

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH: CHENNAI**

श्री जॉर्ज माथन, न्यायिक सदस्य एवं  
श्री एस जयरामन, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.767, 768 to 772/Mds/2017  
निर्धारण वर्ष /Assessment Years: 2008-09, 2008-09 to 2012-13

The Villupuram District Central Co-  
operative Bank Ltd., No.2, Hospital  
Road, Villupuram-605 602.

**Vs.** The Dy. Commissioner of  
Income Tax, Villupuram  
Circle, Vilupuram.

**[PAN: AAAJV 0332 Q]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by

: Mr.K.Ravi, Adv.

प्रत्यर्थी की ओर से /Respondent by

: Mr.M.N.Maurya, CIT

सुनवाई की तारीख/Date of Hearing

: 19.06.2017

घोषणा की तारीख /Date of Pronouncement

: 19.06.2017

**आदेश / ORDER**

**PER BENCH:**

These appeals are filed by the assessee against the Order of  
Commissioner of Income Tax (Appeals), Puducherry, in ITA  
No.187/CIT(A)-PDY/2013-14 & ITA Nos.39 to 43/CIT(A)-PDY/2015-16  
dated 20.03.2017 for the AYs 2008-09, 2008-09 to 2012-13.

2. Shri M.N.Maurya, CIT, represented on behalf of the Respondent and Shri K.Ravi, Adv., represented on behalf of the Appellant.

3. ITA No.768/Mds/2017 is an appeal filed by the assessee for the AY 2008-09 against the order of the Ld.CIT(A), Puducherry, in respect of Assessment Order passed u/s.143(3) of the Act. ITA No.767/Mds/2017 is an appeal filed by the assessee for the AY 2008-09 against the order of the Ld.CIT(A), Puducherry, in respect of Assessment Order passed u/s.143(3) r.w.s.147. It was submitted by the Ld.AR in respect of the ITA No.767/Mds/2017, the assessee had filed return of income for the relevant AY on 29.09.2008 and the assessment was originally completed u/s.143(3) on 28.12.2010 wherein the AO had made certain disallowances in respect of deduction u/s.36(1)(viiia) of the Act. It was a submission that the said Assessment Order was re-opened by issuance of notice u/s.148 on 20.03.2014. The Ld.AR drew our attention to the Assessment Order dated 26.03.2015 at Page No.2 wherein the reasons have been extracted for the purpose of re-opening. It was a submission that re-opening having been done by issuance of notice u/s.148 on 20.03.2014 and the same was beyond the period of four years. It was a submission that a perusal of the reasons recorded clearly showed that when the original assessment was completed u/s.143(3) on 28.10.2010, the AO had considered the deduction u/s.36(1)(viiia) of the Act and the re-opening was done only for the purpose of enhancing the disallowance on a change of opinion. It was a submission that there was no fresh information

available with the AO for the purpose of re-opening and even a perusal of the re-opening, reasons recorded did not show that there was anything to show that the assessee had not fully and truly disclosed all the facts necessary for the completion of his assessment. It was a submission that the reasons recorded and the re-opening being only on a change of opinion that too beyond the period of four years from the end of the AY, the re-opening was bad in law and liable to be quashed.

4. In reply, the Ld.DR submitted that the AO has given the reasons for the re-opening. It was a submission that computation of the disallowances had been wrongly done by the AO in the assessment originally u/s.143(3) on 28.08.2012. It was a further submission that the assessee has also not raised any objection on the reasons recorded but had participated in the re-assessment proceedings. It was a submission that the assessee having not furnished any objections on the reasons recorded specifically, it is clear that the assessee had agreed to the jurisdiction and the re-opening. It was a submission that the order of the Ld.CIT(A) was liable to be upheld.

5. We have considered the rival submissions. A perusal of the reasons recorded by the AO for the purpose of re-opening of the assessment clearly shows that re-opening has been done beyond the period of four years from the end of the relevant AY. In such cases, it is absolutely required that for the purpose of re-opening, there must be some fresh

evidence or information available with the AO, which is the foundation for the formation of opinion that the income of the assessee has escaped assessment. This should be coupled along with the requirement that there was a failure on the part of the assessee to disclose fully and truly of material facts necessary for the assessment. In the present case, for the AY 2008-09, a perusal of the reasons recorded shows that neither fresh information was in the possession of the AO nor the AO has recorded anywhere that the income of the assessee escaped assessment by stating the reasons of failure on the part of the assessee to disclose fully and truly of material facts necessary for his assessment for that AY. This being so, we are of the view that the re-opening by the AO upheld by the Ld.CIT(A) is unsustainable and the re-opening has been done only on the basis of a change of opinion, which is impermissible. In these circumstances, the re-opening of the assessment is held to be bad in law and consequently quashed. Consequently, the Assessment Order u/s.143(3) dated 26.03.2015 stands quashed.

6. In the result, the appeal filed by the assessee for the AY 2008-09 is stands allowed.

**ITA No.768/Mds/2017 for the AY 2008-09:**

7. This appeal relates to the AY 2008-09 against the order of the Ld.CIT(A) in confirming the disallowance of the deduction u/s.36(1)(vii)

of the Act and enhance by restricting the deduction u/s.36(1)(viia) by the Ld.CIT(A). It was submitted by the AR that Ld.CIT(A) had not considered the objections raised by the assessee in respect of the enhancement proposed by the Ld.CIT(A) by restricting the deduction u/s.36(1)(viia) of the Act. It was a submission that on merits the whole issue of deduction u/s.36(1)(viia) itself has not been considered in its right perspective. It was a submission that Ld.CIT(A) has blindly applied the ratio of the jurisdictional Tribunal in the case of M/s.Lakshmi Vilas Bank Ltd. vs. ACIT without considering the fact of the assessee's case. It was fairly agreed by both the sides that the issue in respect of the deduction u/s.36(1)(viia) could be restored to the file of the Ld.CIT(A) for re-adjudication.

8. We have considered the rival submissions. It is worthwhile to mention here that in the earlier portion of this order in ITA No.767/Mds/2017, we have already quashed the re-opening of the assessment for the AY 2008-09 for the purpose of restricting the deduction u/s.36(1)(viia) of the Act. A perusal of the order of the Ld.CIT(A), in the present appeal clearly shows that the Ld.CIT(A) has only confirmed the order of the AO in the regular assessment and has also confirmed his proposal for enhancement by restricting deduction liable u/s.36(1)(viia) of the Act without dealing with the objections raised by the assessee. This being so, in the interest of natural justice, the entire gamut of the claim of deduction u/s.36(1)(viia) is restored to the file of

the Ld.CIT(A) for re-adjudication de novo after granting the assessee adequate opportunity of being heard.

9. In the result, the appeal filed by the assessee for the AY 2008-09 is partly allowed for statistical purposes.

**ITA No.769/Mds/2017 for the AY 2009-10:**

10. This appeal relates to the AY 2009-10. It was submitted by the Ld.AR that for the relevant AY, the assessee had filed his return of income and the same was u/s.143(3) on 28.10.2010. It was a submission that in the case of the original assessment the assessee's claim of deduction u/s.36(1)(viiia) of the Act had been restricted. It was a submission that the assessment was re-opened by issuance of notice u/s.148 on 20.03.2014. It was a submission that the re-opening was done for the purpose of re-working the deduction u/s.36(1)(viiia) of the Act. It was a submission that the re-opening was done on a change of opinion and the same was liable to be annulled.

11. In reply, the Ld.DR vehemently supported the order of the AO & the Ld.CIT(A). It was submitted by the Ld.DR that in the present case, the re-opening was within the period of four years and consequently the re-opening was valid.

12. We have considered the rival submissions. For the AY 2009-10 being the year under appeal the notice u/s.148 has been issued on 28.03.2014 and consequently the same is within the period of four years.

A perusal of the reasons recorded for the purpose of re-opening clearly shows that there has been an error in the computation of the deduction u/s.36(1)(viiia). Admittedly, the re-opening for the purpose of restricting the allowance which has been granted in excess has resulted in income chargeable to tax escaping assessment. In view of the Explanation-1 and also Explanation-2(c) to Sec.147, the re-opening has been done within four years from the end of the relevant AY, we are of the view that the re-opening is valid.

