

<b>IN THE INCOME TAX APPELLATE TRIBUNAL</b>
<b>COCHIN BENCH, COCHIN</b>
<b>BEFORE S/SHRI CHANDRA POOJARI, AM &amp; GEORGE GEORGE K., JM</b>

ITA No.363 /Coch/2017
Assessment Year: 2008-09

M/s. South Malabar Gramin Bank (Presently Kerala Gramin Bank), KGB Towers, A.K. Road, Malappuram-673 505.	<b>Vs.</b>	The Assistant Commissioner of Income-tax, Circle-2(2), Tirur.
<b>(Assessee -Appellant)</b>		<b>(Revenue-Respondent)</b>

ITA No.364 /Coch/2017
Assessment Year: 2011-12

M/s. South Malabar Gramin Bank (Presently Kerala Gramin Bank), KGB Towers, A.K. Road, Malappuram-673 505.	<b>Vs.</b>	The Assistant Commissioner of Income-tax, Circle-2(2), Tirur.
<b>(Assessee -Appellant)</b>		<b>(Revenue-Respondent)</b>

ITA No. 366/Coch/2017
Assessment Year: 2011-12

The Assistant Commissioner of Income-tax, Circle-2(2), Tirur.	<b>Vs.</b>	M/s. South Malabar Gramin Bank (Presently Kerala Gramin Bank), KGB Towers, A.K. Road, Malappuram-673 505.
<b>( Revenue-Appellant)</b>		<b>(Assessee-Respondent)</b>

<b>Assessee by</b>	Shri B. Suraj Kumar, FCA
<b>Revenue by</b>	Shri Mritunjaya Sharma, Sr. DR

<b>Date of hearing</b>	13/01/2020
<b>Date of pronouncement</b>	14/01/2020

**ORDER**

Per CHANDRA POOJARI, AM:

The two appeals by the assessee and one appeal by the Revenue are directed against the different orders of the CIT(A)-III, Kochi (concurrent jurisdiction with CIT(A), Kozhikode) and pertain to assessment year 2008-09 and 2011-12.

2. The assessee has raised the following common grounds of appeal:

1. Disallowance of deduction u/s 36(1) (vii):

1.1 The Appellant had claimed deduction u/s 36(1) (vii) towards advances of two rural branches i.e. Pinangode and Pozhuthana to the tune of Rs. 1,29,73,400/- and the same was disallowed on the ground that these branches are not rural.

1.2 The above mentioned branches are situated in Wayanad District of Kerala and the population is less than 10,000 according to the census with reference to A.Y.2008-09. It is submitted that the relevant census details and Certificate from revenue authorities were produced before the Adjudicating Authority and also the Appellate Authority. The Appellant craves leave to refer and rely upon the same as and when required.

1.3 The Appellant had claimed deduction u/s 36(1) (vii) to a tune of Rs. 1,43,35,940/- towards provision for bad and doubtful advances of rural advances and the same was disallowed on the ground that no provision has been made in the accounts.

1.4 It is submitted that the Appellate Authority had failed to note that a provision in the accounts is not necessary and the same is confirmed by the Hon'ble Supreme Court in the case of *Catholic Syrian Bank Ltd. Vs. Commissioner of Income Tax* (2012] 343 ITR 270 (SC).

1.5 It is further submitted that in the case of North Malabar Gramin Bank, the Commissioner of Income Tax (Appeals), Calicut had allowed the deduction u/s 36(1)(vii) relying on the case of *Catholic Syrian Bank Ltd.*(supra).

2. Disallowance of deduction u/s 36(1) (vii):

2.1 The Appellant had claimed deduction U/s 36(1) (vii) to the tune of Rs.2,80,02,728/- towards bad debts of non-rural branches and the same was disallowed on the ground that it is not written off in the accounts.

2.2 The Appellate Authority has not considered the fact that the bad debts are written off in accounts and therefore the claim made by the Appellant is allowable.

2.3 It is submitted that the bad debts are identified and written off at branch levels and adjusted the same from provision for bad and doubtful debts account maintained at Head Office, under intimation of respective branches.

2.4 It is further submitted that the provision for bad and doubtful debts are taxed during the relevant years. The same is brought to taxation again by way of disallowing bad debts written off in the accounts.

3. The first ground in ITA Nos. 363 & 364/Coch/2017 is with regard to disallowance of deduction u/s. 36(1)(viiia) of the Act.

4. The facts of the case are that the assessee had claimed deduction u/s. 36(1)(viiia) in respect of rural branches which was disallowed by the Assessing Officer on the ground that the assessee did not have any rural branch falling within the definition under explanation (ia) to section 36(1)(viiia) of the Act.

5. On appeal, the CIT(A) confirmed the disallowance by observing that the assessee did not have any rural branch falling within the definition under explanation (ia) to section 36(1)(viiia). The CIT(A) relied on the decision of the

ITAT, Cochin Bench in the case of Kannur District Co-operative Bank vs. ACIT in ITA No.323/coch/2010 dated 23.03.2012 which was decided in favour of the Department and was confirmed by the High Court in the same case. Hence, the CIT(A) held that the assessee is not eligible for deduction u/s. 36(1)(viiia) with regard to 10% of aggregate average advances of rural branches.

6. Against this, the assessee is in appeal before us. The Ld. AR submitted that the above mentioned branches are situated in Pozhuthana and Pinangode in Wayanad District of Kerala and the population is less than 10,000. It was submitted that the relevant census details and certificate from revenue authorities were produced before the lower authorities.

7. We have heard the rival submissions and perused the record. We find this issue is covered in favour of the Revenue by the judgment of the Jurisdictional High Court in the case of CIT vs. North Malabar Gramin Bank in ITA No. 119 of 2015 dated 19/09/2014 wherein it was held as follows:

*"3. The learned Standing Counsel for the Revenue submits that the decision of the Honourable supreme Court would definitely indicate that clause (v) of sub-Section (2) of Section 36 is not applicable for a claim raised under clause (viiia) of section 36(1). However, it is submitted that without a provision in the books of accounts, there could not have been a claim for deduction under Section 36(1)(viiia). The learned counsel for the assessee points out that while sub-Section (vii) of Section 36(1) speaks of writing off, of debts as irrecoverable, in the accounts of the assessee for the previous year, there is no such mandate in clause (viiia). Clause (viiia) starts with the words 'in respect of any provision for bad and doubtful debts made by assessee. A provision for bad and doubtful debts can be made only in the books of accounts and if the same has not been made, there is no reason for allowing the same. As has been*

*submitted by the learned counsel for the Revenue, though the AO was not correct in applying clause (v) of Section 36(2), even then the claim could not have been allowed for reason of the absence of any provision having been made by the assessee in the books of accounts. We, hence, answer the questions of law in favour of the Revenue and against the assessee and restore the order of the AO for the reasons stated hereinabove. NO order as to costs."*

7.1 In view of the above order of the Jurisdictional High Court in assessee's own case, we are inclined to dismiss this ground of appeals of the assessee.

8. The next ground in ITA No. 363/Coch/2019 is with regard to disallowance of deduction u/s. 36(1)(vii) towards provision for bad and doubtful advances of rural advances on the ground that no provision was made in the accounts.

9. On appeal, the CIT(A) observed that provisions of section 36(1)(vii) are distinct and independent of the provisions of section 36(1)(viii) and a deduction for bad debt is allowable only if the debt is written off in the books. However, there is an exemption provided by the Hon'ble Supreme Court in the case of Catholic Syrian Bank vs. CIT 343 ITR 270 in the case of rural advances. In the assessee's case, the Assessing Officer had clearly stated that the assessee had not written off any bad debts in the books of account. It was also observed that the assessee did not have any rural branch falling within the definition under explanation (ia) to section 36(1)(viii) and therefore not entitled for exemption provided by the Apex Court in the case of Catholic Syrian Bank vs. CIT 343 ITR 270. Thus, it was held that the assessee was not eligible for deduction u/s. 36(1)(viii) of the Act.

10. Against this, the assessee is in appeal before us. The Ld. AR submitted that the provision made for bad and doubtful debts are written back and offered for taxation while computing income for liability. Hence, balance in provision account for taxation purposes will be nil, though as per books the accumulated provision is carried over.

