

(2014) 06 CAL CK 0087

Calcutta High Court

Case No: I.T.A. No. 85 1999

C.I.T. WB-III Cal.

APPELLANT

Vs

United Bank of India

RESPONDENT

Date of Decision: June 20, 2014

Hon'ble Judges: Sudip Ahluwalia, J; G.C. Gupta, J

Bench: Division Bench

Advocate: P.K. Bhowmick, Advocate for the Appellant; Abhratosh Majumdar, Soumitra Mukherjee, Avra Majumdar and Soumitra Chowdhury, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The following question was framed when the appeal was admitted:

i) Whether the learned Tribunal committed any substantial error of law in holding that the assessee was entitled to follow hybrid system of accounting and that there was nothing wrong in accounting for sticky loans or cash basis since the recovery of even the principal amounts of these sticky loans was doubtful?

2. The revenue/appellant is interested in contending that the view taken by the learned Tribunal is contrary to the judgment in the case of [State Bank of Travancore Vs. Commissioner of Income Tax, Kerala](#),

3. The assessee, however, contended that the judgment in the case of State Bank of Travancore (supra) is no longer good law in view of the judgment of the Apex Court in the case of [UCO Bank, Calcutta Vs. Commissioner of Income Tax, West Bengal](#), . In the case of UCO Bank (supra), the Apex Court pointed out that the circular dated 9th October, 1984), which reads as follows, was not brought to the notice of the Supreme Court in the case of State Bank of Travancore (supra):

interest in respect of doubtful debts credited to suspense account by the banking companies will be subjected to tax but interest charged in an account where there has been no recovery for three consecutive accounting years will not be subjected to

tax in the fourth year or later the actual amount recovered only will be subjected to tax in the respective years. This procedure will apply to Assessment Year 1979-80 and onwards. The Board's Instruction No. 1186 dated 20-6-1978 is modified to this extent.

4. The Apex court in the circumstances held that-

the circulars which have been in force are meant to ensure that while assessing the income accrued by way of interest on a "sticky" loan, the notional interest which is transferred to a suspense account pertaining to doubtful loans would not be included in the income of the assessee, if for three years such interest is not actually received. The very fact that the assessee, although generally using a mercantile system of account, keeps such interest amounts in a suspense account and does not bring these amounts to the profit and loss account, goes to show that the assessee is following a mixed system of accounting by which such interest is included in its income only when it is actually received. Looking to the method of accounting so adopted by the assessee in such cases, the circulars which have been issued are consistent with the provisions of Section 145 and are meant to ensure that assessees of the kind specified who have no account for all such amounts of interest on doubtful loans are uniformly given the benefit under the circular and such interest amounts are not included in the income of the assessee until actually received if the conditions of the circular are satisfied. The circular of 9-10-1984 also serves another practical purpose of laying down a uniform test for the assessing authority to decide whether the interest income which is transferred to the suspense account is, in fact, arising in respect of a doubtful or "sticky" loan. This is done by providing that non-receipt of interest for the first three years will not be treated as interest on a doubtful loan. But if after three years the payment of interest is not received, from the fourth year onwards it will be treated as interest on a doubtful loan and will be added to the income only when it is actually received.

5. The position, however, was altered materially by an amendment of Section 145 with effect from 1st April, 1997. After the amendment was carried out, sub-section (1) of Section 145 reads as follows:

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

6. Prior to the amendment, sub-section (1) of Section 145 provided as follows:

145. (1) Income chargeable under the head "Profits and gain of business or provision" or "Income from other sources" shall be computed in accordance with the method of accounting regularly employed by the assessee.

7. We are concerned with the assessment year 1989-90 in this appeal. During the relevant period, the view taken in the case of the judgment in the case of UCO Bank (supra) based on the circular dated 9th October, 1984 shall naturally be applicable.
8. Accordingly, the question is answered in negative and in favour of the assessee.