

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

BEFORE S/SHRI ABRAHAM P GEORGE, AM & GEORGE GEORGE K, JM

**ITA No 508/Coch/2015
(Asst Year 2010-11)**

&

**ITA No.522/Coch/2015
(Asst Year 2010-11)**

| | | |
|---|----|---|
| The Ernakulam Dist Coop Bank Ltd Kakkanad Kochi | Vs | The Jt Director of Income Tax (Exemption) Kochi |
| (Appellant/Respondent) | | (Respondent/Appellant) |

| | |
|-----------------------|-----------------------------|
| PAN No. | AABAT4386L |
| Assessee By | Sh V Sathyanarayanan |
| Revenue By | Sh Shantom Boss, CIT-DR |
| Date of Hearing | 21 st March 2017 |
| Date of pronouncement | 22 nd March 2017 |

ORDER

PER GEROGGE GEORGE K, JM:

These are cross appeals against the CIT(A)'s order dated 30.7.2015. The relevant assessment year is 2010-11.

2 First, we shall take up for adjudication the appeal of the assessee.

ITA No. 508/Coch/2015 (by the assessee)

3 In assessee's appeal, 5 grounds are raised. Ground no.5 is general in nature and does not require any adjudication and hence, the same is dismissed. Ground no.1, 2 & 3 relates to the claim made u/s 36(1)(vii) of the I T Act. Ground no.4 relates to the disallowance of Rs.5,81,99,640/- u/s 40(a)(ia) of the I T Act, 1961 for

non deduction of TDS on interest paid to various welfare boards. We shall take for adjudication the issues ground wise as under:

Ground no.1:

4 The brief facts of the case are as follows:

The assessee is a cooperative bank. For the Assessment Year 2010-11, the assessee claimed deduction u/s 36(1)(viiia) of the Act in the computation of total income at 7.5% and 10% of the aggregate rural advances as identified by the assessee's bank. The Assessing Officer rejected the assessee's claim of 10% of the aggregate average rural advances. The Assessing Officer was of the view that for the purpose of computation of aggregate average rural advances, only such branches, which are situated in a village having population of 10,000 or less has to be considered. The Assessing Officer relied on the definition of rural branches, rendered by the jurisdictional High Court, in the case of Lord Krishna Bank Ltd., reported in 339 ITR 606.

4.1 Aggrieved by the assessment, the assessee preferred appeal to the first appellate authority. The CIT(A), following the judgment of the Hon'ble Kerala High Court, in the case of Lord Krishna Bank Ltd (supra), held that deduction u/s 36(1)(viiia) of the Act, in respect of rural branches, has been decided against the assessee.

4.2 Aggrieved by the order of the CIT(A), the assessee is in appeal before us. The ld counsel for the assessee fairly submitted that as regards the claim of deduction u/s

36(1)(vii) to the extent of deduction of rural advances, the matter is now covered against the assessee by the order of the Tribunal in assessee's own case for the AYs 2008-09 and 2009-10 and also by the judgment of the Hon'ble jurisdictional High Court in the case of Lord Krishna Bank Ltd., (supra). However, alternatively, the Id counsel submitted that there are certain rural branches of the assessee situated in a village having population of less than 10,000 as per 2001 census. The relevant portion of the assessee's submission, as regards his alternative contention, read as follows:

The Id CIT(A) ought to have allowed the deduction in respect of the branches which are eligible to be classified as a rural branch as per the decision of Hon High Court referred above. The CIT(A) ought to have noted that the appellant has branches which are situated in villages having population of less than 10000 as per the latest census data available. The Id CIT(A) ought to have verified and allowed the deduction to that extent. The details of the branches situated in a village having population of less than 10000 were furnished to the Id CIT(A) and is given below:

| Branch | Avg.Rural advances(Rs) | Name of the Village | Population as per 2001 census |
|------------------------|------------------------|---------------------|-------------------------------|
| Perumbavoor Main | 43,68,21,370.00 | Perumbavoor (Part) | 8026 |
| Perumbavoor Evening | 38,09,30,965.00 | Perumbavoor (part) | 8026 |
| Kalamassery | 15,50,70,715.00 | Thrikkakara North | 420 |
| Medical College branch | 7,75,44,482.00 | Thrikkara North | 420 |
| Ramamangalam | 2,06,19,939.00 | Ramamangalam | 9999 |

4.3 The Id DR present was duly heard.

4.4 We have heard the rival submissions and perused the material on record. The definition of rural branches has already been clarified by the judgment of the Hon'ble Kerala High Court in the case of Lord Krishna Bank Ltd (supra). The relevant portion of the judgment of the Hon'ble Kerala High Court, read as follows:

“The rural branch has to be always in rural areas and the place referred can easily be taken as a village. Several wards may come within village where it can be in corporation, municipality or panchayat. There can be no village in a municipality or corporation area where the population is less than 10,000. So much Assessing Officer, rural branches are such of the branches located in a village where the population in the village as such is less than 10,000.”

4.5 In view of the above judgment of the Hon'ble Kerala High Court, the assessee is not entitled to the benefit of section 36(1)(viiia) of the Act in relation to rural advances where the branches are situated in a village having population more than 10,000. But the alternative plea is that there are rural branches in a village having population less than 10,000. This alternative plea of the assessee needs to be examined in the interest of justice and equity. The assessee shall produce the necessary proof for the alternative plea raised before the Assessing Officer. For this limited purposes, the issue is restored to the file of the Assessing Officer. The Assessing Officer shall dispose of the matter as expeditiously as possible after affording reasonable opportunity of hearing to the assessee. It is ordered accordingly. Ground no.1 is allowed for statistical purpose.

Ground no.2:

5 The assessee had claimed deduction of Rs. 100,84,14,242/- u/s 36(1)(viiia) of the Act. This claim consists of 7.5% of the total income of the assessee and 10% of the aggregate average rural advances. The Assessing Officer, in the impugned order had rejected the assessee's claim of 10% of aggregate average rural advances. On further appeal, the CIT(A) confirmed the action of the Assessing Officer; however, had also denied the benefit of deduction, even in respect of the assessee's claim of 7.5% of the total income, which falls in the first limb of sec. 36(1)(viiia) of the I T Act.

5.1 Aggrieved by the order of the CIT(A), the assessee is in appeal before us. The Id counsel for the assessee submitted that the CIT(A), while confirming the disallowance to the extent of rural advances, ought to have excluded the amount of deduction claimed to the extent of 7.5% of the total income of the assessee. It was submitted that the above issue is squarely covered in favour of the assessee by the judgment of the Hon'ble Kerala High Court in the case of Kannur District Cooperative Bank Ltd vs CIT in ITA No.179 of 2012 (judgment dated 3.4.2014). The Id DR present was duly heard.

5.2 We have heard the rival submissions and perused the material on record. The Hon'ble Kerala High Court in the case of Kannur District Cooperative Bank Ltd (supra) had categorically held that the benefit of deduction of 7.5% of the total income is available to all the banks irrespective whether it is having rural branches or not. The relevant findings of the Hon'ble High Court, read as follows:

"9 So far as benefit of 7.5% of the total income, there is no condition that it should be in respect of any rural branch. All types of banks described under sub clause (a) of clause (viiia) are entitled to seek deduction of an amount of exceeding 7.5% of the total income. Only condition is there should be a provision for bad and doubtful debts....."

5.3 In view of the above judgment of the Hon'ble High Court, we hold that the claim of deduction to the extent of 7.5% of the total income u/s 36(1)(viiia) is to be granted to the assessee. It is ordered accordingly. Hence, ground no.2 is allowed.

Ground no.3:

6 Both the sides agree that this ground is connected with ground no.1. It was submitted by the Id AR that in the event that the assessee's contention is accepted by the Hon'ble Supreme Court as regards the rural advances, ground no.3, has relevance.

6.1 We have heard the rival submissions and perused the material on record. Since the ground no.1 is restored to the Assessing Officer, we deem it appropriate to restore this ground also to the Assessing Officer. It is ordered accordingly.

Ground no.4

7 Brief acts of the case in relation to ground 2 are as follows:

The Assessing Officer during the assessment proceedings had noticed that the assessee had not deducted tax at source on the payment of interests made to certain welfare boards. Hence, the AO by invoking the provisions of sec 40(a)(ia) of the Act disallowed the total interest payment of Rs. 5,81,99,630/-.

7.1 On further appeal, the CIT(A) has categorically held that the said issue is covered in favour of the revenue by the order of the Tribunal in assessee's own case for the assessment year 2009-10. The Id counsel for the assessee had not contravened the above findings of the CIT(A). Accordingly, we confirm the order of the CIT(A) and dismiss the ground no.4. It is ordered accordingly.

8 In the result, the appeal filed by the assessee is partly allowed as indicated above.

ITA No.522/Coch/2015(by the revenue)

9 Briefly stated the facts in relation to the revenue's appeal is that during the assessment year 2010-11, the assessee had claimed an amount of Rs. 1,73,33,833/- as deduction u/s 36(1)(viii) of the I T Act. However, while completing the assessment, the Assessing Officer restricted the same to Rs 45,93,784/- . For restricting the deduction, the Assessing Officer held that the assessee is not entitled for deduction in respect of the loans for hospital construction, educational institutions, industrial purposes, small scale projects. According to the Assessing Officer, only the loans under the category of housing loans is eligible for deduction and accordingly restricted the claim of deduction to the interest income earned from housing loans.

9.1 On appeal, the CIT(A) allowed the claim of the assessee. The relevant findings of the CIT(A) read as follows:

"8.5 Further, as per the provisions of section 36(1)(viii), eligible business means business of providing long term finance for industrial or agricultural development, development of infrastructure facility in India and development of housing in India. The breakup of the long term finance was also furnished by the appellant, as below:

| Description | Interest Income (Rs) | Purposes |
|--------------------|-----------------------------|-----------------|
| | | |

| | | |
|--|--------------|--|
| Long Term Non Housing Loan Agricultural- | 11,19,104 | Housing Loan |
| Agricultural loans | 37,89,067 | Agricultural purposes |
| Mithra SHG/NHG loans | 12,59,494 | Carry bags manufacturing units. (industrial purposes) |
| Term loans | 64,17,383 | For establishment of new individuals and industries and allied activities societies and expansion of existing industries. |
| Housing Loans | 42,85,24,630 | Housing |
| Project loans | 2,32,48,158 | Small scale industrial projects etc) |
| Other long term | 4,54,60,679 | For purchase of property, loans housing (construction of flats/ purchase of property for construction of house/ flats |
| Total 50,98,18,515 | | |

8.6 From the above discussions, it is clear that the said loans falls under the eligible business of providing long term finance for industrial or agricultural development, development of infrastructure facility in India and development of housing in India and hence is eligible for deduction u/s.36(1)(viii). Accordingly, deduction of Rs.1,56,78,943 is allowed to the assessee."

9.2 Aggrieved by the order of the CIT(A), the revenue is in appeal before us. The Id DR strongly supported the order of the Assessing Officer and contended that the order of the CIT(A) is a non-speaking order and the same needs to be quashed. The Id counsel for the assessee, on the other hand, reiterated the submissions made before the Income Tax authorities.

9.3 We have heard the rival submissions and perused the material on record. As per provisions of section 36(1)(viii) of the I T Act, the eligible business means business of providing long term finance for industrial or agricultural development, development of infrastructure facility in India and development of housing in India. In our view, industrial purposes includes all types of industries both manufacturing as well as service

industry. Admittedly, these are loans advanced by the assessee for long term finance and the details of the purpose for which the loans are advanced, are enumerated in para 8.5 of the impugned order of the CIT(A). The CIT(A), after examining the purpose for which the loans were advanced had categorically held that the interest income, out of loans enumerated, clearly falls within the definition of 'eligible business' under 36(1)(viii) of the Act. This factual finding of the CIT(A) was not dispelled by the revenue by placing any contrary material on record. Moreover, on identical facts, the claim u/s 36(1)(viii) of the Act for earlier assessment years namely AY 2008-09 and 2009-10 were disallowed by the CIT(A) and department had accepted the same. It is well settled that department having accepted the CIT(A)'s order for earlier years cannot agitate the issue for the current assessment year, unless department is able to prove that for earlier years CIT(A) orders were accepted on account of low tax effect. Therefore, we are of the view that the order of the CIT(A) is correct and in accordance with law on this issue and no interference is called for. It is ordered accordingly.

10 In the result, the appeal filed by the revenue is dismissed.

11 To sum-up, the appeal filed by the assessee is partly allowed whereas the appeal of the revenue is dismissed.

Order pronounced in the open Court on this 22nd day of March 2017.

| | |
|---------------------------|--------------------------|
| Sd/- | Sd/- |
| (ABRAHAM P GEORGE) | (GEORGE GEORGE K) |
| Accountant Member | Judicial Member |

Cochin: Dated 22nd March 2017

Raj*

Copy to:

1. Appellant –
2. Respondent –
3. CIT(A)
4. CIT,
5. DR
6. Guard File

By order

Assistant Registrar
ITAT, COCHIN