

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA (SMC) BENCH: AGRA**

BEFORE SHRI A. D. JAIN, JUDICIAL MEMBER

**I.T.A No. 382/Agra/2017
(ASSESSMENT YEAR-2008-09)**

DCIT (AO), Circle-4 (2) (1), Farrukhabad. (Revenue)	Vs.	M/s Kshetriya Kisan Gramin Bank (Now Bank of Aryawart), Mainpuri PAN No.AABCK4565G (Assessee)
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Revenue by	Shri Inderjeet Singh, CIT. DR.
Assessee by	Shri Deependra Mohan, AR.

Date of Hearing	15.05.2018
Date of Pronouncement	01.06.2018

ORDER

This is Department's appeal for assessment year 2008-09, taking the following grounds:

- “1. The order of Ld. CIT(A)'s, Aligarh erred in law and on facts in allowing the relief of Rs.3,00,20,000/- pertaining to head “other provision” in P&L a/c as deduction by allowing the deduction u/s 36(viia) consisting of (a) 7.5% of total income (b) 10% of the aggregate advances made by rural branches.*

2. *The Ld.CIT(A) erred in law and on facts in allowing or admitting the grounds of appeal or claim of rural advances which was never raised at the time of assessment proceedings despite of sufficient opportunity given to the assessee bank.*
3. *That the Ld.CIT(A) erred in law and on facts by giving benefit of accumulated brought forwarded losses of Rs. 8,51,32,000/- pertaining to prior to AY 2004-05 claimed by the assessee on the basis of figures of losses submitted, contrary to what was submitted at the time of assessment proceedings.”*

2. Apropos Ground Nos. 1 and 2, the assessee had filed its return of income on 27.09.2008 at Nil income and had declared loss of Rs.2,85,37,000/-. Later, the assessment was completed on 30.08.2010 at Nil income. Subsequently, a notice u/s 143 was issued on 30.03.2015 and the assessment proceedings were reopened. In response, the appellant filed a copy of the original return and for scrutinizing the same, notices u/s 143(2)/142(1) were issued on 15.06.2015. During the course of the assessment proceedings, it was observed that the appellant bank had claimed Rs. 3,00,20,000/- under other provisions in the profit and loss account. In this regard, the appellant claimed that deduction of Rs. 3,00,20,000/- has been claimed under the provisions of section 36 (viia) on the basis of advances given by the rural

branches. The AO restricted the deduction to 7.5% of the total provisions of debt and doubtful debt. Thus, only an amount of Rs. 1,11,225/- was allowed and the remaining deduction was added back. Thus, the assessment was completed at total income of Rs. 13,71,775/-.

3. The AO observed as follows:

“The assessee has relied upon the census population of the village where the rural branches of the Bank are situated. It is not the population of the village to be taken as deciding the status of the bank as rural rather; the notification of the parent bank indicating the very reasons for setting up of rural branches in that specific region should be the deciding factor. The definition of rural branches is not to be construed narrowly, it is not restricted to a village only where the branch is situated rather, it is "region" for which the branch has been set up by the parental Bank.

Hence the claim of assessee on account of aggregate advances made by the rural branches is denied. However, deduction to the extent of 7.5% totals provisions for bad and doubtful debts during the year, amounting to Rs.1,11,225/- is being allowed and the remaining amount is added back to the income of the assessee during the year.”

4. The Id. CIT(A) accepted the assessee's claim by holding as follows:

“5.3 Decision

The appellant had claimed deduction of Rs. 3,00,20,000/- u/s 36 (viiia) and as mentioned in the assessment order, the computation of rural aggregate advances made by rural branches as per Rule 6ABA of IT Rules 1962 was submitted. The AO has not given any concrete reason for not accepting this claim. I had also examined this issue while deciding the appeal for assessment year 2012-13 and found that the appellant's claim is in accordance with the provisions of law. The deduction allowable u/s 36 (viiia) consist (a) 7.5 % of the total income and (b) 10% of the aggregate advances made by the rural branches. If these two sums are added the allowable deduction would come to Rs. 13,97,99,475/-. The actual amount claimed against the provisions of bad and doubtful debts u/s 36(1) (viiia) is just Rs. 3,00,20,000/- which is much less than the gross amount which could have been claimed under the said provisions. The AO has not indicated any infirmity in the chart furnished by the appellant for computing the aggregate average rural advances as per Rule 6ABA. Also there is no finding that the branches claimed as rural branches are located in a place which had population of more than 10 thousand under the last preceding census. As such the AO did not have any valid ground for rejecting the appellant's claim. Thus, the addition of

Rs.3,00,20,000/- made by the AO is being deleted and these grounds of appeal are being allowed.”

5. The Id. CIT(A) has, thus, followed his order for A.Y. 2012-13.
6. The Id. DR has contended that the Id. CIT(A) erred in law and on facts in allowing the relief of Rs.3,00,20,000/- pertaining to head “other provision” in P&L a/c as deduction by allowing the deduction u/s 36(viia) consisting of (a) 7.5% of total income and (b) 10% of the aggregate advances made by rural branches; and that the Ld.CIT(A) erred in law and on facts in allowing or admitting the grounds of appeal of claim of rural advances, which was never raised at the time of the assessment proceedings despite sufficient opportunity given to the assessee bank.
7. The Id. Counsel for the assessee has placed reliance on the impugned order, as also on the order dated 04.08.2017 passed by the Division Bench, for A.Y. 2012-13.
8. Heard. The matter, it is seen, is squarely covered in favour of the assessee by order dated 04.08.2017 (supra), passed by the Division Bench in the assessee’s case for A.Y. 2012-13. Therein, it has been held as follows:

“13. The AO erred in going beyond the specific requirement of the definition of “Rural Branches” and observing that the assessee “ought to have provided such as (sic) letter from Tehsildar or some other government

agencies, confirming the population of each rural branch as per published Census Report or had (sic) given a copy of Census of India specific to each rural branches(sic)”. Firstly, as discussed, the assessment order does not contain any reference to any such query asked of the assessee by the AO. Then, the definition of “Rural Branch” talks of the “last preceding census”, of which the relevant figures have been published before the first day of the previous year”. Therefore, such figures were, obviously, available as public record/in the public domain, and the AO could have easily obtained them for himself on his own, which was not done. On the contrary, when the assessee produced them from Website of Census of India, the AO illegally refused to accept them and went on to hold the assessee remiss in not providing letter from Tehsildar, or from other Government Agencies or the copy of Census Report. Remarkably, even before us, the figures produced by the assessee have not been shown to be wrong or false. The ld. CIT(A) has verified the chart of aggregate average advances by the assessee’s rural branches, on a test-check basis with the primary records of the assessee bank and the claim has been found to be in accordance with law, which has not been disputed before us.

14. Hence, for the above discussion, the AO was entirely wrong in restricting the assessee's claim and the ld. CIT(A) has correctly allowed the same in full. Accordingly, finding no error in the impugned order in this regard, it is confirmed. Grounds Nos. 1 & 2 are rejected, as having no merit."

9. Thus, following the above-said Division Bench order dated 04.08.2017 in the assessee's case, for the year 2012-13, the order of the ld. CIT(A) is confirmed. Ground Nos. 1 and 2 are rejected.

10. Concerning Ground No.3, the assessee has claimed brought forward losses of Rs.11,47,96,000/-. The details were duly submitted at the time of assessment. However, the AO preferred to keep silence on the issue and he has neither allowed, nor disallowed the claim of brought forward losses. The ld. CIT(A) has, following his order for A.Y. 2012-13, held as follows:

"5.9 Decision

This ground is regarding the computation of brought forward losses. In the Appeal for A.Y. 2012-13 (Appeal No.11/2014-15/ALG/Mainpuri/1466), I had verified the claim of brought forward loss and details were annexed therewith as annexure. Therefore, the AO is being directed to allow benefit of the brought forward loss in

accordance with the details given in the said annexure.

Thus, this ground of appeal may be treated as allowed.”

11. The ld. DR has contended that the ld.CIT(A) has erred in law and on facts by giving benefit of accumulated brought forwarded losses of Rs. 8,51,32,000/- pertaining to prior to AY 2004-05 claimed by the assessee on the basis of figures of losses submitted, contrary to what was submitted at the time of the assessment proceedings.

12. The ld. Counsel for the assessee has, again, relied on the impugned order and the Tribunal order for A.Y. 2012-13.

13. In the order dated 04.08.2017 in the assessee's case for A.Y. 2012-13, it has been held by the Division Bench as follows:

“21. The chart of losses as filed by the assessee before the ld. CIT(A) was before the AO, on remand. The brought forward losses are required to be calculated as per information available with the department and it is on the basis thereof, that the department is duty bound to give necessary correct benefit to an assessee. The AO did not point out any error in the details of losses to be carried forward in the case of assessee-bank. On the other hand, the calculation of the brought forward losses, as given in the Annexure to the impugned order, stands verified by the ld. CIT(A) from the copies of ITR filed

before him. This has not been specifically disputed. Therefore, the CIT(A)'s order on this issue is also upheld and ground No. 3 is rejected, as shorn of merits."

14. In the present year, the ld. CIT(A) has directed the AO to allow benefit of brought forward loss, in accordance with his [the CIT(A)'s] findings for A.Y. 2012-13. Those, findings have been confirmed by the Division Bench, as reproduced above. Therefore, the direction issued by the ld. CIT(A) in the present year is found to be justified and it is confirmed. Ground No. 3 is rejected.

15. In the result, the appeal is dismissed.

Order pronounced in the open court on 01/06/2018.

**Sd/-
(A.D. JAIN)
JUDICIAL MEMBER**

Dated 01/06/2018

AKV

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR