

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Satbeer Singh Godara, Judicial Member and
Shri Amarjit Singh, Accountant Member

ITA No. 232/Coch/2024 - AY: 2004-05
ITA No. 233/Coch/2024 - AY: 2006-07
ITA No. 283/Coch/2024 - AY: 2008-09
ITA No. 285/Coch/2024 - AY: 2013-14
ITA No. 286/Coch/2024 - AY: 2014-15
ITA No. 288/Coch/2024 - AY: 2019-20

The South Indian Bank Ltd. Head Office, Mission Quarters Thrissur 680001 [PAN: AABCT0022F]	vs.	ACIT, Circle - 1(1) Thrissur
(Appellant)		(Respondent)

Appellant by:	Shri Naresh S., CA
Respondent by:	Dr. S. Pandian, CIT-DR

Date of Hearing:	22.08.2024
Date of Pronouncement:	23.10.2024

ORDER

Per Bench

These assessee's six appeals arise against orders of the CIT(A)-2, Chandigarh in proceedings u/s. 250 of the Income Tax Act, 1961 (the Act) as under : -

Sr. No.	ITA No.	AY	DIN & Order No.	Date
1	232/Coch/2024	2004-05	ITBA/NFAC/S/250/2023-24/1060144092(1)	25.01.2024
2	233/Coch/2024	2006-07	ITBA/NFAC/S/250/2023-24/1060196214(1)	29.01.2024
3	283/Coch/2024	2008-09	ITBA/NFAC/S/250/2023-24/10606133339(1)	07.02.2024

4	285/Coch/2024	2013-14	ITBA/NFAC/S/250/2023-24/1060597167(1)	07.02.2024
5	286/Coch/2024	2014-15	ITBA/NFAC/S/250/2023-24/1060609573(1)	07.02.2024
6	288/Coch/2024	2019-20	ITBA/NFAC/S/250/2023-24/1060620241(1)	07.02.2024

We proceed assessment year-wise for the sake of convenience and brevity.

Heard both the parties. Case files perused.

ITA No. 232/Coch/2024 – AY : 2004-05

2. The assessee's first substantive ground claims recomputation of section 234D interest on the ground that the correct relevant time period is 8 months than 9 months taken by the lower authorities. We are of the considered view that the instant issue is more of reconciliation and factual verification than requiring an apt adjudication on our part. We accordingly restore the same back to the Assessing Officer for his fresh adjudication after verification of the necessary facts.

3. The assessee's claim of 244A interest is also restored back to the learned Assessing Officer in preceding terms.

4. Lastly comes the third issue of section 220(2) interest wherein the assessee's admitted case is that although there is no apparent mistake on the part of the Assessing Officer in arriving at the relevant figure herein, it has invoked section 154 rectification on the ground that the departmental authorities had not given effect to the appeal(s) filed in respective orders resulting in refund; which in turn, would reduce its demand in AY 2004-05. We are, first of all, or the considered view that the impugned interest u/s. 220(2) of the Act pertaining to the relevant previous year has to be computed on standalone basis because of the fact that even if we hold the learned Assessing Officer has not given effect to any other assessment years order by

the concerned appellate authority, would not *ispo facto* result in assessee's claim for rectification u/s. 154 of the Act as its purpose is to deal with the apparent mistake on record pertaining to previous year 2003-04 only. Be that as it may, we are of the view that rectification is not meant to deal with detailed fishing enquiries TS Balram, ITO vs. Volkart Bros. [1971] 82 ITR 50 (SC). We thus reject the assessee's last substantive ground. This appeal of the assessee is partly allowed for statistical purposes in very terms.

ITA No. 233/Coch/2024 – AY : 2006-07

5. The assessee has raised its sole substantive ground claiming section 244A interest inter alia for the sole reason that his tribunal had passed its order on 30.06.2011 which was given effect to by the learned Assessing Officer on 16.09.2020. Shri Naresh takes us to section 244a(1A) of the Act inserted by Finance Act, 2016 w.e.f. 01.06.2016 that the assessee is entitled for the interest at the specified rate given the fact that the Assessing Officer had not passed the giving effect order within the prescribed time period.

6. The learned CIT-DR taken a strong exception to applicability of the impugned statutory provision itself on the ground that we are in AY 2006-07 and the tribunal has passed its order in 2011. Meaning thereby that the above statutory provisions could not be applied retrospectively. We are of the considered view that in this factual backdrop the tribunal's coordinate bench order in ITA No. 945/Mum/2023 DCIT vs. Union Bank of India dated 29.08.2023 has rejected Revenue's very stand as under: -

“6. The only grievance of the department before us is that, since the order of the Tribunal was passed before 01/06/2016 and therefore, the provision of Section 244A(1A) is not applicable which was brought in the statute w.e.f. 01/06/2016. Once the

order giving effect by the Assessing Officer has been passed after 01/06/2016 then sub-section (7) of Section 153 categorically provides that effect of any order referred to any Sub-section (5) is given by the AO and if such order has been received before the 1st day of June 2016, then the Assessing officer shall give effect to such order on or before 31/03/2017. Thus, the ld. AO was required to give interest as provided u/s. 244A(1A) r.w.s.153(7) and ld. CIT(A) has merely directed the ld. AO to verify and grant the monetary interest. We do not find any infirmity in the said direction and accordingly, the grounds raised by the Revenue in all the three years are dismissed.”

7. Faced with this situation, we allow the assessee's instant appeal ITA No. 233/Coch/2024 by adopting the above extracted decision mutatis mutandis and direct the learned Assessing Officer to compute the interest herein as per the law. Ordered accordingly

ITA No. 283/Coch/2024 – AY : 2008-09

8. This assessee's appeal raises the following substantive grounds: -

- “1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in confirming the order of AO on disallowance of expenses incurred on QIP treating the same as capital expenditure.*
- 2. Without prejudice to the above, on the facts and in the circumstances of the case and in law, the Id. CIT(A) ought to have at least allowed deduction u/s 35D in respect of the said expenditure.*
- 3. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in confirming the order of AO on taxing of surplus amount realized through auction of jewels, shown as liability in books and to be repaid to customers, based on decision of Hon'ble Kerala High Court without considering the subsequent RBI circular which required the amount to be transferred to Depositor Education and Awareness Fund.*
- 4. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in confirming the order of AO on taxing of excess cash received by branches, shown as liability in books, based on decision of Hon'ble Kerala High Court without considering the subsequent RBI circular which required the amount to be transferred to Depositor Education and Awareness Fund.*
- 5. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in confirming the order of AO on classification of rural branches for section 36(1) (viiia) based on population of village instead of population of ward.*

6. *Without prejudice to the above, on the facts and in the circumstances of the case, based on the decision of Hon'ble Supreme Court in case of Vijaya Bank (323 ITR 166), since the provision made is reduced from advances in the Balance Sheet, the same ought to have been allowed u/s 36(1)(vii).*

Your appellant craves leave to add or to amend and/or vary the grounds of appeal before or at time of hearing.”

9. Suffice to say, both the learned representatives during the course of hearing duly agree that the hon'ble jurisdictional high court has itself settled the issue in department's favour so far as allowability of the impugned expenditure falling under capital than revenue expenditure is concerned. This first and foremost substantive ground stands rejected.

10. Learned counsel's next argument in support of the remaining amount of its expenditure incurred on "QIP" issue of shares falls within section 35D(2)(c) of the Act; as the case may be; which has neither been considered in assessment findings nor in the CIT(A)'s detailed discussion. The assessee vehemently argues that once the expenditure satisfies all foregoing statutory conditions, it is indeed eligible for claiming the relief u/s. 35D of the Act. Faced with this situation, we find that the issue deserves to be restored to the Assessing Officer as there is no indication that he had considered the assessee's claim under the foregoing specific statutory provision. We accordingly restore the issue to the Assessing Officer for his factual verification and adjudication afresh.

11. The assessee's third and fourth substantive grounds and regarding taxability of surplus realized through jewellery action and excess cash received by branches appears to a recurring issue(s) wherein the hon'ble jurisdictional high court in its tax appeal ITA 183 of 2015 dated 22.09.2021 for AY 2007-08 has directed the Assessing Officer to verify the relevant facts afresh as under: -

“6.2 After perusing the findings recorded by the Tribunal and the primary and the appellant authorities under the Act, the Circulars issued by the Reserve Bank of India, and the mandate of Section 26A of the Banking Regulation Act, we are of the view that the issue needs to be reconsidered by the Assessing Officer. Because the contention of assessee in the nature of holding of surplus amount is dealt with and clarified by the RBI. Hence, the questions are answered in favour of the assessee and against the Revenue. The findings recorded by the Tribunal and the conclusions of the authorities are set aside. Matter remitted to the Assessing Officer for disposal afresh in accordance with law and the Circulars are kept in perspective while deciding the nature of receipt, whether constitutes a deposit with assessee/Bank as custodian or attracts the meaning of revenue receipt. The Assessing Officer affords opportunity to the assessee for filing additional reply/materials/details on the operation of Circulars dated 21.03.2014 and 27.05.2014 and steps taken by the assessee in this behalf in the Assessment Years covered there-under. The Assessing Officer, duly taking into consideration all the relevant materials, shall pass fresh assessment order.

Question nos. (d) and (e) are answered as indicated above.”

12. We thus go by their lordships detailed discussion to accept the assessee’s twin identical grounds for statistical purposes in very terms.

13. It lastly emerges that their lordships very judgement has also restored the assessee’s grounds identical to ground Nos. 5 & 6 back to the Assessing Officer as follows :

“4.1 Substantial question no.(b) deals with the claim relating to bad debts and is covered by the judgment of this Court in Commissioner of Income Tax v. Lord Krishna Bank Ltd². This Court has taken a view that the Assessing Officer finds out the extent of rural branches, allows deduction to that extent, and while doing so the applicability of the principle laid down in Vijaya Bank v. Commissioner of Income-tax³ is appreciated. With the above perspective, we are of the view that the matter needs to be remitted to the Assessing Officer for disposal afresh on the claim of rural branches. Accordingly, in ITA No.1284/2009 and ITA 1327/2009, we have remitted the matter to the Assessing Officer for re-consideration afresh on the claim as the present. On the same lines with those observations, the matter is remitted to the Assessing Officer for decision and disposal afresh. The net effect of the above discussion is that, substantial question no.(b) is covered against the assessee and in favour of the Revenue by the judgment in Lord Krishna Bank Ltd and substantial question no.(g) is answered in favour of the assessee and against the Revenue, however issues covered by the question no.(g) are remitted to Assessing Officer for decision afresh.

2 (2011) 339 ITR 606 (Ker)

3 (2010) 323 ITR 166 (SC) 2021”

14. We thus adopting the judicial consistency in light of their lordships judgement and direct the Assessing Officer to carry out his necessary factual verification. Ordered accordingly. This assessee's appeal ITA No. 283/Coch/2024 is partly allowed for statistical purposes.

15. We take assessee's appeal in **ITA Nos. 285 & 286/Coch/2024** for AYs 2013-14 & 2014-15 in raising identical issues challenging correctness of the lower authorities action disallowing it's section 36(1)(vii) deduction on long term housing loans granted to various customers. Suffice to say, the same appears to be a recurring issue between the parties wherein this tribunal's learned coordinate bench in earlier order dated 22.03.2019 had rejected the assessee's very contention(s). The assessee thereafter filed its appeal(s) ITA No. 165 of 2019 in the hon'ble jurisdictional high court. Their lordships' detailed judgement dated 08.07.2024 has reversed the tribunal's said findings to this effect as follows: -

“2. The brief facts necessary for disposal of these I.T. Appeals are as follows:

The appellant before us is engaged in the business of banking and is an assessee under the Income Tax Act ('the Act' for short) on the files of the respondent. During the assessment year 2012-13, the appellant had received dividend income of Rs.1,77,26,110/- from its investments in shares and bonds. Though during the year the dividend income received on such shares and bonds was tax free, the shares and bonds in question were held by the appellant as trading assets. The trading and current assets were valued at cost or market price, whichever was lower at the end of the financial year, and consequent depreciation in the value of the same was taken into account in the financial accounts of the Company. The profit on the sales of shares/bonds was also returned and assessed as business income of the Bank. In respect of the expenditure incurred by the appellant for buying and selling securities, the appellant claimed deduction while computing the profits and gains of business. The said claim for deduction was however disallowed by the assessing authority under Section 14A of the Act.

3. The assessing authority was of the view that in as much as the appellant-Bank had not maintained separate accounts to show that the investment in shares and bonds had been made from surplus funds available with it and not using the borrowed funds, the expenses incurred by way of interest paid to the lending institution could not be allowed

as deduction, in view of the provisions of Section 14A of the Act. The same issue arises for the appellant in I.T.A.No.28 of 2020 as well, pertaining to assessment year 2015-16.

4. In this connection, it has to be noted that the said issue, although answered against the appellant by the Tribunal in the orders impugned before us, was ultimately resolved in favour of the assessee by Supreme Court in an appeal pertaining to an earlier year as evident from the decision reported in South Indian Bank Ltd. v. Commissioner of Income Tax [(2021) 438 ITR 1 (SC)], where the Supreme Court found that there was no necessity for maintaining separate accounts to show that the assessee had made the investments only from surplus funds and that, so long as it was evident that interest free funds were available with the assessee which exceeded their investments, the provisions of Section 14A could not be relied on by the revenue to disallow the claim for expenses made by the assessee. We are also informed that the assessing officer has since, taking note of the Supreme Court judgment, passed rectification orders rectifying the assessments in the instant cases, in line with the Supreme Court judgment.

5. The other issue that arose for the assessment year 2012-13 which is also an issue that arises in the assessment year 2015-16 in I.T.A.No.26 of 2020 is the disallowance under Section 36(1)(viii) of the Act. The disallowance arose consequent to an amendment that was effected to the provisions of Sections 36(1)(viii) with effect from 01.04.2010 through the Finance (No.2) Act, 2009. The appellant-Bank was engaged in the business of providing housing loans for purchase or construction of houses, and had been obtaining the benefit of the deduction contemplated under Section 36(1)(viii) of the Act in the years prior to the amendment. On account of the amendment referred above, and the change in the definition of eligible business, the assessing authority found that eligible business in relation to a Banking Company included only the business of 'providing long term finance for developing of housing in India' and hence, the appellant would not get the benefit if it 'provided long term finance for construction or purchase of houses in India for residential purposes'. The reasoning of the Appellate Tribunal, while confirming the view of the assessing officer, was that after the amendment, and the deletion of the words 'construction or purchase of houses in India for residential purposes' from the definition of eligible business in relation to a Banking Company, the deduction envisaged for a Banking Company could not be availed in a situation where the bank was engaged in providing long term finance for construction or purchase of house for residential purposes, since that deduction was available only to Housing Finance Companies after the amendment.

6. In this connection, it is relevant to note that the explanatory notes to the provisions of the Finance (No.2) Act, 2009 state as follows with regard to the reasons for the amendment effected in Section 36(1)(viii) of the Act with effect from 01.04.2010:

“17. Special deduction under Section 36(1)(viii) to National Housing Bank (NHB)

17.1 Clause (viii) of sub-section (1) of Section 36 [Section 36(1)(viii)] provides special deduction to financial corporations and banking companies of an amount not exceeding 20% of the profits subject to creation of a reserve.

17.2 National Housing Bank (NHB) is wholly owned by Reserve Bank of India and is engaged in promotion and regulation of housing finance institutions in the country. It

provides refinancing support to housing finance institutions, banks, ARDBs, RDBs, etc., for the development of housing in India. It also undertakes financing of slum projects, rural housing projects, housing projects for EWS and LIG categories etc. NHB is also a notified financial corporation under Section 4A of the Companies Act.

17.3. A view has been expressed that NHB is not entitled to the benefits of Section 36(1)(viii) on the ground that is not engaged in the long-term financing for construction or purchase of houses in India for residential purpose. Hence the Act has been amended to provide that corporations engaged in providing longterm finance (including re-financing) for development of housing in India will be eligible for the benefit under Section 36(1)(viii).

17.4. Applicability- These amendments will be effective from the 1 st April, 2010 and will accordingly apply in respect of assessment year 2010-11 and subsequent assessment years.

7. It is apparent from a reading of explanatory notes above that the amendment was deemed necessary to enable the National Housing Bank, which was a notified Financial Corporation under Section 4A of the Companies Act, and wholly owned by the Reserve Bank of India, to claim the deduction in respect of its activities of promotion and regulation of Housing Finance Institutions in the country, inter alia, by providing re-financing support to Housing Finance Institutions and Banks.

8. Apparently, a view had been expressed that National Housing Bank was not entitled to the benefits of the unamended Section 36(1) (viii) of the Act, on the ground that it was not engaged directly in the long term financing for construction or purchase of houses in India for residential purpose. The amendment was therefore deemed necessary to extend the said benefit even to the National Housing Bank. It follows therefore that the amendment was intended to widen the scope of the deduction in relation to Financial Corporations specified in Section 4A of the Companies Act, Financial Corporations that were Public Sectors Companies, Banking Companies and Corporative Banks other than Primary Agricultural Credit Society or Primary Corporative Agricultural and Rural Development Banks and to confine the benefit available to a Housing Finance Company only in relation to the provision by it of long term finance for the construction or purchases of houses in India for residential purpose.

9. We therefore, cannot agree with the finding of the Appellate Tribunal that in as much as the providing of long term finance for construction or purchases of houses in India for residential purpose was an activity that qualified for deduction under Section 36(1)(viii) only for Housing Finance Companies, the same activity would not qualify for deduction in relation to a Banking Company. The phrase 'Development of Housing in India' is wider in its scope and ambit and includes within its ambit the phrase 'construction or purchase of houses in India for residential purposes'.

10. We are therefore of the view that even after 01.04.2010, the appellant Bank would be entitled to the deduction envisaged under Section 36(1)(viii) of the Act in respect of the long term finance provided by it for construction and purchase of houses in India for residential purpose.

11. There is yet another aspect of matter. If the interpretation given to the provisions by the Appellate Tribunal is to be accepted, then it would result in an anomalous situation where the Housing Finance Companies would stand to benefit from the deduction and, consequently, offer attractive rates of interest in relation to the loans advanced by them for construction or purchase of houses for residential purposes, in comparison with the loans offered by the Banking Companies that would not get the benefit of deduction under S.36 (1) (viii). This would result in an arbitrary classification between Banking Companies and Housing Finance Companies that has no nexus with the object that was sought to be achieved by the legislature while amending the statutory provision, and it is trite that an interpretation that would bring about an unconstitutional result has necessarily to be eschewed.”

16. The Revenue fails to pinpoint any specific distinction on facts or law qua the instant sec.36(1)(viii) deduction issue. We thus go by their lordships elaborate discussion mutatis mutandis to accept the assessee’s sole substantive ground in very terms. Both these appeals ITA Nos. 285 & 286/Coch/2024 are allowed in above terms.

ITA No. 288/Coch’2024 – AY : 2019-20

17. We find that both the lower authorities herein have disallowed the assessee’s claim of business expenditure amounting to Rs.5,00,75,900/- representing penalty paid to Reserve Bank of India on the ground that the same is covered under Explanation 1 of section 37(1) of the Act.

18. Learned CIT-DR vehemently argues that the assessee has paid the impugned penalty for violation of the law; which in turn, duly forms an offence even if it may or may not entitled penal consequences.

19. We find that this tribunal’s recent coordinate bench order IDBI Bank v. DCIT in ITA No. 3394 & 3849/Mum/2019 dated 09.02.,2021 has rejected the Revenue’s very stand defending such a disallowance as under : -

12. We have heard the rival submissions and perused the relevant materials on record. In M/s Stock & Bond Trading Company (supra) one of the questions was whether the

Tribunal was justified in deleting the additions made by the AO under provisions to section 37(1) being penalty imposed by the National Stock Exchange on the assessee. The Hon'ble High Court held that :

“3 As regards the second question is concerned, the finding of fact recorded by the CIT(A) and upheld by the ITAT is that the payments made by the Assessee to the Stock Exchange for violation of their regulation are not on account of an offence or which is prohibited by law. Hence, the invocation of explanation to section 37 of the Income Tax Act, 1961 is not justified. In our opinion, in the facts and circumstances of the present case, no fault can be found with the decision of the ITAT. Accordingly, the second question cannot be entertained.”

In Bapunagar Mahila Co-operative Bank Ltd. (supra), the Tribunal held that :

“20. We come to the assessee's first substantive ground. The RBI imposed a penalty of Rs.5 lacs (supra) u/s. 47A (1)(b) of the Banking Regulation Act,1947 alleging violation of KYC norms. Both the authorities below hold that a penalty imposed does not give rise to any corresponding revenue expenditure being penal in nature.

21. It has come on record that this penalty arises from the assessee's action in opening 250 FDRs (supra) already dealt in Revenue's appeal. The question that arises for our consideration is as to whether the word 'penalty' results in a blanket disallowance or facts involved therein still need to be examined. The hon'ble Kerala high court (2004) 265 ITR 177 CIT v/s. Catholic Syrian Bank holds that an important test in such a case is as to whether the penalty for non compliance entails compensatory or penal consequences. And also that if any criminal liability or prosecution is provided, a levy is penal in nature. Section 46 r.w.s. 47A(1)(b) of the Banking Regulation law does not stipulate any such criminal liability. We follow the aforesaid case law in these facts and direct the assessing authority to allow the assessee's claim of Rs.5 lacs as revenue expenditure.”

In Mangal Keshav Securities Ltd. (supra), the assessee was engaged in the business of share/stock broking. It paid a sum of fine/penalty to stock exchange for non-maintenance of KYC forms etc. Said penalty was disallowed by the AO by invoking Explanation 1 to section 37. The Tribunal held that :

“The assessee-company is engaged into stock broking activities and also in financial services which involves substantial compliance requirements with various regulatory authorities, e.g., BSE, NSE, CDSL, NSDL and SEBI, etc. In the regular course of the business of the assessee-company, certain procedural non-compliance are not unusual, for which the assessee is required to pay some fines or penalties. These routine fines or penalties are 'compensatory' in nature; they are not punitive. These fines are generally levied to ensure procedural compliances by the concerned persons. Only those payments, which have been made by the assessee for any purpose which is an 'offence' or which is 'prohibited by law', shall alone would be hit by the Explanation to section 37. Thus impugned amount of penalty was allowable as deduction.”

12.1 In the instant case, as recorded by the AO the assessee has claimed expenses on account of penalty of Rs.15,00,000/- imposed by the RBI u/s 47A of the Banking Regulation Act, 1949 and Rs.94,200/- for non-compliance of guidelines on customer

service, guidelines in respect of exchange of coins and small de-nomination notes and mutilated notes. The ratio laid down in the decisions mentioned at para 12 is squarely applicable to the instant case instead of the decision in ANZ Grindlays Bank (supra) relied on by the Ld. DR. Therefore, following the decisions mentioned at para 12 above, we delete the disallowance of Rs.15,94,200/- levied by the AO. Accordingly, the 2nd ground of appeal is allowed.”

20. We adopt the above detailed discussion *mutatis mutandis* to delete the impugned disallowance in very terms. This assessee’s appeal succeeds.

21. To sum-up, the assessee’s instant six appeals ITA.Nos.232, 233, 283, 285, 286 and 288/Coch./2024 are partly allowed for statistical purposes, allowed, partly allowed for statistical purposes, allowed, allowed and allowed; respectively in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 23rd October, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(Amarjit Singh)
Accountant Member

Sd/-
(Satbeer Singh Godara)
Judicial Member

Cochin, Dated: 23rd October, 2024

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin