

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.694/PUN/2016

निर्धारण वर्ष / Assessment Year : 2010-11

The Islampur Urban Co-op. Bank Ltd.,
Yallamma Chowk, Islampur,
Distt.-Sangli

PAN : AACFT4713H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 2(2), Sangli

.....प्रत्यर्थी / Respondent

Assessee by : Smt. Deepa Khare
Revenue by : Dr. Vivek Aggarwal

सुनवाई की तारीख / Date of Hearing : 23-07-2018

घोषणा की तारीख / Date of Pronouncement : 25-07-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-1, Kolhapur dated 02-02-2016 for the assessment year 2010-11. The solitary issue raised by the assessee in appeal is against disallowance of provision u/s. 36(1)(viiia) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") amounting to Rs.31,860/- and Rs.1,66,667/-.

2. The brief facts of the case as emanating from records are : The assessee is a Co-operative Bank. During the course of scrutiny assessment proceedings, the Assessing Officer observed that the assessee has claimed deduction of Rs.15,03,993/- (Rs.31,860/- + Rs.14,72,133/-) u/s. 36(1)(viia) of the Act. The Assessing Officer after examination of the books observed that the assessee has not created Reserve for Rural Advances. The Assessing Officer restricted the assessee's claim of deduction u/s. 36(1)(viia) to Rs.13,05,466/- i.e. the amount equal to 10% of the average advance of Bahe branch. Thus, the Assessing Officer made disallowance of Rs.1,66,667/- and Rs.31,860/- u/s. 36(1)(viia) of the Act.

Aggrieved by the assessment order dated 28-03-2013 passed u/s. 143(3) of the Act, the assessee filed appeal before the Commissioner of Income Tax (Appeals) inter alia assailing the disallowance of claim u/s. 36(1)(viia) of the Act. The Commissioner of Income Tax (Appeals) vide impugned order dismissed the assessee's ground of appeal with respect to disallowance made u/s. 36(1)(viia) of the Act. Now, the assessee is in second appeal before the Tribunal.

3. Smt. Deepa Khare appearing on behalf of the assessee submitted that the authorities below have recorded wrong finding of fact that the assessee has not created Reserve for Rural Advances. The assessee is having only one branch located in Village-Bahe, Tal.-Walwa. The said branch is a rural branch and the assessee has created provision u/s. 36(1)(viia) in respect of aforementioned rural branch. The ld. AR pointed that in the consolidated P & L Account as on 31-03-2010 (at page 44 of the paper book), the assessee has created provision for bad and doubtful reserve amounting to Rs.15,10,000/-. The ld. AR further in support of her submissions referred to consolidated Balance sheet for the Financial Year

2009-10 at page 41 of the paper book. The ld. AR also referred to the revised computation of total income at page 26 of the paper book to show that provision is created for Bad and Doubtful Debts and that the deduction is claimed in accordance with the provisions of section 36(1)(viiia) @ 7.5% of the total income and 10% of the aggregate average advances made by the rural branch. The ld. AR further in support of her contentions placed reliance on the decision of Co-ordinate Bench of the Tribunal in the case of Shri Mahalaxmi Co-op. Bank Ltd. Vs. ITO in ITA No. 1658/PN/2011 for assessment year 2008-09 decided on 29-10-2013.

4. On the other hand Dr. Vivek Aggarwal representing the Department vehemently defended the findings of Commissioner of Income Tax (Appeals) in confirming disallowance u/s. 36(1)(viiia) of the Act.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The only dispute in appeal by the assessee is the quantum of deduction available to the assessee u/s. 36(1)(viiia) of the Act. It is an admitted position that the assessee is having only one branch located at Village-Bahe, Tal.-Walva. The said branch is rural branch. A perusal of Balance sheet for the Financial Year 2009-10 and the consolidated P & L Account as on 31-03-2010 clearly indicates that the assessee has created provision for Bad and Doubtful reserves amounting to Rs.15,10,000/-. The revised computation of total income placed on record at page 26 of the paper book further shows that in the computation of income the assessee had clearly shown Reserve for Bad and Doubtful Debts at Rs.15,10,000/-. The assessee has claimed deduction in accordance with the provisions of section 36(1)(viiia) in respect of only rural branch. The authorities below have erred in

restricting the deduction u/s. 36(1)(vii) to Rs.13,05,466/-. We find merit in the submissions of assessee. Accordingly, the impugned order is set aside and the appeal of assessee is allowed.

6. In the result, the appeal of assessee is allowed.

Order pronounced on Wednesday, the 25th day of July, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 25th July, 2018
RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-1, Kolhapur
4. आयकर आयुक्त / The CIT-1, Kolhapur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune