IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

Before Shri P.M.Jagtap, Accountant Member
and Dr. S.T.M. Pavalan, Judicial Member.

I.T.A. No.3479, 3480 & 661/Mum/2011.
Assessment Years : 2003-04, 2004-05&2005-06..

M/s SBI Commercial & International Bank Ltd., Maker Chamber III, Nariman Point, Mumbai – 400020. PAN AAACS 8249J	**Vs**.	The Income Tax Officer, Ward-2(2)(4), Mumbai.
Appellant.		**Respondent**.

Appellant by : Shri C. Naresh.
Respondent by : Shri Girija Dayal.

Date of hearing : 08-01-2013.
Date of pronouncement : 18-01-2013

O R D E R

Per P.M. Jagtap, A.M.

These three appeals filed by the assessee against three separate orders of learned CIT(Appeals)-15 dated 10-02-2011, 11-02-2011 and 11-11-2010 for assessment years 2003-04, 2004-05 and 2005-06 respectively involve some common issues and the same, therefore, have been heard together and are being disposed of by this single consolidated order for the sake of convenience.

2. First we shall take up the appeal of the assessee for assessment year 2003-04 being ITA No. 3479/Mum/2011, ground No. 1 of which involves the issue relating to addition of Rs.2,23,17,656/- made by the AO and confirmed by the learned CIT(Appeals) towards difference on account of broken period interest.

3. The assessee in the present case is a banking company which filed its return of income for assessment year 2003-04 on 01-10-2003 declaring total income at Nil. During the course of assessment proceedings, it was noticed by the AO that the assessee has deducted from the computation of its total income the interest accrued but not realized amounting to Rs.3,46,11,759/- to arrive at the figure of profits and gains of business. Since the assessee was following mercantile system of accounting, the AO required it to explain why this interest accrued on securities held as stock in trade should not be added to its total income. In reply, it was submitted on behalf of the assessee that the amount of interest accrued in question cannot be considered as its income at all for the year under consideration as the same becomes its income only on realization of interest by the holder of the securities from RBI. It was also submitted that the bank has been following this method since assessment year 1991-92 and there was, therefore, no loss of any revenue on this count. It was also contended as an alternative that the assessee bank, in any case, was eligible for deduction of broken period interest as per the decision of Hon'ble Bombay High Court in the case of American Express International Banking Corporation vs. CIT 177 CTR 442.

4. The submissions made by the assessee on this issue were not found acceptable by the AO for the following reasons :

> "i) When the Appellant purchases certain securities, it pays not only cost of securities but also the interest which has accrued on day to day basis from the last date of payment of interest to the date of purchase.
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> ii) When the Appellant sells the securities it receives not only sale value but also the broken period interest which has accrued on the securities till the date of sale. Thus, the interest not only accrues from day to day but the quantum of interest accruing is also known to the Appellant Bank to determine the amount of interest accrued till the date of transfer which is to be added to the cost of securities to be paid by the purchaser.

iii) These facts make it clear that as on 31.3.2003, the Appellant had a right to receive the entire accrued interest/discount on the securities held by it. The Appellant followed mercantile system of account, which recognizes the income accrued as per sec. 145 of the ITA. The basis of the mercantile system is that credit for interest is to be taken on day to day basis. The Supreme Court in the case of State bank of Travancore 110 ITR 336 has held that income is to be determined in accordance with the provisions of Act in consonance with the method of accounting followed by the Appellant.

iv) The Hon. Bombay High court in the case of Taparia Tools Ltd. v/s Jt. CIT has also held that method of account employed by the Appellant should be the basis adopted to compute the income."

5. For the reasons given above, the AO added the interest accrued but not realized amounting to Rs.3,46,11,759/- to the total income of the assessee and reduced the amount of Rs.5,69,29,415/- pertaining to assessment year 2002-03 thereby making a net addition of Rs.2,23,17,656/- to the total income of the assessee on account of interest accrued but not realized. The alternative contention of the assessee for allowing the broken period interest was also not accepted by the AO keeping in view that the decision of Hon'ble Bombya High Court in the case of American International Banking Corporation was not accepted by the Department and SLP was filed against the same before the Hon'ble Supreme court.

6. The addition made by the AO on account of interest accrued but not realized was disputed by the assessee in an appeal filed before the learned CIT(Appeals) and the following submissions were made on its behalf before the learned CIT(Appeals) in support of the case on this issue :

"The Appellant has been carrying on the banking business since inception and has been following the mercantile system of accounting. Following the decision of CIT(A)-XIII for AY 1991-92 vide his order dt. 31.5.1995 in a similar matter, the CIT held the correct method of accounting for the interest paid/received on securities. The Appellant has been following the directions ever since and accordingly, preparing the share trading /ac as per directions given by the CIT and the same had also been accepted by the

Department in subsequent assessments". Reliance was placed on the following judicial decisions:

i) CIT V/s South Indian Bank Ltd. 241 ITR 0374.

ii) CIT V/s American Express International Banking Corpn. 248 ITR 0601.

iii) CIT V/s CITI Bank 268 ITR 18.

