

आयकर अपीलीय अधीकरण, न्यायपीठ – “C” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “C” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

**ITA No.267/Kol/2018 &
C.O No.41/Kol/2018**
(a/o ITA No.267/Kol/2018)
Assessment Year :2013-14

ACIT, Circle-24(1) Aayakar Bhawan, G.T Road, Khadinamore, Chinsurah, Hoogly- 712101	V/s.	M/s Hooghly District Central Co-operative Bank Ltd., Netaji Subhas Road, Chinsurah, Hooghly-712101 [PAN No.AACFH 9855 Q]
अपीलार्थी /Appellant	..	प्रत्यर्थी/ प्रतयाक्षेपक Respondent/Co-objector

आवेदक की ओर से/By Assessee	Shri S.M. Surana, Advocate
राजस्व की ओर से/By Revenue	Shri Saurabh Kumar, Addl. CIT- DR
सुनवाई की तारीख/Date of Hearing	17-01-2019
घोषणा की तारीख/Date of Pronouncement	31-01-2019

आदेश /ORDER

PER S.S.Godara, Judicial Member:-

This Revenue's appeal and assessee's cross objection for assessment year 2013-14 arises from Commissioner of Income Tax (Appeals)-6 Kolkata's order dated 20.11.2017 passed in case No.479/CIT(A)-6/Kol/2015-16 involving provision u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The Revenue's sole substantive grievance pleads in its appeal challenges correctness of CIT(A)'s action allowing assessee's claim for bad and doubtful debt u/s 36(1)(viiia) of the Act vide following detailed discussion:-

"3. All the grounds are directed against the action of the AO in disallowing the provision for doubtful debts claimed by the assessee u/s 36(1)(viiia). Such deduction @ 7.5% of the average monthly advances is allowable in the respect of the rural branches of the bank. The assessee claimed that its thirteen branches out of sixteen branches were rural branches. The AO was however of the view that the particular area may be a ward of corporation or municipality or panchayat and may not be rural branch having population less than 10000. The AO also observed that from the link <http://censusindia.gov.in/jpca/pcadataj/Houselisting/housing-WB.html> the list of rural branches submitted by the assessee are situated in an area where population was more than 10000. The AO therefore disallowed the provision for doubtful debts.

4. During the appellate proceedings the AR of the assessee filed the following written submissions:-

"The appellant is a co-operative bank engaged in the business of providing loans farmers of Rural Area within the Dist. of Hooghly. The assessment for the assessment year in question was completed u/ s. 143(3). The Ld. AO disallowed the deduction of Rs. 3.1 Crores under the head provision for bad and doubtful debts which was claimed under sec. 36(1)(viiia). The sole ground on which the deduction was not allowed was that as per the AO the branches of the appellant were not Rural Branches as per the Explanation (ia) to section 37(1)(viiia) and therefore he disallowed the deduction. Aggrieved by the aforesaid disallowance the appellant is in appeal before your honour taking the following grounds:

1. For that the order of the Ld. ITO is arbitrary, illegal, excessive, perverse and bad in law.
2. For that the Ld. A. O erred in disallowing Rs. 3,10,00,000/- being the provision for bad and doubtful debt which was allowable under the provisions of the 1. T. Act, 1961 and was claimed in accordance with law.
3. For that on the facts and circumstances of the case the addition of Rs. 3,10,00,000/- was not justified
4. For that the order of the AO be modified and the assessee be given relief prayed for.
5. For that the assessee craves leave to add, alter or amend any ground before or at the time of hearing.

The first, fourth and fifth grounds are general in nature and therefore not elaborated in the second and third ground, the appellant is disputing the deduction of provision for bad and doubtful debts amounting to Rs. 3.1 Crores disallowed by the AO. It is submitted that as is evident from the assessment order the appellant filed the details of all the 16 branches which had advanced agricultural crop loan to farmers. The details of the branch along with population of the place were also filed before the AO. The appellant claimed deduction only in respect of 13 out of the 16 branches which had population of less than 10000 as per the last Census before the start of the assessment year. The Ld. AO without bringing on record any material or evidence has simply refused to accept the figures of population provided to him (details of which are also enclosed). The deduction was claimed within the four corners of law

and was fully allowable. The Ld. AO has cited the case of CIT Vs Nedungadi Bank Ltd reported in 264 ITR 545 for the proposition that several ward may come within the village whether it be in Corporation, Municipality or Panchayat. However, the Judgement has no relevance on the facts of the appellant's case or the issue involved herein. A copy of the judgement is enclosed herewith for ready reference. Further, the observation of the AO that there can be no village in a Municipal or Corporation area where population is less than 10000 is meaningless as it is nowhere stated that the rural areas where the assessee has branches were having municipality or corporation. The AO has rather admitted that rural branches are such of the branches located in a village where the population in the village as a unit is less than 10000. Further, for all the banks, the Reserve Bank is the monitoring agency directing grant of the rural loans and monitoring the advances, the provisions for bad debts and other related issued. The statutory auditor is also duty bound to report the RBI with regard the provisions for loans granted in rural areas as per their direction. The copy of the return filed before the RBI for assessment year 2012-13 and 2013-14 is enclosed herewith which has been accepted by the RBI wherein the 13 branches are categorically mentioned as rural branches. The report of the statutory auditor is also enclosed herewith wherein the provision was made and there is no adverse comment. The RBI audit till date has also not adversely commented on these provisions from last so many years including for the assessment year in question. More so the AO duly allowed the deduction of provision for bad and doubtful debts in the scrutiny assessment of the immediately preceding asstt. year i.e. 2012-13 completed under sec. 143(3). In support of the same copy of assessment order as well as profit and loss account and computation of income for the assessment year 2012-13 is enclosed. Consistency has to be maintained by the department specially when there was no change in the census figures as compared to earlier year. Hence the deduction claimed may please be allowed."

5. Since the assessee disputed the findings of the AO with regard to the population of the rural branches and the acceptance of the provision for doubtful debts by the RBI the monitoring agency, copy of written submissions was forwarded to the AO for his comments.

6. The AO forwarded his report dated 27.9.2016 whereby the AO claimed to have obtained population figures of the respective rural branches which as per the AO in all the rural branches was more than 10000. A copy of said report of the AO was given to the assessee for his comments.

7. The assessee filed rejoinder to remand report which is as under:-

"The appellant is in receipt of the remand report from the AO wherein has not commented adversely on the submission of the appellant that deduction of provision for bad and doubtful debts was allowed by the AO the immediately preceding assessment year u/ s 143(3) when there was change in the census figures as compared to earlier year.

Further, he has levied an extraordinary charge on the most reliable banking institution of the country- The Reserve Bank of India by stating that it appears that the RBI has in no way monitored the actual categorisation the branch i.e rural branch/ semi urban branch. From the above it is clear that the RBI has accepted the report submitted by the bank without prop examination of the population figure of the rural branches as claimed by the assessee".

The AO has missed to observe that it is the RBI which monitors the bad and doubtful debts and the same has been considered and allowed, Therefore the comments of the AO on the RBI is uncalled for.

It is further submitted that the AO should not have relied on information from WIKIPEDIA which is an unauthorised and unauthentic third party and has not accepted the information as incorporated in the branch bank statistics system maintained at RBI on the basis of which 13 branches out of 16 branches have been categorised as rural branches. The information on WIKIPEDIA is often circulated in respect of a number of issues but never relied on by the courts. The place of branch is in rural area whereas the name of the branch is district/ block town. The populating of total block cannot be considered by putting own interpretation of the word place.

The data of population of the rural areas for each of the village have been downloaded from qoogle, copy whereof is attached hereunth. The population of each of the rural area or the village is less than 10000. Therefore the AO was wrong in taking population from WIKIPDIA and ignoring the real population as per the records maintained by the Government and loaded in google. Moreover, whether RBI has also recognised the branch as rural branch there is no occasion to consider the said branches as not rural branches.

Furthermore, as per master circular of RBI rural branch can be within a block. The copy of the said circular is enclosed herewith and para 17(iii) deals with the rural branch.

Therefore, it is humbly submitted that the basis of disallowance made by the AO has no legs to stand upon and may please be deleted.

8. The assessee's submissions along with the authentic data of population submitted by the assessee appeared to be having sufficient force, the copy of the rejoinder to remand report was sent to the AO for his examination and report.

9. The AO sent his comments vide his report dated 24.4.2017, In this report the AO accepted that the population in respect of six branches a Kumarpukur, Harit, Khamargachi, Nalikul, Haripal and Chanditala was less than 10000. The AO did not controvert the submissions of the assessee that the population at 4 other branches namely Khanakul, Pandua, Mogra and Boiinchee was less than 1000. The AO however reported that the population of the branches at Pursurah, Tarakeswar, and Jangipara was more than 10000.

10. The copy of this report was also sent to the assessee. The assessee filed further rejoinder which is as under:-

"The appellant is in receipt of the remand report from the AO wherein as per the AO in three branches, i.e. Pursurah, Jangipara and Dhariakholi the population was more than 100000, in six branches the population was less than 100000 and four branches he has not reported the population. The AO states that the population figures given by him were on the basis of census.

The assessee has also downloaded the population figures for Attp:/ uillaqainfo. in West Benqsal/ Hugli and the population in each of the eleven villages is less than 100000. The details downloaded are enclosed herewith. The assessee has also down loaded population figures from CD block wise primary census abstract date (PCA)-West Bengal and as per which the population each of the three villages i.e. Pursurah, Jangipara and Dhaniakhali was less than 100000, Therefore the AO was no justified in presuming the assessee was not entitled to deduction u/ s. 36(1)(vii) and denying the deduction on account of reserve created as per the provisions of sec. 36(1)(vii).

It is alternatively submitted that as per sec. 36(1)(iia), the assessee is entitled to create reserve @ 7.5 of the total income or 10% aggregate average advances made by the rural branches. The details of average advances made are enclosed herewith. Therefore, even if the AO considers the average advances of only 8 branches for the purpose of the deduction, the aggregate average advances made by the eight branches will also cover the reserve of 3.10 cores.

In view of the above the assessee is entitled to the deduction of Rs. 3.10 Crore on both the counts. The AO may be directed to allow the deduction. "

11. I have considered the assessment order and remand reports and the submissions made by the assessee. I find that the AO has himself accepted the population figures of six branches and has also not disputed the population figures of 4 other branches submitted by the assessee. The assessee in further rejoinder to remand report also supported the population of three branches namely Jangipara and Pursura and Dhanial Khali by filing the census data downloaded from "C.D. Block Wise Primary Census Abstract Data(PCA)- West Bengal <http://censusindia.gov.in/pca/cdbpcacensus/houselisting-housing-WB.html>) whose population was not accepted by the AO to be less than 10000. Therefore the assessee was entitled to create reserve for doubtful debts u/s 36(1)(viiia) in respect of 13 branches. The assessee has filed details of advances made before the AO as well as before me. It appears that the advances made in 16 branches are Rs.268 crores. Even if the advances made to the three branches at Tarkeshwar, Arambagh and Singur accepted by the assessee as not rural branches and to whom advances 60 crores is excluded, still advances of the other branches remain to be over 200 crores. Hence appears that the reserve created at Rs. 3.1 crores was much less than 7.5% which is allowable u/s 36(1)(viiia)."

3. It is vehemently contended at the Revenue's behest that CIT(A) has erred in law as well as on facts in deleting the impugned bad debts disallowance. Its case is that Assessing Officer had rightly not treated assessee's 16 branches to be rural branches since having population of more than 10,000 people. We find no merit in Revenue's instant grievance. The fact remains that CIT(A) has gone by the relevant census data only in coming to the conclusion that the assessee's relevant branches fall in rural branch category as defined sec. 36(1)(viiia) Explanation (ia). This said statutory provision defines a "rural branch" to be a branch of scheduled or non-scheduled bank situated in a place which has a population not more than 10000 according to the preceding census of which the relevant figures have been published before the first date of the previous year. This is not the Revenue's case that assessee's branches otherwise do not fall under the above statutory provision or the CIT(A) has committed any illegality or irregularity in going by corresponding census available as prescribed in the Act. The Revenue's sole substantive ground and its appeal fail therefore.

3. The assessee's cross objection 41/Kol/2018 supportive of CIT(A)'s order deleting the impugned disallowance is rendered infructuous.

4. This Revenue's appeal ITA No.267/Kol/2018 is dismissed and assessee's cross objection 41/Kol/2018 is dismissed as rendered infructuous.

Order pronounced in the open court 31/01/2019

Sd/-

(लेखा सदस्य)

(Dr.A.L. Saini)
(Accountant Member)

Kolkata,
*Dkp, Sr.P.S

दिनांक:- 31/01/2019 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक/Assessee-M/s Hooghly Dist. Central Co-op. Bank Ltd. Netaji Subhas Road, Chinsurah, Hooghly-712101
2. राजस्व /Revenue-ACIT, Cir-24(1), Aayakar Bhawan, G.T. Road, Khadinamore, Chnsurh, Hooghly-712101
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

Sd/-

(न्यायिक सदस्य)

(S.S.Godara)
(Judicial Member)

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।