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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME-TAX)
ORIGINAL SIDE

ITAT/166/2022
IA NO. GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX, SILIGURI, KOLKATA
VS.
THE JALPAIGURI CENTRAL CO-OPERATIVE BANK LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : SEPTEMBER 29, 2022.

Appearance:
Mr. Prithu Dudhoria, Adv.
…for the appellant
Mr. Avra Mazumder, Adv.
Mr. Binayak Gupta, Adv.
…for respondent

GA/1/2022

The Court :- We have heard Mr. Prithu Dudhoria, learned standing Counsel for the appellant and Mr. Avra Mazumder, learned Advocate duly assisted by Mr. Binayak Gupta, learned Advocate for the respondent.

There is a delay of 1353 days in filing the appeal. We have perused the affidavit filed in support of the application and we find that sufficient cause has been shown by the revenue for not being able to prefer the appeal within the period of limitation.

Hence, the application is allowed and the delay in filing the appeal is condoned.

ITAT/166/2022

This appeal by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated June 22, 2018 passed by the Income Tax Appellate Tribunal "D" Bench, Kolkata in I.T.A. No. 327/Kol/2017.

The revenue has raised the following substantial question of law for consideration:-

"(i) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in holding that a provision for overdue interest is allowable as expenditure under Income Tax Act?"

We have heard Mr. Prithu Dudhoria, learned standing Counsel for the appellant and Mr. Avra Mazumder, learned Advocate duly assisted by Mr. Binayak Gupta, learned Advocate for the respondent.

The respondent/assessee is a Co-operative bank filed its return of income for the assessment year under consideration. The assessing officer completed the assessment under Section 143(3) of the Act by order dated 14th January, 2016 and the provision made by the assessee for overdue interest was disallowed and added back to the total income of the assessee.

Aggrieved by the same the assessee preferred the appeal before the *Commissioner of Income Tax, Appeals, Jalpaiguri [CIT(A)]* contending that the provision for overdue interest is made against portion of overdue interest included in interest earned, which is already considered for computation of tax, interest earned may also be noted by provision for overdue interest, reducing gross income for computation of tax, but that would not comply with the standard of accounting as per the guidelines issued by the Reserve Bank of India in exercise of the power under Section 45Q of the Reserve Bank of India Act, 1949. The assessee further contended that the guidelines issued by the Reserve Bank of India has an overriding power over the accounting norms prescribed under Section 145 of the Act and the same is also in consonance with accounting standard AS-9. Further the assessee stated that the same issue was also considered by the CIT(A) for financial year 2007-08, 2008-09, 2009-10, 2010-11 and the same was allowed and the disallowance made by the assessing officer was set aside.

The assessee placed reliance on the decision in the case of *CIT v. ANNAMALAI FINANCE LTD.* [(2005) 275 ITR 451 (Mad)]; *CIT v. ELGI FINANCE LTD* [293 ITR 357 (Mad)]; *CIT v. KICM INVESTMENTS (Cal)* [310 ITR 4]; *CIT v. SHOORJI VALLABHDAS & CO.* [46 ITR 144 (SC)].

The assessee also relied upon the decision of the Coordinate Bench of the Tribunal.

The CIT(A) taking note of the decision and also the decision of the Coordinate bench of the Tribunal as well as the fact that in the assessee's own case such disallowance made by the assessing officer for the earlier financial years was deleted by the CIT(A), and allowed the assessee's appeal.

Aggrieved by the same the revenue preferred appeal before the learned Tribunal. The learned Tribunal taking note of the various decisions and also the decision of the Coordinate Bench of the Tribunal dismissed the revenue's appeal and challenging the same the present appeal has been preferred and the legal issue which was decided by the Learned Tribunal has been settled in various decisions and at this juncture it would be beneficial to refer to the decision in the case of *PRINCIPAL COMMISSIONER OF INCOME TAX- 1, RAJKOT, v. KUTCH DISTRICT CENTRAL CO-OP. BANK LIMITED,* [2018] 94 TAXMANN.COM 298(GUJARAT) wherein it was held that interest on non performing assets is not taxable on accrual basis based on the guidelines issued by the Reserve Bank of India. The decision in *KUTCH DISTRICT CENTRAL COOPERATIVE BANK LIMITED* was affirmed by the Hon'ble Supreme Court in the decision reported in [2018]94 TAXMANN.COM 300 (SC).

Thus we find that the learned Tribunal has rightly dismissed the appeal filed by the revenue and such order does not call for any interference.

In the result the appeal is dismissed and the substantial question of law is decided against the revenue.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

Pkd/GH.