

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
&
SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 659/Bang/2015

Assessment Year: 2006-07

State Bank of India (erstwhile State Bank of Mysore prior to merger) Local Head Office Compliance Department 4th Floor 65, St. Marks Road Bangalore - 560001 [PAN: AACCS0155P]	Vs	Joint Commissioner of Income Tax, Large Tax Payers Unit, Bangalore
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

I.T.A. No. 682/Bang/2015

Assessment Year: 2006-07

Joint Commissioner of Income Tax, Large Tax Payers Unit, Bangalore	Vs	State Bank of India (erstwhile State Bank of Mysore prior to merger) Local Head Office Compliance Department 4th Floor 65, St. Marks Road Bangalore - 560001 [PAN: AACCS0155P]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Ketan Ved & Shri Akshay Nagrajan, A/Rs
Revenue by :	Shri P.C. Chhotaray, Spl. Counsel, D/R

सुनवाई की तारीख/Date of Hearing : 13/02/2025

घोषणा की तारीख /Date of Pronouncement: 20/02/2025

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

I.T.A. No. 659/Bang/2015 & I.T.A. No. 682/Bang/2015, are cross-appeals by the assessee and the revenue preferred against the order of the Id. CIT(A)-14, Bangalore, [hereinafter 'the Id. CIT(A)'] dated 26/02/2015, pertaining to AY 2006-07.

2. Vide Ground No. 1, with all its sub-grounds, the assessee has challenged the validity of the assessment framed u/s 147 of the Act on the ground that the reopening of assessment is bad in law.

3. Since the challenge to the reopening of the assessment goes to the root of the matter, we decide to adjudicate it first.

4. Representatives of both sides were heard at length. Case records carefully perused and the relevant judicial decisions brought to our notice duly considered.

5. Briefly stated, the facts of the case are that the assessee filed its return of income on 28/11/2006 declaring total income of Rs.1,42,54,80,793/-. The return was selected for scrutiny assessment and subsequently, assessment was framed u/s 143(3) of the Act vide order dated 04/02/2008. During the course of scrutiny assessment proceedings, the following issues *inter alia* were considered by the AO:-

"8. Bad debt provision in respect of Rural Advances u/s.36(1)(viiia): Rs. 3,62,05,800

As seen from the computation statement, the assessee claimed an amount of Rs.147,69,35,537/- as reduction u/s.36(1)(viiia). A perusal of the calculation sheet filed along with the return revealed that out of the said deduction, 10% of average rural advances was claimed at Rs. 125,91,55,500/-. In support of this claim, the assessee enclosed a list of 215 branches along with population details and also showing the average advances. Vide this office letter dated 17.01.08, the assessee was requested to furnish the population data in respect of each of the rural branch as per the latest published census figures in order to justify the claim. In response thereto, the assessee submitted its reply on 4.02.08 wherein the details of population in respect of the rural branches as per census 2001 were furnished. A perusal of the list

so filed revealed that in respect of the following branches, the population either exceeded 10,000 or the population was shown at zero.

Sl. No.	Name of the Branch	Average Advances (In Thousands)	Population as per Census 2001
1	Sri M.M. Hills	32,111	10676
2	Kamagere	33,715	0
3	Donimalai Township	56,825	0
4	Khandepar, Goa	47,458	0
5	Bommasandra	32,918	0
6	Hoody	95,851	0
7	Suttur	47,546	0
8	VTU Mache, Belgaum	15,634	0
	Total	3,62,058	-

In respect of Sl.No.1 mentioned above, since the population exceeded 10,000, the average advances in respect of this branch cannot be taken into account. In respect of the other branches, from Sl.No.2 to 8, the population figures furnished are zero which is not correct. When this was pointed out, the AR submitted that they could not find the population data of these villages from the details collected from the census department. The Villages mentioned at Sl.No.5 & 6 above, viz., 'Hoody' and 'Bommasandra' have actually been merged with Bangalore City and hence they cannot be categorized as Rural branches and probably this could be the reason as to why the assessee could not find the relevant population data in the details furnished by the census department. In respect of other rural branches also, where the population was shown at zero, it is possible that those villages were merged with the nearest Municipal Corporations. In these circumstances, the claim for deduction u/s.36(1)(viii) in respect of the branches mentioned in the above table which works out to Rs.3,62,05,800/- is not allowable and accordingly, the same is disallowed and added back to the total income. (Addition: Rs. 3,62,05,800/-)"

6. The completed assessment was reopened by issuing notice u/s 148 of the Act on 25/03/2013. The reasons for reopening the assessment read as under:-

"The assessee has claimed deduction u/s 36(1)(viii) of Rs. 147,69,35,537/- in the computation of income. This included Rs. 125,91,55,500/- as 10% of average aggregate rural advances and 7.5% of total income amounting to Rs.21,77,80,037/- During the course of assessment the AO disallowed the average aggregate advances claimed in respect of following 8 branches:

SI No.	Name of branch	Reason for disallowance
1	Sr. M.M. Hills	Population for more than 10,000
2	Kamagere	The assessee could not furnish any evidence in support of the claim.

3	Donimalai Township	The assessee could not furnish any evidence in support of the claim.
4	Khandepar Goa	The assessee could not furnish any evidence in support of the claim.
5	Bommbasandra	Part of urban area [Bangalore]
6	Hoody	Part of urban area [Bangalore]
7	Suttur	The assessee could not furnish any evidence in support of the claim.
8	VTU Mache, Belgaum	The assessee could not furnish any evidence in support of the claim.

During the course of assessment proceedings of the assessee bank for the AY 2010-11 the claim of deduction made by the bank u/s 36(1)(viiia) was examined in details. As per section 36(1)(viiia) the average aggregate advances made by rural branches will be taken into consideration for calculating the deduction available u/s 36(1)(viiia). During the course of verification of details submitted by the bank it is noticed that in the following cases / branches the branch is located in an area which cannot be defined as rural as per the decision of Honourable high Court of Kerala in the case of CIT us Lord Krishna bank 339 ITR 606.

Sl. No.	Name of branch	Average Aggregate Advances [in thousands]
1	Alur	73988
2	Gudibanda	21164
3	Sorab	105428
4	Koppa	77750
5	Mudigere	332894
6	Donimalai	56825
7	Hosanagara	79979
8	Beltangadi	
		748028

To be a rural branch the branch must be located in a 'place' that is a revenue village. However, the branches below are situated in places which are defined as urban agglomerate by the census of India 2001. They are places which are defined as town panchayat, municipality etc. The evidence gathered is placed on record.

However as Donimalai was already disallowed in the assessment order, only the balance branches are taken. 10% of aggregate average advances in respect of these branches works out to Rs. 7,47,45,975/-.

Hence, it is evident that the claim deduction u/s 36(1)(viiia) of Rs. 147,69,35,537/- is incorrect and the assessee has inflated his claim by Rs. 7,47,45,975/- by claiming urban branches as rural."

7. The challenge of the assessee is that there is not even a whisper of any failure on the part of the assessee to disclose fully and truly all material facts pertaining to the assessment. Strong reliance was placed on the decision of the Hon'ble Jurisdictional High Court in the case of *Hindustan Lever Ltd. vs R.B. Wadkar* [2004] 268 ITR 332 (Bom). The relevant findings read as under:-

"20. The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. The reasons are the manifestation of the mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide the link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish the vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing an affidavit or making an oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches the court, on the strength of the affidavit or oral submissions advanced.

21. Having recorded our finding that the impugned notice itself is beyond the period of four years from the end of the assessment year 1996-97 and does not comply with the requirements of the proviso to [Section 147](#) of the Act, the Assessing Officer had no jurisdiction to reopen the assessment proceedings which were concluded on the basis of assessment under [Section 143\(3\)](#) of the Act. On this short count alone the impugned notice is liable to be quashed and set aside.

8. Since the reopening has been done after four years, therefore, first proviso to Section 147 of the Act squarely applies which reads as under:-

“Income escaping assessment.

147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of [sections 148](#) to [153](#), assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in [sections 148](#) to [153](#) referred to as the relevant assessment year) :

.....

Provided that where an assessment under sub-section (3) of [section 143](#) or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under [section 139](#) or in response to a notice issued under sub-section (1) of [section 142](#) or [section 148](#) or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

... ..

Explanation 1.— Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.”

[emphasis supplied]”

9. The reasons recorded for reopening the assessment exhibited elsewhere when read with the first proviso, it can be safely concluded that there is no mention of any failure on the part of the assessee to disclose all material facts truly and correctly.

10. The ld. D/R strongly contended that merely because the AO has not mentioned one sentence of failure on the part of the assessee, would not invalidate the impugned assessment order. Drawing support from

Explanation (1) to Section 147 of the Act, the ld. D/R argued that the assessee has not disclosed the true facts of rural branches during the course of the assessment proceedings while claiming deduction u/s 36(1)(viiia) of the Act. It is the say of the ld. D/R that it was the duty of the assessee to furnish all the relevant details which it failed and, therefore, the reopening is good in law.

10.1. Strong reliance was placed on the decision of the Hon'ble Bombay High Court – Panaji Bench in the case of *Sociedade De Formento Industrial P. Ltd. Vs. ACIT & Anor.* [2011] 339 ITR 595 (Bom.) and read the operative part of the judgment which we have carefully considered and found not applicable on the facts of the case for the following findings of the Hon'ble High Court:-

14. We hasten to add that we do not suggest that the petitioner has not disclosed all necessary facts truly merely because the same have not been stated by the chartered accountant's certificate or the enclosure and attachment thereto. It may well have been done even otherwise. Such questions however would require to be considered in detail. The entire record may have to be considered. They would more conveniently be dealt with in proceedings under the IT Act rather than in a writ petition under Article 226 of the Constitution of India.

15. It is only for this reason that we are not inclined to entertain the writ petition at this stage. All the contentions of the parties are kept open.

16. With the above clarifications, the writ petition is dismissed. The interim order shall continue upto and including 16th Aug., 2010."

10.1.1. The ld. D/R wanted to raise other issues relating to reasons to believe to defend the order of the assessment which the Bench declined to consider since the only issue argued by the assessee was applicability of 1st proviso to Section 147 of the Act.

11. The contention of the ld. D/R that merely because one sentence is not mentioned in the reasons for reopening the assessment would not

invalidate the assessment, is not acceptable because the Hon'ble Bombay High Court in the case of *Hindustan Lever Ltd. (supra)* has categorically mentioned "*It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded.*"

11.1. Another decision relied upon by the Id. D/R is in the case of *The Indian Hume Pipe Co. Ltd. Vs. ACIT in W.P. NO. 1017 of 2021*. However, we find that the Hon'ble Bombay High Court was considering the claim of exemption u/s 54EC of the Act for which all the necessary facts on the basis of which the claim of exemption were found not disclosed. Therefore, the Hon'ble High Court held that the AO was justified in re-opening assessment. However, in the case in hand, as mentioned elsewhere, there is not even a whisper of any failure on the part of the assessee to disclosed all material facts relating to the assessment. Needless to mention the decision in the case of *The Indian Hume Pipe Co. Ltd. (supra)*, relied upon by the Id. D/R is again on Writ Petition for which the Hon'ble High Court declined the exercise the extraordinary jurisdiction under Article 226 of the Constitution.

12. The Id. D/R vehemently stated that by not disclosing the true status of the village branches, the assessee has not disclosed fully and truly all material facts necessary for its assessment. Strong reliance was placed on the decision of the Hon'ble Kerala High Court in the case of *CIT vs. Lord Krishna Bank Ltd. [2011] 339 ITR 606 (Kerala)*. It is true that

the Hon'ble High Court of Kerala has explained the meaning of rural area contained in the census report wherein revenue village is treated as a unit of rural area but the fact of the case in hand are that the return of income was filed on 28/11/2006 and on that dated, as per the census of 2001, the assessee disclosed fully and truly all material facts necessary for its assessment for the impugned assessment year. Decision of the Hon'ble High Court of Kerala is dated 07/10/2010, therefore, the assessee could not foresee what would be the meaning of rural area as define by the Hon'ble Kerala High Court. On the facts of the case in hand, we are convinced that there was no failure on part of the assessee to disclose fully and truly all material facts necessary for its assessment for the year under consideration.

13. Considering the facts of the case in totality, we have no hesitation in setting aside the impugned notice u/s 148 of the Act thereby quashing the impugned assessment order. Since we have quashed the assessment order, the other issues raised by the assessee and the revenue are left open.

14. In the result, appeal of the assessee is allowed and that of the revenue is dismissed.

Order pronounced in the Court on 20th February, 2025 at Mumbai.

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 20/02/2025

Sd/-

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai