

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

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2453/PUN/2016

निर्धारण वर्ष / Assessment Year : 2013-14

Manmandir Co-Operative Bank Ltd.,
At & Post Vita, Tal.-Vita,
Dist. – Sangli – 415311

PAN : AAAAM0585H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 1(4), Sangli

.....प्रत्यर्थी / Respondent

Assessee by : Shri M.K. Kulkarni
Revenue by : Shri Abhijit Halder

सुनवाई की तारीख / Date of Hearing : 17-10-2019

घोषणा की तारीख / Date of Pronouncement : 25-10-2019

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 21-09-2016 passed by the Commissioner of Income Tax (Appeals)-1, Kolhapur [‘CIT(A)’] for assessment year 2013-14.

2. Shri M.K. Kulkarni, the ld. AR submits that the assessee has no interest to prosecute ground No. 1 and prayed to dismiss the same as not

pressed. Accordingly, ground No. 1 raised by the assessee is dismissed as not pressed.

3. Ground No. 2 relating to confirmation of addition made by the Assessing Officer on account of denying the deduction u/s. 36(1)(viia) of the Act in the facts and circumstances of the case.

4. Heard both parties and perused the materials available on record. We note that the assessee is a Co-operative Bank operating a branch at Mayani, Taluka Khatav, District Satara. The assessee engaged in the banking business and controlled by the Rules and Regulations prescribed by the RBI. The main activity of the bank is to accept the deposits from the public, lending to the borrowers and invest in various deposits and securities. According to AO, the assessee claimed deduction u/s. 36(1)(viia) of the Act for Rs.42,00,000/- being 10% of the aggregate average advances made by its rural branch. According to the Assessing Officer that the assessee is not entitled to claim said deduction as the population of Mayani Village is above 10,000 as per census conducted in the year 2011. The assessee explained that as on the first day of previous year i.e 01-04-2012 the figure of population as per latest census is not available and the census of population figure of previous preceding census is to be considered and placed reliance on the certificate issued by the Dy. Director, Census Division, Mumbai dated 05-02-2016. The fact remains admitted that Dy. Director, Census Division published the final figures of data of Census 2011 on 23-05-2013 wherein the population of said Mayani Village is 10,872 as on 01-04-2012 but however as rightly pointed out by

Shri M.K. Kulkarni, the ld. AR that figure of population was not available and were not in public domain as on the date of 01-04-2012.

5. The contention of Sri Abhijit Halder, the ld. DR is that the figure of population as per data census 2011 concerning the issue was available through official website of Government at www.censusindia.gov.in and the assessee is in the knowledge of the same. The Ld.DR referred to page no's 3 and 4 of AO and argued that the assessee is not entitled to claim deduction u/s. 36(1)(viiia) of the Act. We find that the final data of population as per Census, 2011 was published on 23-05-2013 which is supported by the certificate dated 05-02-2016 issued by the Dy. Director, Census Division, Mumbai, clearly establishes that the final data of population as per census 2011 relating to Mayani Village was not available on public domain as on the first day of previous year 01-04-2012 relating to assessment year under consideration.

6. Sub Clause (ia) of clause (viiia) of sub-section of section 36 of the Act provides the definition of *rural branch means a branch of a scheduled bank or a non scheduled bank situated in a place which has a population of not more than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of previous year.* Admittedly, in the present case as discussed above the FY is 12-13, the last preceding census is 2011 which have not been published before the first day of previous year i.e 01-04-2012 as per the definition provided under the provisions of section 36 of the Act. In the said circumstances when the publication of data of population for last preceding census 2011 is not available, the data of figure of population of previous preceding

census i.e. 2001 which is the available and have been published before the first day of previous year is to be taken into consideration, therefore, in our opinion, the assessee is entitled to claim deduction u/section 36(1)(viiia) of the Act as per Census, 2001. Thus, the ground No. 2 raised by the assessee is allowed.

7. In the result, the appeal of assessee is partly allowed.

Order pronounced in the open court on 25th October, 2019.

Sd/-
(Anil Chaturvedi)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 25th October, 2019

RK/GCVSR

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, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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