

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

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

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

आयकर अपील सं./ITA No.3074/Chny/2017

निर्धारण वर्ष / Assessment Year : 2014-15

M/s The Kanyakumari District  
Central Co-operative Bank Ltd.,  
Nagercoil,  
Kanyakumari District – 629 001.

v.

The Assistant Commissioner of  
Income Tax,  
Circle – 1,  
Nagercoil.

PAN : AACFT 6796 L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी/Appellant by : Sh. N. Devanathan, Advocate

प्रत्यर्थी/Respondent by : Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing : 11.07.2018

घोषणा की तारीख/Date of Pronouncement : 19.09.2018

### **आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -1, Madurai, dated 12.10.2017 and pertains to assessment year 2014-15.

2. The only issue arises for consideration is disallowance made by the Assessing Officer under Section 36(1)(vii) of the Income-tax Act, 1961 (in short 'the Act').

3. Sh. N. Devanathan, the Ld.counsel for the assessee, submitted that the Assessing Officer disallowed the claim of the assessee under Section 36(1)(viiia) of the Act. According to the Ld. counsel, among the list of rural branches furnished by the assessee, the Assessing Officer found that six branches of them are not rural branches. The aggregate average outstanding of these six branches are ₹1,67,24,01,092/-. According to the Ld. counsel, the assessee claimed ₹4,05,44,538/- as deduction under Section 36(1)(viiia) of the Act towards bad and doubtful debts. The Assessing Officer disallowed ₹4,05,44,538/- on the ground that the six branches of the assessee are not rural branches. The six branches are : (1) Thuckalay; (2) Monday Market; (3) Elankadai; (4) Puthukadai; (5) Punnai Nagar; and (6) Gandhi Nagar.

4. The Ld.counsel for the assessee further submitted that on appeal by the assessee, the CIT(Appeals) found that six places found to be non-rural branches by the Assessing Officer were in fact rural branches. The CIT(Appeals) referred to the Census data 2001 and 2011. Having found that the six branches are rural branches by the CIT(Appeals), according to the Ld. counsel, the CIT(Appeals) found that the assessee has created provision for non-performing asset which comprises the non-performing asset and standard asset. The standard asset is always considered to be recoverable. Therefore, according to the Ld. counsel, the

CIT(Appeals) found that the provision was not made as required. Accordingly, he confirmed the disallowance made by the Assessing Officer. According to the Ld. counsel, the assessee has made provision as required under Section 36(1)(viia) of the Act, therefore, the disallowance may be restricted to the provision made.

5. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the Assessing Officer found that the six branches referred in the order of the Assessing Officer were not rural branches. According to the Ld. D.R., excluding the above branches, the aggregate average advance works out to ₹5,71,86,155/- and 10% of the same comes to ₹57,18,615/-. Accordingly, he restricted the allowance under Section 36(1)(viia) to the extent of ₹57,18,615/- against the claim of ₹4,05,44,538/-. Moreover, according to the Ld. D.R., no provision was made as observed by the CIT(Appeals), hence, disallowance was rightly confirmed by the CIT(Appeals).

6. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee claims that the provision was made as required under Section 36(1)(viia) of the Act in respect of bad and doubtful debts. Even though the Assessing Officer found that six branches referred in the assessment order, more particularly at page 9 of the order, are non-rural branches, the

CIT(Appeals) after considering the Census data of the years 2001 and 2011 found that these six branches are rural branches. The finding of the CIT(Appeals) that the above six branches are rural branches is not challenged by the Revenue. In other words, the finding of the CIT(Appeals) that six branches are rural branches attained finality. Therefore, now the Revenue cannot contend before this Tribunal that the above six branches are not rural branches.

7. Now coming to the claim of the assessee, it is not in dispute that to the extent of provision made by the assessee for bad and doubtful debts under Section 36(1)(viiia) of the Act, it has to be allowed. The CIT(Appeals) found that the assessee has not made proper provision and the provision made includes standard asset which would always be considered to be recoverable. However, the CIT(Appeals) has not examined the nature of standard asset. The details of standard asset are not available on record. In those circumstances, this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer. The Assessing Officer shall verify whether the assessee has made any provision for bad and doubtful debts and if the provision is made, to the extent of the provision the claim of the assessee under Section 36(1)(viiia) of the Act has to be allowed. Accordingly, orders of both the authorities below are set aside and the Assessing Officer is directed to verify the provision made by the assessee for non-

performing asset and thereafter decide the issue accordingly as observed above. To that limited extent, the appeal of the assessee is allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the court on 19<sup>th</sup> September, 2018 at Chennai.

sd/-  
(एस जयरामन)  
(S. Jayaraman)  
लेखा सदस्य/Accountant Member

sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 19<sup>th</sup> September, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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