

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' 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.2503/Chny/2017

निर्धारण वर्ष /Assessment Year : 2013-14

M/s The Tiruvannamalai District  
Central Co-operative Bank Ltd.,  
Collectorate Master Complex,  
Tiruvannamalai – 606 604.

v. The Assistant Commissioner of  
Income Tax,  
Circle – 1,  
Vellore.

PAN : AAATT 4448 F

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.2476 & 2477/Chny/2017

निर्धारण वर्ष /Assessment Years : 2013-14 & 2014-15

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

v. M/s The Thiruvannamalai District  
Central Co-operative Bank Ltd.,  
No.9, 6<sup>th</sup> Street, Gandhi Nagar,  
Thiruvannamalai – 606 602.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

निर्धारितीकी ओर से/Assessee by : Shri K. Ravi, Advocate

राजस्वकी ओर से/Revenue by : Shri Homi Raj Vansh, CIT

सुनवाई की तारीख / Date of Hearing : 19.12.2018

घोषणा की तारीख / Date of Pronouncement : 02.01.2019

**आदेश / O R D E R**

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

Both the assessee and Revenue have filed appeals against the respective orders of the Commissioner of Income Tax (Appeals)-13, Chennai, for the assessment year 2013-14. The Revenue has filed one more appeal for assessment year 2014-15. Since common issue arises for consideration in all these appeals, we heard these appeals together and disposing of the same by this common order.

Let's first take the assessee's appeal in I.T.A. No.2503/Chny/2017 for assessment year 2013-14.

2. The first ground arises for consideration is disallowance of ₹2,52,000/- towards rent paid, under Section 40(a)(ia) of the Income-tax Act, 1961 (in short 'the Act').

3. During the course of hearing, Shri K. Ravi, the Ld.counsel for the assessee, submitted that he is not pressing this issue. Moreover, admittedly, the assessee has not deducted tax as required under the Act. Therefore, the disallowance has to be made. In view of the above, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

4. The next ground arises for consideration is with regard to computation of total income for the purpose of deduction under Section 36(1)(viiia) of the Act.

5. Shri K. Ravi, the Ld.counsel for the assessee, submitted that an identical issue was considered by this Tribunal in the case of Indian Overseas Bank in I.T.A. No.248/Mds/2010 by an order dated 05.03.2013. This Tribunal, according to the Ld. counsel, found that the brought forward losses would not be deducted while computing the total income for the purpose of Section 36(1)(viiia) of the Act. In fact, this Tribunal placed its reliance on the earlier order in I.T.A. No.1147/Mds/2008. Therefore, according to the Ld. counsel, it is a covered matter.

6. On the other hand, Shri Homi Raj Vansh, the Ld. Departmental Representative submitted that he is placing his reliance on the observation made by the Assessing Officer and the CIT(Appeals).

7. We have considered the rival submissions on either side and perused the relevant material available on record. This Tribunal in the case of Indian Overseas Bank in I.T.A. No.248/Mds/2010 considered an identical issue and found that the brought forward losses would not be deducted while computing the total income for the purpose of deduction

under Section 36(1)(viiia) of the Act. In view of this, the brought forward losses would not be required to be set off.

8. However, the CIT(Appeals) is referring to a judgment of Apex Court. There is no reference about the case name or the report wherein the said case was reported. Therefore, it is not known which case of the Apex Court the CIT(Appeals) was referring to. If there is a judgment of Apex Court as referred by the CIT(Appeals), this Tribunal is of the considered opinion that the judgment of Apex Court has to be followed. However, it is obligatory on the part of both the CIT(Appeals) and Ld. D.R. to mention the reference of the case wherein the Apex Court decided the issue and how the judgment of the Apex Court is applicable to the facts of the present case. Since such an endeavour was not made by both the CIT(Appeals) and the Ld. D.R., this Tribunal is of the considered opinion that the matter needs to be reconsidered by the Assessing Officer. Accordingly, orders of both the authorities below are set aside and the matter is remitted back to the file of the Assessing Officer. The Assessing Officer shall reconsider the issue in the light of the order of this Tribunal in Indian Overseas Bank (supra) and also the judgment of Apex Court which was referred by the CIT(Appeals) in the impugned order and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

9. Now, coming to the Revenue's appeals for both the assessment years, the only issue arises for consideration is with regard to deduction under Section 36(1)(viiia) of the Act as per the Rule 6ABA of the Income-tax Rules, 1962.

10. We heard the Ld. D.R. and the Ld.counsel for the assessee. During the course of hearing, it was brought to the notice of the Bench that in the assessee's own case for assessment year 2007-08 in I.T.A. No.226/Mds/2016, this Tribunal found that in view of the decision of co-ordinate Bench of this Tribunal in DCIT v. Madurai District Central Co-operative Bank Ltd. (2014) 51 taxmann.com 194, there was no provision to consider only the advances made during the year under consideration. In view of the decision of co-ordinate Bench of this Tribunal in the assessee's own case for assessment year 2007-08, which was followed by the CIT(Appeals), this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

11. In the result, the assessee's appeal in I.T.A. No.2503/Chny/2017 is partly allowed for statistical purposes. However, both the appeals of the Revenue are dismissed.

Order pronounced in the court on 2<sup>nd</sup> January, 2019 at Chennai.

sd/-

(एस. जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 2<sup>nd</sup> January, 2019.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती /Assessee
2. Assessing Officer
3. आयकर आयुक्त (अपील)/CIT(A)-13, Chennai
4. Principal CIT- 8, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.