

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.: 1410/CHNY/2024

निर्धारण वर्ष/Assessment Year: 2018-19

Karur Vysya Bank Ltd.,
Erode Road,
Karur – 639 002.

**The Principal Commissioner
of Income Tax,**
Vs. Madurai – 1.

PAN: AAAC 3373J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri Ananthan, Advocate

Smt. R.Lalitha, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri Nilay Baran Som, CIT

सुनवाई की तारीख/Date of Hearing

: 01.10.2024

घोषणा की तारीख/Date of Pronouncement

: 23.10.2024

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the Revision order passed by the Principal Commissioner of Income Tax, in Order No.ITBA/REV/F/REV5/2023-24/1063497446 (1) dated 27.03.2024. The assessment was framed by the Assessing Officer, National Faceless Assessment Centre, Delhi for the assessment year 2018-19

u/s.143(3) r.w.s.144B of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 31.05.2021.

2. The only issue in this appeal of assessee is as regards to the revision order passed by PCIT, Madurai by invoking the provisions of section 263 of the Act and partially set aside the assessment order on the following issues:-

- i) To verify the MAT credit and even found not available, the AO is directed to disallow. The PCIT in para 5 of his order has directed the AO as under (relevant):-

“Therefore, the Assessing Officer is directed to verify the claim of the assessee and disallow the MAT credit, if found credit not available.”

- ii) To verify the claim of deduction u/s.36(1)(viia) of the Act and directed the AO to verify the classification of branches based on population and re-compute the deduction u/s.36(1)(viia) of the Act, the PCIT has directed the AO as under (relevant):-

“In view of the above, except for Pongalur branch having aggregate average advance of Rs.1,25,13,362/-, there is no error in the classification of the branches based on population and hence no revision order can be passed in respect of the 10 branches.

In view of the above submission of the assessee, the Assessing Officer is directed to verify the claim of the assessee and re-compute the deduction u/s.36(1)(viia) accordingly”

iii) The AO is directed to verify whether the assessee bank is treating all the investments as stock-in-trade for the purpose of disallowance u/s.14A of the Act, read with Rule 8D(2) of the Income Tax Rules, 1962 (hereinafter the 'Rules'). The PCIT directed the AO in para 5.2 as under (relevant):-

“The Hon’ble Tribunal relied on the decisions of the Hon’ble Supreme Court in the case of South India Bank Ltd and Maxopp Investments Ltd and on various Tribunal decisions in this regard to hold that in the case of Assessee engaged in the business of banking, no disallowance can be made u/s 14A. Therefore, the AO is directed to verify the submission of the assessee in this regard and decide issue accordingly.”

3. Brief facts are that the assessee is engaged in the business of banking and assessee’s main business is accepting deposit for onward lending by retaining sufficient Statutory Liquidity Ratio requirements in Government securities and in other Specified securities. The assessee’s main earning of income is by way of lending and securities held. The assessee is also earning income from para-banking activities such as insurance and mutual fund business. The assessee filed its return of income on 06.10.2018 and the same was processed u/s.143(1) of the Act and subsequently, the case was selected for scrutiny assessment under CASS and accordingly, notice u/s.143(2) of the Act dated 22.09.2019 was

issued and served on the assessee. Subsequently, notices u/s.142(1) of the Act were issued along with questionnaire and assessee filed details in response to the same, which was scrutinized by the AO from the facts of the case, financial statements and certain issues were discussed and AO framed assessment u/s.143(3) r.w.s. 144B of the Act vide order dated 31.05.2021. Subsequently, the PCIT on verification of assessment records for the relevant assessment year 2018-19 and assessment order passed by AO u/s.143(3) r.w.s. 144B of the Act dated 31.05.2021, a show-cause notice u/s.263 of the Act was issued by the PCIT on the issue of MAT credit adjustment, excess claim of deduction u/s.36(1)(viiia) of the Act and disallowance of expenses relatable to exempt income by invoking the provisions of section 14A of the Act r.w.rule 8D of the Rules on 02.02.2024 and subsequently, another show-cause notice was issued on 07.03.2024.

3.1 The assessee before PCIT explained as regards to MAT credit set off that the assessee for assessment year 2015-16 has paid the tax under MAT and it was carried forward and set off against tax payable for assessment year 2018-19 apart from other preceding years. It was explained that for assessment year 2015-16 because of additions were made in the order u/s.143(3) of the Act under

regular computation, the tax payable under normal computation was higher and there was no tax demand under MAT. The appeal for assessment year 2015-16 was allowed by Tribunal and consequent to Tribunal's order, the computation has to be reworked and accordingly, the MAT becomes applicable, the same will be available for set off in the subsequent assessment years and Tribunal has already decided this issue. The Id.counsel stated that for this purpose and for verification of MAT credit, the revision proceedings cannot be initiated rather this can be rectified while giving effect to the appellate order of ITAT or an order can be passed u/s.154 of the Act. The Id.counsel stated that the Tribunal has already passed an order allowing the appeal of assessee bank for assessment year 2015-16 and other years on most of the issues and if the appeal effect is given to the order of ITAT, then the MAT credit available on the same can be verified.

4. As regards to the claim of deduction u/s.36(1)(vii) of the Act, the Id.counsel stated the facts that the assessee's bank claimed deduction of Rs.227,08,23,702/- u/s.36(1)(vii) of the Act in respect of provision for bad and doubtful debts and complete details were submitted during assessment proceedings and assessment was completed after allowing a part of claim by excluding 11 rural

branches from the calculation. The present proceedings i.e., revision proceedings u/s.263 of the Act alleging to the assessee that another 11 rural branches are to be excluded from the classification as rural branches, the assessee before PCIT submitted the complete details which are extracted at pages 10 to 12 of the revision order and it is an admitted fact that except for Pongalur branch having credit value advance of Rs.1,25,13,362/-, there is no error in the classification of branches based on population, which has already been considered. Except this Pongalur branch, no other branch can be excluded because the assessee has enclosed the 2011 census population before PCIT and even now before us, the assessee admitted that Pongalur branch can be excluded from rural branches since the population is more than 10,000 as per 2011 census. The Id.counsel for the assessee before us submitted that the PCIT has only directed the AO to verify the claim of assessee and re-compute the deduction u/s.36(1)(viiia) of the Act but did not find any error in the order of AO but he only remanded the issue back to the AO for the purpose of verification.

5. As regards to disallowance of expenses relatable to exempt income, the Id.counsel for the assessee stated that the assessee bank had earned exempt income on investments amounting to

Rs.136 crores and it has suo-moto disallowed a sum of Rs.2,56,403/- but this disallowance is without prejudice to its argument that no disallowance can be made invoking the provisions of section 14A of the Act. The Id.counsel for the assessee stated that the PCIT during the proceedings u/s.263 of the Act, treated the investments made by bank as stock-in-trade, hence no such disallowance can be made by invoking the provisions of section 14A of the Act for the reason that this issue was decided by Hon'ble Supreme Court in the case of South Indian Bank Ltd., vs. CIT reported in (2021) 438 ITR 1. Even this issue is covered by the Tribunal's decision in assessee's own case in earlier assessment years in ITA Nos.902, 903, 905, 907/CHNY/2010 & 930, 931/CHNY/2011 vide order dated 09.06.2023. The Id.counsel stated that the Hon'ble Supreme Court has considered this issue and categorically held whatever the investments held by banking company are to be treated as stock-in-trade and no disallowance u/s.14A of the Act can be made while dealing with the case of banks.

6. Apart from the merits of the case, the Id.counsel for the assessee also raised the issue of jurisdiction that there is no error in the assessment order or there is no prejudice caused to the Revenue pointed out by PCIT while passing revision order u/s.263 of the Act.

7. On the other hand, the Id.CIT-DR relied on the revision order passed by the PCIT.

8. We have heard rival contentions and gone through facts and circumstances of the case. First issue on merits is as regards to the order of PCIT directing the AO to verify the claim of assessee to MAT credit and if found credit not available, disallow the same. The facts of the case are that the assessee bank had availed MAT credit for the assessment year relating to assessment year 2015-16 as per the provisions of section 115JAA of the Act. We noted from the facts that for the relevant assessment year 2018-19, it had adjusted MAT credit of Rs.35,56,55,351/- against the tax liability payable as per the normal provisions. The audit party raised objection, while auditing the assessment records that there was no MAT credit available for the assessment year 2015-16 since the assessment completed u/s.143(3) of the Act made various additions by the AO and the tax payable as per regular computation was more than tax payable as per MAT computation. In term of these observations, the PCIT commenced revision proceedings u/s.263 of the Act but it was explained by assessee before us that in the present case, the ITAT for assessment year 2015-16 has already passed order allowing the

appeal of bank in respect of most of the additions made by AO and confirmed by CIT(A). The Id.counsel explained before us that if the AO give appeal effect to the order of ITAT, then the MAT credit will be available to the assessee and in term of ITAT, a consequential order giving effect to the same has to be passed. Since in the present case, there is no error in the assessment order as per the returned income, MAT credit is available. Any adjustment arising out of assessment and appeal proceedings could be rectified while giving effect to the Appellate Order passed by ITAT or rectification order u/s.154 of the Act can be passed. The Id.counsel for the assessee filed complete details before us but going through the fact that these needs verification, after going through the consequential order passed by AO and hence, although it cannot be a subject matter of revision u/s.263 of the Act, there is no error in the assessment order or no prejudice is caused to the Revenue, the MAT credit can be verified by the AO and that can be done while giving appeal effect order of AO for the assessment year 2015-16 and consequent rectification can be done by the AO for assessment year 2018-19 also. Hence to that extent, we agree with the directions of PCIT but this cannot be a subject matter of revision u/s.263 of the Act. Accordingly, this issue of assessee's appeal is allowed subject to above observation.

8.1 The second issue on merits is as regards to revision order of PCIT directing the AO to verify the claim of deduction u/s.36(1)(viia) of the Act on the loan advance by 11 branches, which are not classified as rural branches for the purpose of claiming deduction u/s.36(1)(viia) of the Act. We noted that the assessee bank claimed deduction of Rs.227,08,23,702/- u/s.36(1)(viia) of the Act in respect of provisions for bad and doubtful debts. The assessee before AO during the original assessment proceedings filed various details and thereafter, the AO completed assessment after disallowing a part of claim of deduction by excluding 11 rural branches from the calculation and passed assessment order u/s.143(3) of the Act and AO disallowed a sum of Rs.199,68,95,443/-. The Id.counsel before us has now argued that the revision proceedings commenced by PCIT u/s.263 of the Act by alleging that another 11 branches are to be excluded from the classification as rural branches, we noted from the facts that the assessee has filed complete details of 11 branches which are situated in various cities and also submitted addresses of branches in Annexure-2, which is made part of the revision order at pages 10-12. From the above, 11 branches located at various places, it is noticed that 10 branches are covered by 2011 census wherein population is less than 10,000 except one branch of Pongalur which can be excluded from rural branches since the

population is more than 10,000 as per 2011 census. The claim of deduction in respect of Pongalur banch having aggregate average advance of Rs.1,25,13,362/- can be excluded. We have gone through the factual details and noted that, error in the assessment order which has caused prejudice to the Revenue is only in respect of this amount of Rs.1,25,13,362/- claimed as deduction u/s.36(1)(viiia) of the Act in regard to Pongalur branch. Hence, we direct the AO to amend the assessment order to that extent and to that extent, the assessment order is erroneous and prejudicial to the interest of Revenue. But in any case, we have adjudicated this issue on merits and directed the AO accordingly.

8.2 Coming to the next issue on merits arising out of revision order passed by PCIT is as regards to disallowance of expenses relatable to exempt income u/s.14A r.w.rule 8D(2) of the Rules. We noted from the facts of the case that the assessee has earned exempt income to the extent of Rs.136 crores and the assessee suo-moto made disallowance of Rs.2,56,403/-, the expenses incurred to earning exempt income by going through the provisions of section 14A of the Act. Now the PCIT want to invoke the prescribed formula as prescribed under Rule 8D(2)(ii) of the Rules and disallowance according to PCIT has to be worked out at 1% of the average value

of investment on income earned or capable of earning exempt income which works out to Rs.1.36 crore. We noted that the AO as well as PCIT during revision proceedings u/s.263 of the Act noted that investments are treated by assessee bank as stock-in-trade and this issue is squarely covered by the decision of Hon'ble Supreme Court in the case of South Indian Bank Ltd., *supra* and hence, no disallowance can be resorted by invoking the provisions of section 14A of the Act r.w.rule 8D(2) of the Rules, wherever the investments are treated by bank as stock-in-trade. We noted that this issue is covered by Tribunal decision in assessee's own case in ITA Nos.902, 903, 905, 907/CHNY/2010 & 930, 931/CHNY/2011 wherein the Tribunal has considered this issue in paras 6 & 7 as under:-

6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The solitary issue that came up for our consideration from all these appeals filed by the assessee relates to disallowance of expenditure relatable to exempt income u/s.14A of the Act. We find that the issue is squarely covered in favour of the assessee by the decision of ITAT, Chennai Benches in the assessee's own case for AY 2013-14, where the Tribunal by following the decision of the Hon'ble Supreme Court in the case of South Indian Bank Ltd. v. CIT (supra) held that shares & securities held by the bank or guarantor and income received for such shares & securities must be considered as business income, and consequently, provisions of Sec.14A of the Act, would not be attracted to such income. The relevant findings of the Tribunal are as under:

12. The first issue that came up for our consideration from Ground No.2 of disallowance of expenditure relatable to exempt income u/s.14A of the Act The earned dividend income of Rs.2,21,85,558/-, however no disallowance as required Act had been made by the assessee. Therefore, the AO has disallowed 2% of such income as expenses relatable to exempt income u/s.14A read with Rule 8D of the Rules, 1962 (hereinafter the 'IT Rules'). On appeal, the Id.CIT(A) has restricted 1.15% of exempt income which is proportionate expenditure of the Treasury CIT (A) has also disallowed an amount of Rs.65,68,526/- being 0.5% of the tax exempt by invoking Rule 8D(2)(iii) of the IT Rules.

12.1 The Id.AR for the assessee at the time of hearing submitted that this issue is favour of the assessee by the decision of ITAT in assessee's own case for 2012-13 in ITA No.54/CHNY/2018, where it has been held that no disallowance u/s.14A is permissible in terms of Rule 8D where the assessee is engaged in banking business He submitted that in a recent decision in the case of South Indian Bank Ltd., vs. CIT, Supreme Court in Civil Appeal No.9606 of 2011, vide order dated 09.09.2021 held that in the case of banking companies, Section 14A is not applicable.

12.2 The Id.DR on the other hand supporting order of the CIT(A) submitted that the exempt income is earned, disallowance contemplated u/s.14A triggers and the AO shall compute such disallowance by invoking Rule 8D of IT Rules, 1962 and thus, there is no error in the reasons given by the authorities below to sustain addition made towards disallowance u/s.14A and their orders should be upheld.

12.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Admittedly, the issue is covered in favour of the assessee by the decision of ITAT in assessee's own case for assessment year 2012-13, where under identical set of facts, the Tribunal by following certain judicial precedents including the decision of Hon'ble Punjab & Haryana High Court in the case of Pr.CIT vs. State Bank of Patiala, [2017] (2) TMI 125, held that no disallowance u/s.14A is permissible in terms of Rule 8D, where the assessee is engaged in banking business. A similar view is taken by the Hon'ble Supreme Court in the case of South Indian Bank Ltd vs. CIT in Civil Appeal No.9606 of 2011, and held that shares and securities held by a bank are stock-in-trade and income received on such shares and securities must be considered to be business income. That is why, Section 14A of the Act would not be attracted to such income.

12.4 In this view of matter and consistent with view taken by the Co-ordinate Bench and also by respectfully following the decision of Hon'ble

Supreme Court in the case of South Indian Bank Ltd., vs. CIT, supra, we direct the AO to delete addition made towards disallowance u/s.14A r.w.rule 8D of the IT Rules, 1962.

7. Further, the Hon'ble Karnataka High Court in the case of the CIT, LTU, the Addl./Jt.CIT, LTU, Bengaluru v. M/s.Canara Bank, reported in 2023 (1) TMI 243 (Karnataka High Court), had considered an identical issue and by following the decision the Hon'ble Supreme Court in the case of South Indian Bank Ltd. v. CIT (supra) held that provisions of Sec.14A of the Act, are not applicable in case of banking companies, where dividend income has to be considered as business income. The Hon'ble Delhi High Court, in the case of PCIT v. Punjab National Bank had also considered an identical issue and by considering the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. CIT reported in [2018] 402 ITR 640 (SC) held that provisions of Sec.14A of the Act, will not apply on profits from shares where held as stock in trade and not as investments. The sum and substance of ratio laid down by the Hon'ble Supreme Court and the Hon'ble High Courts are that in case of banking companies were shares & securities are held as stock in trade, dividend income is considered as business income, and consequently, provisions of Sec.14A of the Act, cannot be applied.

In term of the above, we find no error in the order of AO which is causing prejudice to the Revenue rather the AO has rightly not disallowed any expenses relatable to exempt income in respect of investments held by assessee bank as stock-in-trade. Hence, we find no error in the assessment order and hence on this issue, on merits, the order of PCIT is reversed.

9. As regards to the issue of jurisdiction, since we have adjudicated the issues on merits, this has become academic and hence, dismissed as academic. Accordingly the appeal of the assessee is partly-allowed.

10. In the result, the appeal filed by the assessee is partly-allowed.

Order pronounced in the open court on 23rd October, 2024 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 23rd October, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Madurai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.