11. We have heard the rival submissions and perused the record. We find that a similar issue came up for consideration before the Supreme Court in the case of Vijaya bank vs. CIT 323 ITR 166 wherein it was held as follows:

*“Section 36(1)(vii) of the Income-tax Act, 1961, dealing with allowance of bad debts written off by the assessee covers banking as well as non-banking assessees.*

*After April 1, 1989, a mere provision for bad debt will not be entitled to deduction under section 36(1)(vii). If an assessee debits an amount of doubtful debt to the profit and loss account and credits the assets account like sundry debtors account, that would constitute a write off of an actual debt. However, if an assessee debits provision for doubtful debts to the profit and loss account and makes a corresponding credit to the “current liabilities and provisions” on the liabilities side of the balance sheet, then it would constitute a provision for doubtful debt. In the latter case, the assessee would not be entitled to deduction after April 1, 1989.”*

11.1 In view of the above order of the Supreme Court, we are inclined to decide the issue in favour of the assessee. This ground of appeal of the assessee in ITA No.363/Coch/2017 is allowed. In the result, the appeal of the assessee in ITA Nos. 363/coch/2017 is partly allowed and the appeal of the assessee in ITA No.364/Coch/2017 is dismissed

12. In the Revenue appeal in ITA No. 366/coch/2017, the Revenue has raised the following grounds of appeal:

1. The order of the learned Commissioner of Income Tax(Appeals) is against law, facts and circumstances of the case.
2. Whether on the facts and in the circumstances of the case, the Commissioner of Income Tax(Appeals) is right in law in holding that the assessee is eligible for claiming deduction of the incremental amount of provision made towards depreciation on investments?
3. The assessee does not claim depreciation on the investments in its books of accounts. It is shown only in the income computation. When the asset is sold the income is calculated using the book value of the asset thereby resulting in the income being calculated in the subsequent years only on book value and not on depreciated value. The assessee has not shown that only unprecedented investments have been sold during the impugned Financial year 2010-11. In view of this, is not the decision of the CIT(A) against facts?
4. The income being computed on book value the income attributable to the depreciation allowed has not been declared by the assessee.
5. The Hon'ble Supreme Court in the case of *CIT vs. Woodward Governor India (P) Ltd* [alongside the case of *CIT vs. M/s Honda SieS Power Products Ltd* (2009) 312 ITR 254 (SC) has held on facts involving unrealized Foreign Exchange (FE) losses/gains that Accounting Standard (AS) 11 would apply squarely and the FE losses/gains would be revenue in nature. However, in the financial year in which the sale materializes (or realization takes place), the taxable income would need to be computed vis-à-vis the depreciated value. The same is applicable in the impugned matter of depreciation/appreciation on investments purchased and subsequent sales.
6. For these and other grounds that may be urged at the time of hearing, it is requested that the order of the CIT(A) may be set aside and that of the Assessing Officer restored.

13. The facts of the case are that the assessee claimed a sum of Rs.6,92,55,513/- under the head "depreciation on investment" for the AY 2011-12. The Assessing

Officer had disallowed the claim by relying on the CBDT's instruction No. 17 of 2008 and RBI guidelines. The Assessing Officer has stated in the impugned order that as per Board's instruction No. 17 of 2018 and as per RBI guidelines, the assessee bank is not entitled for depreciation since the investments are in the HTM category, they are held at book value till maturity and hence, needs to be disallowed.

14. On appeal, the CIT(A) relied on the order of this Tribunal in the assessee's own case in ITA No. 662/Coch/2013 and held that the assessee is eligible for deduction of the incremental amount of provision made towards depreciation on investments. Therefore, the Assessing Officer was directed to re-compute the actual incremental depreciation on investments for the AY 2011-12 and the same has to be allowed.

15. Against this, the Revenue is in appeal before us. The Revenue relied on the grounds of appeal.

16. We have heard the rival submissions and perused the material on record. We find that a similar issue came up for consideration before this Tribunal in assessee's own case in ITA No.662/Coch/2013 dated 07/03/2014 wherein it was held as follows:

*6. We have heard Ld D.R also on this issue. According to Ld A.R, the assessing officer has placed reliance on a Circular of RBI, which is not applicable to it. Further, according to Ld A.R, the assessee has been consistently following the practice of claiming "Depreciation on Investments" in the Computation of Income only, without providing for the same in its books of accounts. By placing reliance on the decision of Hon'ble Supreme Court in the case of United*

*Commercial Bank (supra), the Ld A.R contended that there is no necessity to provide for the amount in the books of account and it can be claimed in the Computation of income alone. We notice that the Hon'ble Supreme Court, in the case of United Commercial Bank (supra), had noticed that the assessee has been following the different methods of valuation for book purposes and for income tax purposes for the past 30 years and the same has been accepted by the revenue in the past years. Under these circumstances, the Hon'ble Apex Court has expressed the following view:-*

*"In our view, as stated above, consistently for 30 years, the assessee was valuing the stock-in-trade at cost for the purposes of statutory Balance Sheet, and for the income tax return, valuation was at cost or market value, whichever was lower. That practice was accepted by the Department and there was no justifiable reason for not accepting the same. Preparation of the balance sheet in accordance with the statutory provision would not disentitle the assessee in submitting the income tax return on the real taxable income in accordance with the method of accounting adopted by the assessee consistently and regularly. That cannot be discarded by the departmental authorities on the ground that the assessee was maintaining the balance sheet in the statutory form on the basis of the cost of the investments. In such cases, there is no question of following two different methods for valuing its stock-in-trade (investments) because the bank was required to prepare the Balance sheet in the prescribed form and it had no option to change it. For the purpose of income tax, as stated earlier, what is to be taxed is the real income which is to be deduced on the basis of the accounting system regularly maintained by the assessee and that was done by the assessee in the present case."*

7. *In the instant case, it is required to be seen as to whether the method adopted by the assessee for valuation of investments for Income tax purposes was consistently followed by the assessee in the earlier years also. Though the Ld A.R furnished a copy of order of Ld CIT(A) relating to the assessment year 2007-08, yet the above said question was not examined by the assessing officer. If the assessee has been consistently following a particular method of valuation of investments over the years and the same has also been accepted by the department also, then as per the decision rendered in the case of United Commercial bank (supra), the tax authorities were not justified in rejecting the said claim during the instant year. However, as stated earlier, this aspect has not been examined by the assessing officer. Further, since the assessee has been claiming deduction only for income tax purposes (without making appropriate entries in the books of account), the assessee would be entitled to claim deduction of only the incremental amount of provision. Before us, the assessee has not furnished any details to show that the claim of Rs.8.92 crores*

*made by it represents only the incremental amount of provision for depreciation on investments. Hence, in our view, this aspect also requires verification at the end of the assessing officer. In view of the above, we set aside the order of Ld CIT(A) on this issue and restore the same to the file of the assessing officer with the direction to examine this issue afresh in the light of discussions made supra and take appropriate decision in accordance with the law, after affording necessary opportunity of being heard to the assessee.*

16.1 In view of the above order of the Tribunal, we are inclined to remit the issue to the file of the Assessing Officer for reconsideration on similar directions. Thus, this ground of appeal of the Revenue is partly allowed for statistical purposes. The appeal of the Revenue in ITA No.366/Coch/2017 is partly allowed for statistical purposes.

17. In the result, appeal of the assessee in ITA No.363/Coch/2017 is partly allowed and in ITA No.364/Coch/2017 is dismissed and the appeal of the Revenue in ITA No.366/Coch/2017 is partly allowed for statistical purposes.

Order pronounced in the open court on 14<sup>th</sup> January, 2020

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

sd/-  
(CHANDRA POOJARI)  
ACCOUNTANT MEMBER

Place: Kochi

Dated: 14<sup>th</sup> January, 2020

GJ

Copy to:

1. M/s. South Malabar Gramin Bank (Presently Kerala Gramin Bank), KGB Towers, A.K. Road, Malappuram-673 505.
2. The Assistant Commissioner of Income-tax, Circle-2(2), Tirur.
3. CIT(A)-III, Kochi (concurrent jurisdiction with CIT(A), Kozhikode)

4. The Pr. Commissioner of Income-tax, Kozhikode.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)  
I.T.A.T., Cochin