IN THE INCOME TAX APPELLATE TRIBUNAL
"C"BENCH: BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENTAND
SHRI B.R. BASKARAN, ACCOUTANT MEMBER

ITA No.2120/Bang/2018
AssessmentYear: 2012-13

M/s. The Chitradurga District Co-Op. Central Bank Ltd. DC Office Circle Chitradurga-577 501 **PAN NO :AAALC0069M**	**Vs.**	DCIT Circle-2(1) Davangere
APPELLANT		**RESPONDENT**

ITA No.1937/Bang/2018
Assessment Year: 2012-13

DCIT Circle-2(1) Davangere	**Vs.**	M/s. The Chitradurga District Co-Op. Central Bank Ltd. DC Office Circle Chitradurga-577 501
APPELLANT		**RESPONDENT**

Appellant by	**:**	Shri Suresh Muthukrishnan, A.R.
Respondent by	**:**	Smt. R. Premi, D.R.

Date of Hearing	**:**	28.09.2020
Date of Pronouncement	**:**	29.09.2020

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

These cross appeals are directed against the order dated 8.3.2018 passed by Ld. CIT(A) Davangere and they relate to the assessment year 2012-13.

2. The revenue is in appeal assailing the decision of Ld. CIT(A) in deleting the addition made in respect of interest income accrued on non-performing the assets.

3. The assessee is in appeal assailing the decision of Ld. CIT(A) in sustaining additions relating to interest income accrued on standard assets, disallowance made u/s 40(a)(ia) of the Act and disallowance made u/s 37(2B) of the Act.

4. The facts relating to the case are stated in brief. The assessee is a co-operative bank carrying on banking business. The A.O. noticed that the assessee is following hybrid system of accounting, viz., cash system for accounting interest income on loans given by it and mercantile system for all other items. In view of the same, the assessee did not account for interest accrued on standard asset and non-performing assets.

5. The A.O. noticed that the provisions of section 145 of the Act mandates that the income chargeable under the head "Profits & Gains" on itself or profession shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Accordingly, he took the view that the interest income accrued on standard assets and non-performing assets should be assessed in the hands of the assessee on accrual basis. The interest accrued on standard assets which was not accounted as income by the assessee worked out to Rs.260.03 lakhs. Similarly, the interest accrued on non-performing asset but not accounted as income worked out to Rs.260.53 lakhs. The A.O. assessed both the amount referred above as income of the assessee.

6. The A.O. also noticed the assessee has paid interest of deposits made by the non-members. However, it did not deduct TDS on the interest so paid u/s 194A of the Act. Accordingly, the A.O. disallowed a sum of Rs.67.47 lakhs u/s 40(a)(ia) of the Act. The A.O. also noticed that the assessee incurred advertisement expenses for inserting an advertisement in a Souvenir. The A.O. held that the amount of Rs.75,500/- incurred on the above said advertisement is not allowable has deduction u/s 37(2B) of the Act. Accordingly, he disallowed the same.

7. In the appellate proceedings, the Ld. CIT(A) noticed that Hon'ble High Court of Karnataka has held in the case of CIT Vs. Canfin Homes Ltd. 347 ITR 382 that the interest from non-performing assets is not assessable as income. Following the same, the Ld. CIT(A) deleted the addition of interest income relating to NPA assets. The Ld. CIT(A), however, confirmed that the addition of interest income accrued on standard assets disallowance made u/s 40(a)(ia) of the Act and u/s 37(2B) of the Act.

8. Aggrieved, both the parties are in appeal before us challenging the decision rendered by Ld. CIT(A) against each of them.

9. We shall first take up the appeal filed by the revenue. The Ld. A.R. submitted that the A.O. had made identical addition in respect of income accrued on non-performing assets in assessment years 2009-10 and 2010-11 also. The coordinate bench of ITAT, vide its order dated 28-09-2017 passed in ITA nos.1522 & 1523/Bang/2016 has held that interest income on non-performing assets is not assessable as income of the assessee. In this regard, the coordinate bench has followed the decision rendered by the

jurisdictional High Court in the case of Canfin Homes Ltd. (supra) and also in the case of Siddeshwar Co-operative Bank Ltd. reported in 388 ITR 588.

10. On the contrary, the Ld. D.R. supported the order passed by the A.O.

11. We heard the parties on this issue and perused the record. We notice that the issue relating to addition of interest income accrued on non-performing assets has been considered by the coordinate bench in the assessee's own case in assessment year 2009-10 & 2010-11 and it was decided in favour of the assessee. For the sake of convenience, we extract below the operative portion of the order passed by the coordinate bench in assessment years 2009-10 & 2010-11.

> 5. We have heard the learned Departmental Representative as well as learned Authoised Representative and considered the relevant material on record. At the outset, we note that this issue is covered by the Hon'ble jurisdictional High Court in the case of CIT Vs. Canfin Homes (supra) however, the CIT (Appeals) has bifurcated NPAs by classifying the some of the NPAs as highly sticky loans and others are only sticky loans and allowed the claim of the assessee only in respect of highly sticky loan to the extent of Rs.25.87 lakhs accrued interest. Thus addition to the extent of Rs.27,32,000 was sustained by the CIT (Appeals). We are of the view that there is no basis for reclassification of NPAs into highly sticky and sticky loans once the assessee has treated the loan in the category of ITA No.1522, 1523,1548 & 1549/Bang/2016 NPAs as per the RBI Guidelines then the interest on these NPAs cannot be treated

as income of the assessee. We further note that for the Assessment Year 2010-11 the CIT (Appeals) allowed full claim of the assessee without any reclassification. The Hon'ble High Court reiterated its view in case of CIT Vs. Shri Siddeshwar Co-op Bank Ltd. (supra) in para 5 as under :

> 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?"
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> 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/[2011] 201 Taxman 273/13 taxmann.com 43 with reference to non-performing assets. The Division Bench of this Court has held as follows:
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> > "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 non-performing assets would also ITA No.1522, 1523,1548 & 1549/Bang/2016 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 'Tannan's Banking Law and Practice 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 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 Ltd.'s case (supra) would squarely apply. Accordingly, the above question of law also stands answered. Accordingly, the appeals stand disposed of.

Accordingly, in view of the binding precedent of the Hon'ble jurisdictional High Court in the case of Canfin Homes Ltd. (supra), we decide this issue in favour of the assessee and against the revenue. Ground Nos.2 to 4 of the revenue(supra) appeal are dismissed and Ground No.2 of the assessee's appeal is allowed.

12. We notice that the coordinate bench has followed the binding decision rendered by the Hon’ble Karnataka High Court in the case

of Canfin Homes Ltd. (supra) and Siddeshwar Co-operatie Bank Ltd. (supra). We have also noticed that the Ld. CIT(A) has followed the decision rendered by the Karnataka High Court in the case of Canfin Homes Ltd. (supra) in deciding this issue in favour of the assessee. Accordingly, we do not find any infirmity in the order passed by Ld. CIT(A) on this issue.

13. We shall now take up the appeal filed by the assessee. At the time of hearing, the Ld. A.R. submitted that the assessee has opted for settlement of the dispute under Vivad Se Vishwas Act, 2020 and has filed applications in Form 1 and 2. Accordingly he prayed that the assessee's appeal may be kept pending.

14. The Ld. D.R. submitted that the appeal of the assessee may be dismissed, since no purpose would be served in keeping the appeal pending as the assessee, in any way, required to withdraw the appeal.

15. We heard the parties and perused the record. Since the assessee has opted to settle the dispute under Direct Tax Vivad Se Vishwas Act, 2020, the assessee would be moving application for withdrawing the present appeal filed before the Tribunal in due course. Accordingly, we are of the view that no purpose will be served in keeping the appeal of the assessee pending. Accordingly, we dismiss the appeal of the assessee as withdrawn. The assessee seeks adjournment only for the reason that it has not received Form No.3, meaning thereby, the assessee wants to ensure that there is no difference in the tax amount payable by it. However, since we have dismissed the appeal of the assessee, it is given liberty to move appropriate application for recall of the present order in accordance with law, if the assessee intends to do so.

16. In the result, both the appeals are dismissed.

Order pronounced in the open court on 29th Sept, 2020.

Sd/-	**Sd/-**
(N.V. Vasudevan)	**(B.R. Baskaran)**
Vice President	**Accountant Member**

Bangalore,
Dated 29th Sept, 2020.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.