

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

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No.672/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2014-15)

The Lakshmi Vilas Bank Limited Salem Road, Kathaparai, Karur – 639 006.	बनाम/ Vs.	ACIT Circle 2(1), Trichy.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAACT-4291-P		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./ITA No.900/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2014-15)

DCIT Circle 2(1), Trichy.	बनाम/ Vs.	The Lakshmi Vilas Bank Limited Salem Road, Kathaparai, Karur – 639 006.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAACT-4291-P		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Assessee by	:	Shri G. Sittaraman (CA) – Ld. AR
प्रत्यर्थी की ओर से/ Revenue by	:	Shri R. Mohan Reddy (CIT)& Shri AR. V Sreenivasan (Addl. CIT) – Ld. DRs

सुनवाई की तारीख/ Date of Hearing	:	13-12-2022
घोषणा की तारीख / Date of Pronouncement	:	04-01-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid cross-appeals for Assessment Year (AY) 2014-15 arises out of order dated 31-01-2019 passed by learned Commissioner of

Income Tax (Appeals)-1, Trichy [CIT(A)] in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 31-12-2016.

1.2 The grounds raised by the assessee read as under:

1. The CIT(A) erred both in Law and on the Facts of the Case in enhancing the income in respect of the following :
 - (a) Depreciation in investments **(not quantified)**
 - (b) Deduction u/s.36(l)(vii) **(not quantified)**
 - (c) Deduction u/s.36(l)(viii)
2. He erred in not issuing the notice of enhancement and in simply forwarding the letter received from the AO to the CIT(A) for making certain additions, without independently applying his mind.
3. CIT(A) erred in treating the letters received from the AO to the CIT(A) as a enhancement petition, without appropriate application of his mind.
4. He erred in not following the decision of the Appellate Authorities in the appellant's own case for the earlier years, in respect of the addition made towards depreciation on investments.
5. He failed to appreciate that the Calcutta High Court in PCIT, Jalpaiguri Vs. UttarbangaKshetriya Gramin Bank had held that the appellant was entitled to deduction u/s.36(l)(viiia), in respect of the aggregate average rural advances.
6. He failed to appreciate that the appellant had claimed deduction u/s.36(l)(viiia) in respect of the aggregate average rural advances computed as per 6ABA of the Income-tax Rules.
7. He also failed to appreciate that the appellant had claimed the deduction u/s.36(l)(viii) on a scientific manner and, in the same manner, as adopted in the earlier years and accepted by the Department.
8. The appellant submits that though the principle of *resjudicata* does not apply to income-tax proceedings, the rule of consistency applies.
9. The appellant, therefore, prays that the enhancement made by the CIT(A) may be deleted.

The additional grounds raised by the assessee read as under:

1. CIT (Appeals) erred both in Law and on the facts of the Case in not considering the deletion of the addition of Rs.4,69,83,415/-to the Book Profit.
2. He failed to appreciate that provision for leave encashment is an ascertained liability as per the decision of the Supreme Court in Bharat Earth Movers Vs. CIT (245 ITR 428 (SC) and that, therefore, it could not be added to the book profit.
3. The appellant, therefore, prays that the addition of Rs.4,69,83,415/- to the book profit may be deleted.

1.3 The grounds raised by the Revenue read as under:

1. The order of the learned CIT(A) against the facts and circumstances of the case.
2. On the facts and circumstances of the case, the CIT(A) erred in holding that the assessee has claimed leave encashment only on payment basis hence on this point

is allowed. As per section 43B(f) of the Act, under the title, ' Certain Deductions to be only on actual payment', the deduction in respect of any sum payable by the assessee in lieu of any leave at the credit of his employee shall be allowed.

4. In the facts and circumstances of the case, the learned CIT (A) has erred in allowing the claim on Ex-gratia payment without considering the fact that provisions of Sec. 37(1) clearly stipulates that it does not cover the expenditure which is in the nature covered u/s. 30 to 36 and Bonus is covered u/s. 36

5. On the facts and circumstances of the case, the CIT(A) failed to see that no rural debt written off can be claimed u/s 36(l)(viiia) if its value is less than the provision made u/s 36(l)(viiia) and also failed to appreciate the fact that the list of debts written off filed by the assessee contains some rural debts also.

6. On the facts and circumstances of the case, the CIT(A) has erred in deleting the disallowance of provision for bad and doubtful debts u/s 36(l)(viiia) of the Act quoting the census 2001.

7. On the facts and circumstances of the case, the learned CIT(A) has erred in the issue u/s 36(l)(viiia) by considering partly allowed. The CIT(A) has not considered as rural branches, as the population of each of the branches exceeded 10,000 as per the Census of 2011 are to be excluded from the definition of 'rural branches' and the quantum of "Aggregate Average Rural Advances are to be re-worked.