7. The submissions made on behalf of the assessee on this issue as above were not found acceptable by the learned CIT(Appeals) and he confirmed the addition made by the AO on account of interest accrued but not realized for the following reasons given in paragraph No. 2.3 of his impugned order :

> " I have considered the assessment order and the submissions of the Appellant. As I note, similar issue came up for decision before my predecessor for AY 1997-98. For the reasons discussed in detail on page 4 at para 5 of his order dt. 7.7.2010 my predecessor had the occasion to confirm the addition and dismiss the appeal on this ground. I have considered this order and find that facts for the present year remain the same. As I note, the fact remains that the Appellant is following mercantile system of accounting and accordingly, the Appellant having the right to receive the income, there is absolutely no infirmity in the conclusion drawn by the Assessing Officer in the matter. In the instant case. When the Appellant sells the securities, it receives not only the sale value, but also the interest which has accrued on the securities till the date of sale, and thus, in this template, it is clear, the Appellant's right to receive the interest arises instantaneously with the sale. It is well established that in the environment of mercantile system of accounting, the income becomes taxable the moment a person's right to receive the income stands validated. This is the view of accrual which has also judicially evolved over the years. The decision of the Hon'ble Delhi High Court in the case Saraswati Insurance Company Limited Vs. CIT 252 ITR 430 records this proposition eloquently. In this decision, armed with the principles laid down by the Hon'ble Supreme Court in heir cases CIT Vs. K.R.M.T.T. thiagaraja Chetty & Co. 24 ITR 525 and Morvi Industries Ltd. Vs. CIT 82 ITR 835, the Hon'ble Court has held as under :
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> "Income accrues when it falls due, that is to say, when it becomes legally recoverable."

Similar view has been echoed by the Hon'ble Rajasthab High Court in the case S.M.S. Investment Corporation Pvt. Ltd. Vs. CIT 272 ITR 613. Premised on the foregoing, I find no reason to deviate from the decision of my predecessor for AR 1997-98. Further, the Appellant's alternative argument also is not acceptable in view of the decision of the Hon. Supreme Court in the case of Goetze (India) Ltd. vs CIT (2006) 284 ITR 323 in which the Hon. Supreme Court has held that a relief if omitted to be sought has to be claimed only by filing a revised return and that this requirement cannot be circumvented by claiming the relief in any other form. Tested on this, I find that there is no claim through a revised return in the matter. In the line with the foregoing, the addition is confirmed and the ground of appeal is dismissed."

8. The learned counsel for the assessee submitted that the interest in question on the concerned securities was payable only on respective due dates and, therefore, the same could be said to have accrued only on such due dates and not prior to that. He submitted that the assessee bank did not have the right to claim such interest before the due dates specified in the bonds and thus the said interest became the income only on the relevant due dates. He contended that the AO as well as the learned CIT(Appeals) have failed to appreciate that the assessee bank was having the right to receive the interest only on the due dates and on the purchase/sale of bonds, interest was paid/received from the purchaser/seller of securities and not from the issuer of the security. He contended that the right to receive interest from the issuer of securities thus accrued and became due only on the due dates and the same was chargeable to tax only on due dates. In support of this contention, he relied on the decision of Hon'ble Bombay High Court in the case of CIT vs. Bank of Rajastan 326 ITR 526, Mumbai Special Bench of ITAT in the case of DCIT vs. Bank of Bahrain and Kuwait 5 ITR (Trib) 301 and Hon'ble Madras High Court in the case of CIT vs. Tamilnadu Mercantile Bank Ltd. 291 ITR 137.

9. The learned DR, on the other hand, strongly relied on the orders of the authorities below in support of the Revenue's case on this issue.

10. We have heard the arguments of both the sides and also perused the relevant material on record. It is observed that this issue involved in ground No. 1 of the assessee's appeal is squarely covered in favour of the assessee, inter alia, by the decision of Hon'ble Bombay High Court in the case of CIT vs. Bank of Rajastan Ltd. (supra) wherein it was held while upholding the Tribunal's order in deleting the similar addition made on account of interest accrued but not realized on the Government securities that interest on Government securities could be said to accrue only when it becomes due and, therefore, there should not be a charge to such income until such time that it becomes due. The Special Bench of ITAT, Mumbai in the case of Bank of Bahrain and Kuwait (supra) has also taken a similar view holding that in the case of Government securities, interest accrues only on the coupon dates and not on day to day basis. Respectfully following the decision of Hon'ble jurisdictional High Court in the case of CIT vs. Bank of Rajastan Ltd. (supra) as well as that of Special of this Tribunal in the case of DCIT vs. Bank of Bahrain and Kuwait (supra), we hold that the interest in question on account of relevant Government securities can be brought to tax in the hands of the assessee only on the relevant due dates when it could be said to have accrued to the assessee. Accordingly, the addition made by the AO and confirmed by the learned CIT(Appeals) on this issue is deleted allowing ground No. 1 of the assessee's appeal.

11. The next issue involved in ground No.2 of the assessee's appeal relates to the determination of head of income under which interest on income-tax refund is chargeable to tax whether "income from other sources" or "profits and gains of business or profession".

12. We have heard the arguments of both the sides and also perused the relevant material on record. Although the learned counsel for the assessee has cited certain judicial pronouncements in support of the assessee's case that interest on income-tax refund constitutes business income of the assessee keeping in view the nature of its business being that of a banking company, it is observed that none of the said judicial pronouncements cited by the learned counsel for the assessee is directly on the issue under consideration. On the other hand, the decision of coordinate bench of this Tribunal in the case of M/s Laxmi Centre vs. ITO (ITA No. 3149/Mum/2009 dated 16th December, 2011) is directly on the issue wherein it was held that the source of such interest income being the income-tax refund arising from the income-tax proceedings, the same cannot be treated as business income of the assessee. It was held that this activity resulting into income-tax refund as well as interest payable thereon as per the provisions of section 244A of the Income-tax Act, 1961 cannot form part of business activity of the assessee and the same cannot even be treated as an activity incidental to the business of the assessee so as to say that such interest constitutes its business income. Respectfully following the said decision of coordinate bench of this Tribunal in the case of Laxmi Centre (supra), we uphold the impugned order of the learned CIT(Appeals) confirming the action of the AO in treating the interest on income-tax refund received by the assessee as income from other sources and not profits and gains of business or profession. Ground No.2 of the assessee's appeal is accordingly dismissed.

13. The next issue involved in ground No. 3 of the assessee's appeal relates to the determination of the head of income under which miscellaneous income earned by the assessee is chargeable to tax whether "income from other sources" or "profits & gains of business or profession".

14. We have heard the arguments of both the sides on this issue and also perused the relevant material on record. It is observed that the action of the AO in treating the miscellaneous income earned by the assessee as the income from other sources and not business income was upheld by the learned CIT(Appeals) observing that the said income had no link with any organized and regular business activity of the assessee. Before us, the learned counsel for the assessee has submitted that the miscellaneous income has arisen to the assessee from non banking assets held by it and since the said non banking assets were acquired by the assessee in the normal course of carrying on business of banking, income derived from the same constitutes its business income. He, however, has not furnished any details of the non banking assets claimed to be held by the assessee into normal course of carrying on its banking business. Even the orders of the AO and the learned CIT(Appeals) do not throw any light on this aspect. We, therefore, set aside the impugned order of the learned CIT(Appeals) on this issue and restore the matter to the file of the AO to decide the same afresh after ascertaining the exact nature of non banking assets claimed to be held by the assessee in the normal course of its banking business. Needless to say that the AO shall afford sufficient opportunity to the assessee of being heard. Ground No. 3 of the assessee's appeal is accordingly treated as allowed for statistical purposes.

15. The next issue raised by the assessee is relating to the addition made by the AO and confirmed by the learned CIT(Appeals) while computing its book profit u/s 115JB of the Act on account of the provision for doubtful debts.

16. We have heard the arguments of both the sides on this issue and also perused the relevant material on record. The learned counsel for the assessee at the outset, has relied on the decision of Mumbai G-Bench of ITAT in the case of Krung Thai Bank PCL vs. Joint Director of Income-tax (ITA No. 3390/Mum/2009 dated 30th

September, 2010) wherein it was held that the provisions of section 115JB could only come into play when the assessee was required to prepare its profit & loss account in accordance with the provisions of Part II and III of Schedule VI to the Companies Act and the starting point of computation of minimum alternate tax (MAT) u/s 115JB is the result shown by such profit & loss account. It was held that in the case of banking companies, the provisions of Schedule VI to the Companies Act, however, are not applicable in view of exemption set out under proviso to section 211(2) of the Companies Act and since the final accounts of the banking companies are required to be prepared in accordance with the provision of the Banking Regulation Act, the provisions of section 115JB cannot be applied to the case of a banking company. As the learned DR has not been able to cite any judicial pronouncement which is in favour of the Revenue on this issue, we respectfully follow the decision of coordinate bench of this Tribunal in the case of Krung Thai Bank PCL (supra) and hold that the provisions of section 115JB not being applicable in the case of the assessee being a banking company, the question of computation of book profit under the said provisions or making any addition for this purpose does not arise at all. The addition made by the AO and confirmed by the learned CIT(Appeals) on account of provision for doubtful debts while computing the book profit u/s 115JB, therefore, is deleted.

17. Now we shall take up the appeal of the assessee for assessment year 2004-05 being ITA No. 3480/Mum/2011, ground No. 1 of which involves the same issue as involved in ground No. 1 of the assessee's appeal for assessment year 2003-04 relating to addition of Rs.76,12,046/- made by the AO and confirmed by the learned CIT(Appeals) towards difference on account of broken period interest. As all the facts relating to this issue as involved in assessment year 2004-05 are similar to assessment year 2003-04, we follow our decision rendered in assessment

year 2003-04 and delete the addition made by the AO and confirmed by the learned CIT (Appeals) on this issue. Ground No. 1 is accordingly allowed.

18. The issue raised in ground No. 2 of the assessee's appeal for assessment year 2004-05 relating to the determination of head of income under which interest on income-tax refund is chargeable to tax is also similar to the issue involved in ground No. 2 of assessee's appeal for assessment year 2003-04 which has been decided by us in the foregoing portion of this order. Following our conclusion drawn in assessment year 2003-04 on this issue, we uphold the impugned order of the learned CIT(Appeals) on this issue confirming the action of the AO in treating the interest on income-tax refund received by the assessee as income from other sources and not profits and gains of business or profession. Ground No.2 of the assessee's appeal is accordingly dismissed.

19. The issue involved in ground No. 3 of the assessee's appeal relating to determination of head of income under which miscellaneous income is chargeable to tax is also similar to ground No. 3 of assessee's appeal for assessment year 2003-04 which has been decided by us in the foregoing portion of this order. Following our conclusion drawn in assessment year 2003-04 on this issue, we set aside the impugned order of the learned CIT(Appeals) on this issue and restore the matter to the file of the AO to decide the same afresh after ascertaining the exact nature of non banking assets claimed to be held by the assessee in the normal course of its banking business. Needless to say that the AO shall afford sufficient opportunity to the assessee of being heard. Ground No. 3 of the assessee's appeal accordingly treated as allowed for statistical purposes.

20. The next issue relating to additions made by the AO and confirmed by the learned CIT(Appeals) on account of provision for doubtful debts amounting to

Rs.15,12,85,840/- and provision for expenses amounting to Rs.35,34,886/- while computing the book profit of the assessee u/s 115JB of the Act is similar to the one involved in assessee's appeal for assessment year 2003-04. As held by us in assessment year 2003-04 following the decision of coordinate bench of this Tribunal in the case of Krung Thai Bank PCL vs. Joint Director of Income-tax (ITA No. 3390/Mum/2009 dated 30th September, 2010), the provisions of section 115JB cannot be applied in the case of the assessee being a banking company and there is thus no question of computation of book profit u/s 115JB or any addition to be made for this purpose. Following our decision rendered in assessment year 2003-04, we delete both the additions made by the AO and confirmed by the learned CIT(Appeals) in assessment year 2004-05 while computing the book profit and decide this issue in favour of the assessee.

21. Now we shall take the appeal of the assessee for assessment year 2005-06 being ITA No. 661/Mum/2011 which involves a solitary issue relating to addition of Rs.15,10,33,760/- and Rs.5,83,08,052/- made by the AO and confirmed by the learned CIT(Appeals) on account of provision for doubtful debts and provision for revaluation of investment respectively while computing the book profit u/s 115JB of the Act. In assessment years 2003-04 and 2004-05, we have already decided a similar issue following the decision of coordinate bench of this Tribunal in the case of Krung Thai Bank PCL vs. Joint Director of Income-tax (supra) holding that the provisions of section 115JB cannot be applied in the case of the assessee being a banking company and the question of computation of book profit u/s 115JB or making any addition for this purpose does not arise. Following our conclusion drawn in assessment years 2003-04 and 2004-05 on this issue, we delete both the additions made by the AO and confirmed by the learned CIT(Appeals) while computing the book profit u/s 115JB of the Act for assessment year 2005-06.

22. In the result, the appeals of the assessee for assessment years 2003-04 and 2004-05 are partly allowed while the appeal of the assessee for assessment year 2005-06 is allowed.

Order pronounced on this 18th day of January, 2013.

Sd/-	Sd/-
(Dr. S.T.M. Pavalan)	(P.M. Jagtap)
Judicial Member	Accountant Member

Mumbai,
Dated: 18th January, 2013.

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, E-Bench.

(True copy)

By Order

Asstt. Registrar,

ITAT, Mumbai Benches, Mumbai.

Wakode