

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **2169/CHNY/2018**

निर्धारण वर्ष /Assessment Year: 2013 - 14

The DCIT,
Circle 2(1),
No.44, Williams Road,
Cantonment,
Trichy – 620 001.

(अपीलार्थी/Appellant)

The Karur Vysya Bank Ltd.,
v. Erode Road,
Karur – 630 002.

PAN : AACT 3373J

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri M. Rajan, CIT
: Shri S. Ananthan, CA &
Ms. R. Lalitha, CA

सुनवाई की तारीख/Date of Hearing : 23.12.2021

घोषणा की तारीख/Date of Pronouncement : 31.01.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-1, Tiruchirapalli in Ord. No.154/1/CIT(A)-1/Trichy/2018-19, vide order dated 18.05.2018. The original assessment was framed by the DCIT, Circle 2(1), Chennai for the assessment year 2013-14 vide order dated

30.03.2016 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act'). The additions made in this original assessment order was challenged by assessee before CIT(A) and the CIT(A)-1, Tiruchirappalli in ITA No.37/CIT(A)-1/TRY/2016-17, order dated 14.09.2017 allowed relief on many grounds. Subsequently, the order of CIT(A) dated 14.09.2017 was rectified by the CIT(A)-1, suo-motu vide order No.154/1/CIT(A)-1/Try/2017-18 dated 01.11.2017. Subsequently, the DCIT, Circle 2(1), Trichy moved an application of rectification u/s.154 of the Act, dated 14.12.2007 and notice u/s.154 of the Act was issued dated 12.02.2018 and the CIT(A)-1, Tiruchirapalli passed order in appeal No.154/CIT(A)-1/Try/2018-19 dated 18.05.2018 (impugned order now).

2. The first issue in this appeal of Revenue is as regards to the order of CIT(A) in upholding the issues (i) depreciation on investment and (ii) deduction u/s.36(1)(vii) of the Act, as highly debatable and does not fall under the mistake apparent from record. For this, Revenue has raised Ground Nos.6, 7 & 9 as under:-

“6. The Ld.CIT(A) erred and failed to appreciate that non following of Instruction No.17/2008 dated 26.11.2008 during the course of appeal proceedings constitute a mistake apparent from records u/s 154.

7. The Ld.CIT(A) erred and failed to appreciate that CBDT Instruction No.17/2008 dated 26.11.2008 had been held valid by the Hon'ble Gujarat High Court in the case of CIT vs. Rajkot Dist. Co-op Bank Ltd. [2014] 43 taxmann.com 161 (Gujarat HC) and CIT vs. UTI Bank Ltd. [2013] 29 taxmann.com 79 (Gujarat HC).

9. The Ld.CIT(A) erred and failed to consider the jurisdictional ITAT judgments during the course of appeal proceedings which are binding and non following of such decisions and constitute a mistake apparent from record u/s.154.”

3. We have heard rival contentions and gone through facts and circumstances of the case. We have perused various orders passed by the AO under original assessment, rectification orders and various orders of CIT(A) as noted above. Before us, the Id.DR could not make out any case as how the provisions of section 154 of the Act, i.e., rectification of mistake apparent from record will apply in the case of depreciation on investments and the claim of deduction u/s.36(1)(vii) of the Act on merits. The Id.AR just relied on the grounds raised by the Revenue.

4. The Id.AR for assessee took us to the application moved by the AO u/s.154 of the Act requesting the CIT(A) to rectify the mistake apparent from record in the order passed by CIT(A) dated 14.09.2017 in ITA No.37/CIT(A)-1/TRY/2016-17. The Id.AR drew our attention to the following two issues:-

- (i). The appellant bank failed to classify the investments under HTM, AFS & HFT categories as per Reserve Bank of India guidelines and failed to set off appreciation against the depreciation thereby claiming excess depreciation.
- (ii). Claimed deduction u/s 36(1)(viia) on the Aggregate Average Rural Advances instead of incremental advance.

The Id.AR stated that the CIT(A) categorically held that both the issues are debatable and they cannot be considered as mistake apparent from record, rectifiable u/s.154 of the Act. He stated that both the issues on merits are covered in favour of assessee bank and these issues have been raised and decided by CIT(A) on the material placed by assessee either during assessment proceedings or CIT(A) proceedings originally or u/s.154 of the Act. The Id.AR stated that the CIT(A) recording the finding that these issues are debatable after considering material from records. The Id.AR drew our attention to final finding of CIT(A), para 24 which reads as under:-

“24) Conclusion : The ARs argued tht considering the lengthy debate and learned arguments advanced on both sides by Shri Naveenkumar, JCIT on the one side and whole team of Authorised Representative headed by Shri Anandhan on the other side, it is clear that matter sought in to be rectified are in the nature of debatable issues. There is no clarity on the accounting involved. This being the nature of issues involved, which did not permit it to be dealt as mistake apparent from records, they are not eligible for rectification u/s 154. Hence, I have to accept the argument of ARs that this issue is not up to rectification by action u/s 154 of I.T. Act.”

5. The Id.AR also raised the issue on merits that the issue of depreciation on investments amounting to Rs.41,80,57,696/-. The issue is covered by the decision of Hon'ble Jurisdictional High Court in the assessee's own case, as reported in [2005] 273 ITR 510 (Mad) and even the SLP filed by the Department has been dismissed vide SLP No.9458/2010. The Id.AR stated that this decision has been followed by the Tribunal, Chennai Bench in assessee's own case for assessment year 2007-08 in ITA No.1497/Chny/2013 dated 28.02.2019, as reported in [2019] 72 ITR (Trib) 26. The Id.AR stated on merits that the issue is covered by the decision of Hon'ble Supreme Court in the case of CIT vs. Nawanshahar Central Co-opertive Bank Ltd., [2007] 289 ITR 6 (SC), wherein the Board Circular No.18/2015 dated 02.11.2015 has clarified that the investments held by the banking concern are part of business of banking and therefore, the income from the same is taxable under the head 'profits and gains of business'. According to him, the natural corollary of the circular and the decision of Hon'ble Supreme Court is that the investments remained at the end of the year has to be treated as stock-in-trade and the settled principle is that the stock-in-trade should be valued

at lower of cost or market value. Similar are the facts in assessee's case.

6. As regards to the claim of deduction u/s.36(1)(viiia) of the Act, it was argued that the issue is squarely covered by Co-ordinate Bench decision of ITAT in assessee's own case in ITA No.1497/Chny/2013 for assessment year 2007-08 vide order dated 28.02.2019 and moreover this issue is covered by the decision of Hon'ble High Court of Calcutta in the case of PCIT vs. Uttarbanga Kshetriya Gramin Bank [2018] 408 ITR 393. In view of the above, the Id.counsel for the assessee stated that both the issues are covered, as noted above, the issue cannot be taken up under rectification proceedings.

7. We noted from the above that the issue is first of all highly debatable and requires legal arguments. Even otherwise both the issues i.e., depreciation on investments and claim of deduction u/s.36(1)(viiia) of the Act, both are covered in assessee's own case by Tribunal Benches as well as by the Hon'ble Jurisdictional High Court in assessee's own case and the Hon'ble High Court of

Calcutta. Hence, we find no error in the order of CIT(A) and hence, the appeal of Revenue is dismissed.

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 31st January, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 31st January, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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