8. Appellant craves to add, alter or modify any ground(s) of appeal

2. As is evident, the subject matter of assessee's appeal is (i) Deduction towards decline in value of securities; (ii) Computation of Deduction u/s 36(viiia); (ii) Computation of deduction u/s 36(1)(viii); (iv) Addition of provision for leave encashment to Book Profits u/s 115JB.

The subject matter of revenue's appeal is (i) Ex-gratia payments; (ii) deletion of leave encashment; (iii) Deduction u/s 36(1)(viiia).

3. It is admitted position that substantial issues are already covered in Tribunal order in assessee's own case for AY 2012-13, ITA Nos.671 & 899/Chny/2019 order dated 19.08.2022. A copy of the same has been placed on record. In the said background, the issues arising in cross-appeals are adjudicated as under.

4. Provision for Leave Encashment:

4.1 The assessee claimed provision for leave encashment for Rs.941.46 Lacs which was partially paid during the year. The Ld. AO, invoking the provisions of Sec.43B(f), added the differential amount of

Rs.469.83 Lacs not paid by the assessee during the year. The said sum was also added back to Book Profits u/s 115JB since it was unascertained liability for the Bank. The Ld. CIT(A) directed Ld. AO to allow the deduction by observing that the said amount of Rs.941.46 Lacs was already disallowed by the assessee in the computation of income and the deduction was claimed on payment basis only.

4.2 The findings rendered by Ld. CIT(A) is uncontroverted before us. Since the assessee has already disallowed the provision in the computation of income, adding the same again would amount to double addition. Therefore, the same has rightly been deleted by Ld. CIT(A). The corresponding grounds raised by the revenue stand dismissed.

4.3 So far as the adjustment thereof u/s 115JB is concerned, Ld. AR has relied on the decision of Hon'ble Apex Court in **Bharat Earth Movers vs. CIT (245 ITR 428)** to support the argument that if the business liability has arisen in the accounting year, the deduction of the same should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. The Hon'ble Apex Court held that the provision made under leave encashment scheme proportionate with the entitlement earned by the employees of the company is not a contingent liability. Respectfully following the same, we direct Ld. AO to verify the provision so made as per actuarial valuation and not to add the same u/s 115JB. The grounds raised by the assessee stands allowed for statistical purposes.

5. Ex-gratia payments:

5.1 The assessee paid Rs.185.35 Lacs towards ex-gratia payments. The Ld. AO disallowed the same. The Ld. CIT(A) allowed the same by

relying upon the decision of Hon'ble High Court of Madras in TCA No.897 of 2013 and MP No.1/2013.

5.2 Since this issue is covered by the decision of jurisdictional High Court and Ld. CIT(A) has relied on the same, no infirmity could be found in the same. The grounds raised by the revenue stand dismissed.

6. Decline in value of securities

6.1 This was an enhancement made by Ld. CIT(A). The Ld. AO was directed to compute the depreciation under each category of security. The assessee had computed the depreciation on aggregate basis considering depreciation but ignoring appreciation. Aggrieved, the assessee is in further appeal before us.

6.2 This issue has been sent back by Tribunal in AY 2012-13 for re-adjudication. With a view to enable the revenue to take consistent stand, the matter is sent back to Ld. AO with similar directions as given in para 9.3 of Tribunal order for AY 2012-13. This ground stand allowed for statistical purposes.

7. Deduction u/s. 36(1)(viiia)

7.1 The Ld. AO was directed to compute this deduction on the basis of incremental rural advances. For this purpose, Ld. AO was directed to use Census for 2011. Aggrieved, the assessee as well as revenue is in further appeal before us.

7.2 On this issue, the directions given in Tribunal order for AY 2012-13 are as under: -

7.6 So far as the computation of deduction is concerned, we find that this issue is now covered in assessee's favor by the decision of Hon'ble High Court of Madras in the case of **CIT V/s City Union Bank Ltd. (TCA No.961 of 2010 dated 07.03.2022)** wherein Hon'ble Court concurred with principles laid down by Hon'ble Calcutta High Court in **PCIT V/s UttarbangaKshetriyaGramin Bank (256 Taxman 72)** wherein it was held that the assessee is entitled to deduction on average aggregate rural advances as computed u/r 6ABA and rejected the contentions of the department that

the deduction should be allowed only on the average aggregate rural advances disbursed during the year. Respectfully, following the same, the assessee's corresponding grounds stands allowed.

7.7 So far as second limb is concerned, we find that the meaning of rural branch has been elaborated by Hon'ble High Court of Karnataka in **State Bank of Mysore V/s ACIT (53 Taxmann.com 253)** as under: -

(ia) 'ruralbranch' 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 the previous year'

8. In respect of any provision for bad and doubtful debts made by the scheduled Bank, an amount not exceeding 7^{1/2} percentage of the total income computed before making any deduction under this clause and Chapter VI A and an amount not exceeding 10% of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner are allowed as deduction. It is clear from the said provision that, the distinction has been made between the branches situated in the rural areas and the branches situated outside the rural areas. In respect of rural area, branches have to cater to the requirements of the poor and under privileged section of the society. The chances of recovery by the national bank being weaker by 10% to the aggregate average, advances made in those rural branches is given deduction towards bad and doubtful debts. The Legislature has defined what is "rural branch", as it is clear from the *Explanation*. They have fixed the population of not more than 10,000 as determining the rural branch and that population of 10,000 should be according to the last preceding census of which the relevant figures have been published before the first day of previous year. Therefore, this benefit of 10% of the aggregate average advances made by the rural branches of the bank is extended to the small population, living in the villages which is less than 10,000. If the population of such village is more than 10,000, then the said benefit of 10% deduction is not available. Hence, we keep this object of the Legislature in mind, then interpret with the word rural branch. The word used is 'published' before the first day of previous year. If in the Census it is found that the population of a particular village has crossed 10,000 then the scheduled Bank pertains to that village would not be entitled to the deduction of 10,000 to the aggregate average advances towards bad and doubtful debts. The Census figure would be available with the Census Department. It is not possible for the common man or the bank to know what is the Census figure. Therefore, the said provision stipulates that Census figure has to be published. Therefore, it is only after publication of the Census figures one may be able to decide whether it is a rural branch as defined under the Act or not. The last stipulated population necessarily would be with reference to particular date. That day is also prescribed as that date before first day of the previous year. Once the publication of census is made before the first day of the previous year, then the said information is in public domain. Therefore, on that basis one could find whether a branch is a rural branch or not. It is no doubt true that the Census Department initially publishes a provisional population total. Probably calling objections from the public and after considering those objections, publishes final population total. The Legislature has used the words "bad and doubtful debts" and the words "provisional" and

"final" conspicuously missing in the said words. The word published has to be understood as final population as contended by the learned counsel appearing for the assessee. If other words are added it would amount to re-writing which is impermissible in law. Keeping in mind the object, before the bank is entitled to the said benefit all that is to be seen is whether in that village where the rural branch is situated population is less than 10,000 or exceeding 10,000. Census is conducted once in ten years. After conclusion of the Census, provisional figure will be published and then final publication is made. If from the date of provisional population totals being published it has crossed the 10,000 limit as prescribed under the Law, then it does not satisfy the requirements of the rural branch and consequently assessee would not be entitled to the benefit granted to the rural branches. The publication of the final population total is only a formality. If after provisional population total shows more than 10,000 and in the final population total figure shown is less than 10,000 then it will make difference. But in both the provisional population total and the final population total if figure is mentioned above 10,000 it makes no difference in the instant case. It is not the case of the assessee though the provisional figure mentioned is above 10,000 and in the final population total it has gone below 10,000. Therefore, provisional population total cannot be acted and in that view of the matter the Tribunal was justified in upholding the order passed by the assessing authority where they have acted on the Census figures of 2001 as reflected in the provisional population totals and denied the benefit to the assessee. We do not find any error committed by the authorities. In that view of the matter, the substantial question of law is answered in favour of the revenue and against the assessee. We do not see any merit in these appeals. Accordingly, appeals are dismissed.

The Special Leave Petition of the assessee against the same has already been dismissed by Hon'ble Supreme Court which is reported as 79 Taxmann.com 65. In terms of ratio of this decision, it was held that to determine status of a bank as a 'rural branch' for allowing benefit of deduction u/s 36(1)(viiia), even provisional figures of census data available on first day of relevant financial year can be taken into consideration and if figure shown in provisional population total in a village exceeds 10,000, then bank would not satisfy requirement of rural branch and consequently, would not be entitled to benefit granted to rural branch. Therefore, we direct Ld. AO to classify rural branches in terms of this decision. The assessee is directed to supply the requisite data. The ground of the department stand allowed to that extent.

Facts being pari-materia the same, similar adjudication is done for this year and the grounds thus raised in the cross-appeals stand disposed-off accordingly.

8. Deduction u/s. 36(1)(viii)

8. The only dispute is with respect to manner of computation. This issue has been adjudicated by Tribunal in AY 2012-13 as under: -

8.3 It is the plea of Ld. AR that similar methodology has been followed by the assessee in earlier years which has been accepted by the revenue and this is the first year in which such deduction has been revised. We are of the considered opinion that though the res judicata is not applicable to Income tax proceedings, however, rule of consistency would demand that accepted position is not to be disturbed, facts being remaining the same. Therefore, accepting the plea of Ld. AR, we direct Ld. AO to compute this deduction as accepted by the revenue in earlier years. This ground stand allowed for statistical purposes.

Facts being pari-materia the same, similar adjudication is done for this year and the grounds thus raised by the assessee stand disposed-off accordingly.

Conclusion

9. The appeal of the assessee as well as the appeal of revenue stand partly allowed for statistical purposes.

Order pronounced on 04th January, 2023.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 04-01-2023

EDN

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT 5. विभागीयप्रतिनिधि/DR 6. गार्डफाईल/GF