13. It was further submitted by the Ld.AR that the notice issued u/s.143(2) referred to the return filed by the assessee on 28.09.2009 and the notice having been issued on 15.09.2014, the notice was barred by limitation and the consequent assessment was liable to be annulled.

14. In reply, the Ld.DR vehemently supported the orders of the AO and the Ld.CIT(A).

15. A perusal of the Assessment Order clearly shows that the assessee has filed his original return of income on 28.09.2009. When the assessee was served with the notice u/s.148, the assessee had responded vide a letter dated 17.04.2014 requesting to treat the return already filed on 28.09.2009 as return filed in response to the notice issued u/s.148 of the Act. This being so, the assessee vide his letter dated 17.04.2014 had requested for the treatment of the return dated 28.09.2009 as a return to the response to the notice issued u/s.148 of the Act. Only after that the

AO has issued the notice u/s.143(2) on 15.09.2014. In the said notice, as the return was dated 28.09.2009, he had referred to the said date. In fact the said return dated 28.09.2009 is the return which is to be considered for the purpose of assessment as the same has been treated as the return in response to the notice u/s.148 by the assessee by the issuance of letter dated 17.04.2014. This being so, we are of the view that the notice issued u/s.143(2) is not barred by limitation.

16. It was further submitted by the Ld.AR that on merits in respect of deduction u/s.36(1)(viiia) of the Act the submission in respect of ITA No.768/Mds/2017 may be considered.

17. In reply, the Ld.DR vehemently supported the Orders of the AO & the Ld.CIT(A).

18. We have considered the rival submissions. In ITA No.768/Mds/2017 on merits we have restored the issue of the computation of the deduction admissible u/s.36(1)(viiia) to the file of the Ld.CIT(A) for de novo re-adjudication. On similar lines, the issue in respect of this AY is also restored to the file of the Ld.CIT(A) for de novo re-adjudication after granting the assessee adequate opportunity of being heard.

19. In the result, the appeal filed by the assessee for the AY 2009-10 is partly allowed for statistical purposes.

**ITA Nos.770 & 771/Mds/2017 for AY 2010-11 & 2011-12:**

20. ITA No.770/Mds/2017 is an appeal filed by the assessee for the AY 2010-12 and ITA No.771/Mds/2017 is an appeal filed by the assessee for the AY 2011-12. It was fairly agreed by both the sides that the submission in regard to the AY 2009-10 in ITA No.759/Mds/2017 would apply to both ITA Nos.770 & 771/Mds/2017.

21. We have considered the rival submissions. In respect of the re-opening of the assessment as also the issuance of notice u/s.143(2) for both the AYs 2010-11 & 2011-12 in ITA Nos.770 & 771/Mds/2017, the same stands upheld. For the reasons specified in our order in ITA No.769/Mds/2017 on merits, the issue of the deduction u/s.36(1)(viiia) is restored to the file of the Ld.CIT(A) for re-adjudication de novo.

22. In the result, the appeals filed by the assessee for the AYs 2010-11 & 2011-12 are partly allowed for statistical purposes.

**ITA No.772/Mds/2017 for the AY 2012-13:**

23. It was fairly agreed by both the sides that the only issue was the confirmation of the order of the AO and enhancement done by the Ld.CIT(A) in respect of the claim of deduction u/s.36(1)(viiia) of the Act. It was fairly agreed that in line with the finding on merits for the AY 2009-10 in ITA No.769/2017, the issue on merits was to be restored to the file of the Ld.CIT(A) for re-adjudication.

24. We have considered the rival submissions. As the issue of deduction u/s.36(1)(viia) of the Act has been restored to the file of the Ld.CIT(A) for de novo adjudication in ITA No.769/Mds/2017, on similar lines, this issue is restored to the file of the Ld.CIT(A) for re-adjudication de novo.

25. In the result, the appeal filed by the assessee for the AY 2012-13 is partly allowed for statistical purposes.

26. In the result, ITA No.767/Mds/2017 stands allowed, ITA Nos.768 to 772/Mds/2017 are stands partly allowed for statistical purposes.

Order pronounced in the Open Court on June 19, 2017, at Chennai.

**Sd/-**

(एस जयरामन)

**(S. JAYARAMAN)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**

(जॉर्ज माथन)

**(GEORGE MATHAN)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: June 19, 2017.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF