the realisability of the dues :

(a) Sub-standard assets

(b) Doubtful assets

(c) Loss assets."

Therefore, it is evident that the mere nomenclature adopted with reference to the bad loans and advances receivable, would refer to all non-performing assets of any nature, of whatever category" it was placed as a non performing asset and therefore, the decision of this court in Canfin Homes would squarely apply. Accordingly, the above question of law also stands answered. Accordingly, the appeals stand disposed of.