

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.654 & 655/Mds/2016

निर्धारण वर्ष / Assessment Years : 2008-09 & 2011-12

M/s The Little Kancheepuram
Co-op. Urban Ltd.,
C/o Shri A.K. Venugopal,
Chartered Accountant,
No.10, Thirupakkudal Street,
Kancheepuram – 631 501.

v. The Assistant Commissioner of
Income Tax,
Kancheepuram – 631 501.

PAN : AAATO 1272 H

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri A.K. Venugopal, CA

प्रत्यर्थी की ओर से/Respondent by : Shri Shiva Srinivas, JCIT

सुनवाई की तारीख/Date of Hearing : 28.07.2016

घोषणा की तारीख/Date of Pronouncement : 09.09.2016

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals) - 13, Chennai, dated 4.12.2015 and pertain to assessment years 2008-09 and 2011-12. Since common issue arises in both the

appeals, we heard both the appeals together and disposing of the same by this common order.

2. Shri A.K. Venugopal, the Ld. representative for the assessee, submitted that the first issue arises for consideration is deduction of provision for standard assets by equating with the provision for bad and doubtful assets under Section 36(1)(viiia) of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. representative, the assessee is a co-operative urban bank having two Branches at Kancheepuram town and Ayyampettai Village apart from Head Office. The assessee claimed deduction under Section 36(1)(viiia) of the Act in respect of the provision made. However, the Assessing Officer without any discussion restricted the claim to 7.5% of the total income. According to the Ld. representative, the entire provision has to be allowed as bad and doubtful debts while computing taxable income. Since the Assessing Officer has not discussed anything in the light of the provisions of law, according to the Ld. representative, the CIT(Appeals) ought to have allowed the claim of the assessee.

3. On the contrary, Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that under Section 36(1)(viiia) of the Act,

provision to be made for bad and doubtful debts shall not exceed 7.5% of the total income. In this case, according to the Ld. D.R., the assessee made a provision exceeding 7.5%, therefore, the Assessing Officer has rightly restricted the claim to the extent of 7.5%. Hence, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

4. We have considered the rival submissions on either side and perused the relevant material available on record. A bare reading of assessment order shows that the Assessing Officer has not discussed anything in the assessment order. The Assessing Officer has simply restricted the claim of the assessee to 7.5% of the total income. We have carefully gone through the provisions of Section 36(1)(viiia) of the Act. Section 36(1)(viiia) of the Act very clearly says that provision for bad and doubtful debts made by a scheduled bank or a co-operative bank other than a primary agricultural credit society, an amount not exceeding 7.5% of total income and 10% of aggregate average advance made by rural branch of such bank, computed in the prescribed manner, can be allowed while computing the total income. In the case before us, the Assessing Officer admittedly restricted the claim to 7.5%. But, he has not

considered the aggregate average advance made by the rural branches of the assessee. Since the Assessing Officer has not considered the aggregate average advance made by the rural branches and the CIT(Appeals) also has not discussed anything about the aggregate average advances made by the assessee, this Tribunal is of the considered opinion that the matter needs to be reconsidered. Accordingly, the orders of the authorities below are set aside and the issue with regard to claim of deduction under Section 36(1)(viiia) of the Act is remitted back to the file of the Assessing Officer. The Assessing Officer shall reconsider the issue in accordance with law, after giving a reasonable opportunity to the assessee.

5. The next ground of appeal is with regard to provision for investment depreciation reserve.

6. Shri A.K. Venugopal, the Ld. representative for the assessee, submitted that the assessee claimed provision for investment depreciation reserve. The Assessing Officer without considering the claim of the assessee disallowed the same. The CIT(Appeals) found that provision for investment depreciation reserve made in the accounts are not eligible for depreciation.

According to the Ld. representative, investment depreciation reserve is nothing but a provision for diminution in the value of investment, therefore, the same is allowable under Section 28 of the Act. The Ld. representative further submitted that when the investment was made as required by statutory provision and the market price fluctuates, the opening balance at the end of the year has to be allowed as depreciation. Referring to the Reserve Bank of India circular, the Ld. representative submitted that all the non-scheduled urban co-operative banks should hold their entire SLR only in Government securities, therefore, the diminution in the value of investments has to be allowed under Section 28 of the Act while computing the taxable income.

7. On the contrary, Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that the assessee is trading in investments, therefore, not eligible for depreciation. The depreciation, at the best, may be allowed only on investments and not on the trading asset. The actual expenditure incurred by the assessee has to be allowed while computing taxable income. However, according to the Ld. D.R., the provisions are not eligible for deduction. The provision and reserve, according to the Ld. D.R.,

are required to be added back to the net profit and deduction, if any, has to be allowed only under Section 36(1)(viia) of the Act. Therefore, according to the Ld. D.R., the Assessing Officer has rightly disallowed the provision made for investment depreciation reserve and the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

8. We have considered the rival submissions on either side and perused the relevant material available on record. The question arises for consideration is whether the investment depreciation reserve could be allowed while computing the taxable income? The assessee claims that it is a diminution in the value of investment. The investment, according to the Ld. representative of the assessee, was made on the basis of circular of the Reserve Bank of India. These investments were, according to the Ld. representative, made only for equity purpose and should not be treated as capital asset. The CIT(Appeals) found that provision made for investment depreciation reserve cannot be allowed while computing the taxable income. Referring to the judgment of Madras High Court in CIT v. City Union Bank Ltd. (2007) 291ITR 144, the CIT(Appeals) found

that this judgment of Madras High Court is not applicable to the case of the assessee.

9. We have carefully gone through the judgment of Madras High Court in City Union Bank Ltd. (supra). In the case before the Madras High Court, the assessee-bank made investment as required by the statutory provision. When the market price of the investment fluctuated from the value shown in the opening balance at the end of the year, the High Court found that this can be allowed as depreciation. In the case before us, the assessee claims that the investment was made as required by the statutory provision. But, the Revenue contends that the investment was made in the course of trading, therefore, for the purpose of applying the judgment of Madras High Court, it has to be ascertained whether the investment was made as per the statutory requirement and guidelines framed by Reserve Bank of India or it was made in the course of trading activity. If the investment was made as required by the statutory provision, this Tribunal is of the considered opinion that the judgment of Madras High Court in City Union Bank Ltd. (supra) is squarely applicable. Since the facts need to be ascertained, the orders of the authorities below are set aside and the matter is

remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the issue in the light of the material that may be filed by the assessee and thereafter decide the issue in the light of the judgment of Madras High Court in City Union Bank Ltd. (supra).

10. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced on 9th September, 2016 at Chennai.

sd/-
(डि.एस. सुन्दर सिंह)
(D.S. Sunder Singh)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 9th September, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-13, Chennai
4. Principal CIT-8, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.