

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

BEFORE SHRI. NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER AND
ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A No.4041/Mum/2023
(Assessment Year:2013-14)

DCIT Circle-3(4), Mumbai Room No.559, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	vs	IDBI Bank Ltd, Mumbai IDBI Tower, WTC Complex 7 th Floor, Taxation Cell, Cuffe Parade, Mumbai-400 005 PAN: AABCI8842G
APPLICANT		RESPONDENT

Assessee by : Shri C Naresh
Respondent by : Shri R.A. Dhyani, CIT DR

Date of hearing : 04/12/2024
Date of pronouncement : 05/12/2024

ORDER

PER SHRI ANIKESH BANERJEE, JM:

Instant appeal of the revenue was filed against the order of the National Faceless Appeal Centre, Delhi (NFAC) [in brevity, 'Ld. CIT(A)'], order passed under section 250 of the Income-tax Act, 1961 for Assessment year 2013-14, date of order 13/09/2023. The impugned order was emanated from the order of the Ld. Assistant Commissioner of Income-tax, Circle 3(4), Mumbai, order passed under section 154 of the Act, date of order 31/03/2021.

2. The revenue has taken the following grounds:-

“(1) Whether in the facts and in the circumstances of the case and in law, the Ld.CIT(A) is correct in allowing the assessee’s appeal holding that the assessee has rightly taken the figure of census 2001 for the purpose of classification of rural branch to claim the deduction u/s 36(1)(viiia) ignoring the fact that provisional data of 2011 census was available to the assessee and that on identical issue the Hon’ble Supreme Court has decided the issue in favour of Revenue as reported in (2017) taxmann.com 65 (SC)/[2017] 246 Taxman 58 (SC)?”

3. The brief facts of the case are that the assessment was completed under section 143(3) of the Act for impugned assessment year. Considering the census data of census 2011, the Ld.AO proceeded to rectify the assessment order, passed U/s 143(3) of the Act and changed the status of 5 rural branches of the assessee. Accordingly, he reduced the claim of deduction U/s 36(1)(viiia) of the Act related to the 5 impugned rural branches of the assessee. During the impugned assessment year, the assessee claimed deduction amount to Rs.107,99,49,912/- towards 10% of average rural advances in respect of 90 rural branches. However, the population figure for classification of the said branches was taken by the assessee on the basis of census 2001 instead of census 2011 despite the availability of provisional population figure of census 2011, as on 01st April, 2012. The rectification order was made under section 154 and the Ld.AO had changed the status of 5 rural branches of the assessee whose population was supposed to exceed 10,000. The assessment order was rectified and the assessee’s claim U/s 36(1)(viiia) of the Act was reduced amount to Rs.18,40,28,816/-. The aggrieved assessee filed an appeal before the Ld. CIT(A). After considering the submission

of the assessee, the Ld.CIT(A) upheld the appeal of the assessee. Being aggrieved, the revenue filed an appeal before us.

4. The Ld.DR vehemently argued and filed a written submission, which is kept in record. The Ld.AR stated that the order of the Hon'ble Supreme Court in case of **State Bank of Mysore vs ACIT, Circle 12, Bengaluru (2017) 79 taxmann.com 65 (SC)** is duly applicable in assessee's case. The Ld.AO had considered the provisional data as on 01/04/2012 of the Census 2011 and 5 branches are having more than 10,000 population, so the claim under section 36(1)(vii) are correctly rejected. The Hon'ble Supreme Court is directed that the provisional data from beginning of the financial year should be considered. So, there is no infirmity in the Ld. AO's view. He fully relied on the impugned rectification order.

5. On the other hand, the Ld.AR vehemently argued and only pointed out that the assessee has asked the census data from the Registrar General, India, Government of India, Ministry of Home Affairs about the village-wise population related to the census, 2011. By a letter dated 06/11/2015 bearing No.F-14011/8/2015-DDU-Part II/197 it was intimated that there is no village-wise data and only the district-wise data is available. So, the assessee relied on the village-wise last census data. The Ld.AR further stated that the observation of the Ld.AO is erroneous in the impugned rectification order. The details were submitted before the Ld. CIT(A) and the issue was correctly considered. The Ld. AO only relied on district-wise population which viciates the entire observation. He fully relied on the relevant paragraphs of the impugned appeal order and accordingly para 4.2 to 4.4 are reproduced below: -

“4.2 I have carefully gone through the rectification order, grounds of appeal, statement of facts filed, written submission uploaded as well as oral contention of the appellant. The only effective ground of appeal to be adjudicated in the present appeal is in respect of reducing of deduction u/s 36(1)(viia) by Rs. 18,40,28,816/- on the ground that appellant has wrongly taken the classification of rural branch on the basis of population of 2001 census instead of census 2011. It is the case of the AO that provisional population figure of census 2011 were available on 01 April 2012 and based on that population figure AO has found out that five branches claimed as rural were in fact not rural and therefore the irregular deduction claimed in respect of these branches were disallowed total amounting to Rs. 18,40,28,816/-. On the other hand, it is the contention of the appellant that the the provisional census cannot be the basis for determining population for the purposes of section 36(1)(viia). Further, the final population data as per census 2011 was released only on 30.04.2013. Hence, the AO adopted the population figures based on the census which was published only on 30.04.2013 and the provisional census figure which was available before 01.04.2012 cannot be the basis for determining the rural branch for the purpose of claiming deduction u/s 36(1)(viia) for the relevant assessment year. In support of its contention, appellant has also enclosed letter issued from the office of Registrar General of India dated 06.11.2015 which clearly mentions as under: “(i) That the provisional population total (PPT) as per census 2011 was released on 31.03.2011 district wise. (ii) That the final population data as per census 2011 was released on 30.04.2013. (iii) There is variation in provisional and final population total.” 4.3 Having considered the written submission, oral contention as well as supporting documents uploaded by the appellant, I am of the view that AO has erred in invoking the provisions of section 154 of the Act and reducing the deduction with respect to provisions u/s 36(1)(viia) of the Act for rural branches on the basis of provisional population figure of census 2011 which were available before 01.04.2012. It is an admitted fact on record that there was variation

between provisional and final population total. For the purpose of classification of rural branches, the figure of census which have been published before the first day of previous year should be taken as per the explanation (ia) provided in the section 36(1)(viiia). As pointed out above the final population data of census 2011 was not available on the first day of previous year for the relevant A.Y. 2013-14 i.e. on 01.04.2012, which was ultimately released on 30.04.2013. Hence, appellant has rightly taken the figure of census 2001 for the purpose of classification of rural branch to claim the deduction u/s 36(1)(viiia).

4.4 In view of the above discussion, the addition made by the AO in the order passed u/s 154 of the Act dated 31.03.2021 on account of provisions u/s 36(1)(viiia) for rural branches which were not rural is deleted. AO is directed to re-compute the total income of the appellant and to allow the provisions u/s 36(1)(viiia) for rural branches taking the figure of census 2001 as the final population data as per census 2011 was not available on the first day of previous year for the relevant A.Y. 2013-14 i.e. on 01.04.2012. Thus, Ground no. 3 and 4 of the appeal raised are allowed.”

6. We have carefully considered the submissions of both parties and reviewed the documents on record. The Ld. DR elaborated on the nature of census data, contending that the provisional data for the 2011 Census should be accepted when claiming deductions under Section 36(1)(viiia) of the Act. The Ld. DR argued that the assessee incorrectly relied on the census data, maintaining that the provisional data for the 2011 Census should have been used instead. However, the primary issue is not whether the census data relied upon was provisional or final. We have respectfully considered the decisions of the Hon'ble Supreme Court and the Hon'ble High Court of Karnataka in State Bank of Mysore vs. ACIT, Bengaluru (57 taxmann.com 253 [Kar]), but note that the facts in those cases are

distinguishable. The assessee utilized village-wise population data for its rural branches, where the population was less than 10,000, to determine eligibility for deduction under Section 36(1)(viiia) of the Act. In contrast, the Ld. AO relied on district-wise data from the 2011 Census, which led to the erroneous rejection of the rural branch status for five branches of the assessee. Due to the absence of village-wise data in the 2011 Census, the assessee appropriately relied on the final data from the 2001 Census to claim the deduction. The Ld. AO, acting on an incorrect assumption, disallowed the deduction and made an addition to the income. Upon review, we find no error in the impugned appellate order, which appropriately addressed the matter.

Accordingly, the revenue's appeal is dismissed.

7. In the result, the appeal of the revenue bearing **ITA No.4041/Mum/2023** is dismissed.

Order pronounced in the open court on 05th day of December, 2024.

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 05/12/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai