

आयकरअपीलीयअधिकरण, 'ए' न्यायपीठ,चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवंश्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 135/Mds/2017

निर्धारण वर्ष/Assessment Year : 1994-95

Deputy Commissioner of Income Tax,
Circle 2(1),
Trichy – 620 001.

M/s. The Lakshmi Vilas Bank Ltd.,
Vs. Regd. Office, Kathaparaj,
Karur.

[PAN: AACT 4291P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Ms.PavunaSundari, JCIT

प्रत्यर्थीकीओरसे/Respondent by

: ShriG. Seetharaman, CA

सुनवाईकीतारीख/Date of Hearing

: 30.05.2017

घोषणाकीतारीख/Date of Pronouncement

: 28.08.2017

आदेश / O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

This is an appeal filed by the revenue against the order of the Commissioner of Income Tax (Appeals)-1, Tiruchirapalli, in ITA No. 686/2006-07/CIT(A)-1/Try, dated 17.11.2016.

2. In the assessment made for the assessment year 1994-95, the Assessing Officer disallowed Rs. 75,77,756/- u/s. 14A and Rs. 2,34,80,675/- u/s. 36(1)(vii). Aggrieved against this order, the assessee filed an appeal before the CIT(A). The CIT(A) relying on this tribunal order in ITA No. 1404/Mds/2012 for assessment year 2004-05 dated 22.03.2013, in the assessee's case, restricted the disallowance at the rate of 2% on the exempt income. On the disallowance under the head "Bad debts written off", the CIT(A) after examining the details filed by the assessee in Annexure-A, directed the AO to delete that addition. Aggrieved, the revenue has filed this appeal, inter alia, with the following grounds of appeal:

"2. The learned CIT (A) has erred in estimating the disallowance @ 2% of exempt income and thus allowing major relief of Rs.74,26,200/- without considering the average cost of deposits and thereby arriving at disallowance by working out the average interest cost of the investments made for earning the tax-free income as the assessee has not furnished separate accounts for the expenditure incurred towards interest paid on funds borrowed.

3. The learned CIT (A) has erred in allowing the claim of the assessee without considering the fact that the Hon'ble High Court of Kerala in the case of CIT vs Dhanalakshmi Bank Ltd. [2010] 344 ITR 259 has observed that in the event of the assessee not being able to establish accurately the interest expended on earning tax free income, the AO could follow the following formula:

$$\frac{\text{Total interest liability}}{\text{Total Income}} \times \text{Tax Free Income}$$

4. *The learned CIT (A) has erred in allowing the claim of the assessee towards bad debts written off of Rs.2,34,80,375/- u/s 36(1)(vii) holding that the provision earlier created towards bad and doubtful debts was reduced from the total bad debts written off and only the resultant balance was claimed in the statement of income. The CIT(A) ought to have seen that the proviso clause of 36(1)(vii) states that the amount of deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under that clause.*

5. *The learned CIT (A) has erred in holding that for reckoning of credit balance available under provision for bad & doubtful debts for the purpose of computing the deduction allowable u/s 36(1)(vii), opening balance of the above provision alone is to be taken thus excluding the provision created during the year.*

6. *The learned CIT (A) has erred in holding that the bad debts claimed u/s 36(1)(vii) is only a net figure, after adjustment towards the "credit balance" of earlier year available under provisions for bad & doubtful debts created u/s 36(1)(vii) and hence is allowable."*

3. We heard therival submissions and gone through the orders. On the issue of disallowance u/s 14A, the CIT (A) relied on this tribunal decision in the assessee's case for ay 2004-05 in ITA No. 1404/Mds/2012 dated 22.03.2013 The relevant portion of the order is extracted as under :

" 6.1

.....

" Para 16: We have heard both parties qua the issue involved and perused the facts emanating the orders of the

Assessing Officer and CIT(A). The broader issue sought to be raised by both parties is as to whether the CIT(A) has rightly taken the disallowance of expenditure for earning tax free income @ 2% or not. In this regard, as rightly pointed out by the Revenue, the Hon'ble Jurisdictional High Court in the case of M/s. Simspson and Co. Ltd Vs. DCIT (supra) itself has held that such an addition @ 2% is not unreasonable. Following this, we uphold CIT(A)'s order and reject the grounds."

6.2 Referring to the above order, the learned A.R. submitted that the tribunal's findings in this regard has been accepted both by the Department as well as the assessee and therefore the appellant would have no objection if disallowance is restricted to 2% of such tax free/exempt income."

From the above, it is clear that this tribunal following the Jurisdictional High Court decision held that disallowance of 2% of the exempt income could be considered as reasonable expenditure for earning the exempt/tax free income in the assessee's case itself. Judicial discipline demands consistency and hence, we do not find any error in the order of the CIT(A). Thus, the revenue's grounds of appeal on this issue fail.

4. On the issue of disallowance u/s. 36(i)(vii) the relevant portion of the CIT(A) order is extracted as under:

7.2 Before me, the learned A.R. has submitted that in its computation of income, the appellant had claimed Rs. 2,34,80,675/- towards "bad debts written off". In addition, it was further submitted that complete details of such bad debt written off had been submitted

along with return of income vide an attachment mentioned as "Statement: 15" (Annexure -'A'). A copy of the same has been filed during the appellate proceedings and it is found that all these bad debts written off during the year pertained to non-rural branches. A separate "Statement :15A" (Annexure-'B') containing details of bad debts relating to rural branches amounting to Rs. 12,48,544/- had also been attached but the same was not claimed as a deduction in the "statement of income" as such bad debts pertaining to rural branches, were less than the provision created u/s 36(i)(viii) of the I.T. Act. Only bad debts pertaining to non-rural branches were claimed, that too, after deducting the opening balance of provision created in the earlier year. In support of the same, my attention was drawn to "Statement: 15", wherein the total bad debts written off was computed at Rs. 2,79,60,669/-, out of which provision created in the earlier year of Rs. 38,80,294/- was reduced and only Rs. 2,34,80,375/- was claimed in the "Statement of income". This goes to show that there has been no double deduction as alleged by the Assessing Officer. The Assessing Officer was of the opinion that some of the "bad debts written off" would be part of the "provision created for bad and doubtful debts". But, such misgiving or doubt in the mind of the Assessing Officer would have been cleared, had he actually examined the above "statement:15" in detail. He would have found that the provision earlier created towards bad and doubtful debts had been reduced from the total bad debts written off and only the resultant balance has been claimed in the statement of income. Therefore, the claim of bad debt written off by the assessee to the extent of Rs. 2,34,80,375/- is in order. Hence, the Assessing Officer is directed to allow the same. Consequently, ground no. 7 is allowed."

We find from the Annexure-A, titled as details for bad debts written off (Non-rural branches) that the assessee has furnished the details of bad debt written off from various persons from 35 non-rural branches as under:

Bad Debts written off	27225737.00
Add: Interest suspense w/off vide details given (Statt.13)	134932.00

	27360669.00
Less: Provision claimed Last year	3880294.00

	23480375.00

Thus, it is clear that the assessee has reduced the provisions earlier created towards bad and doubtful debt and only the resultant balance has been claimed in the statement of income. Hence, the order of the CIT(A) does not require any interference. Thus, the revenue's grounds of appeal on this issue fail.

5. In the result, the revenue's appeal is dismissed.

Order pronounced on Monday, the 28th day of August, 2017 at Chennai.

Sd/- (एन.आर.एस. गणेशन) (N.R.S. GANESAN) न्यायिकसदस्य/Judicial Member	Sd/- (एसजयरामन) (S. JAYARAMAN) लेखासदस्य/Accountant Member
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चेन्नई/Chennai,

दिनांक/Dated: 28th August, 2017

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त (अपील)/CIT(A) |
| 4. आयकरआयुक्त/CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF |