

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JANUARY, 2015

PRESENT

THE HON' BLE MR. JUSTICE N. KUMAR

AND

THE HON' BLE MR. JUSTICE B. VEERAPPA

INCOME TAX APPEAL Nos.6-7/2009

BETWEEN:

STATE BANK OF MYSORE
HEAD OFFICE, K.G. ROAD
BANGALORE-560 009.
REPRESENTED BY SRI. R. BANERJEE
CHIEF MANAGER-TAXATION
S/O LATE BHOLANATH BANERJEE
AGED ABOUT 52 YEARS.

... APPELLANT

(BY MRS. MEHTAB P. EASA, ADVOCATE A/W
SRI. G. SARANGAN, SENIOR COUNSEL)

AND:

THE ASSISTANT COMMISSIONER OF
INCOME TAX, CIRCLE-12(2)
BANGALORE.

... RESPONDENT

(BY SRI K.V. ARAVIND, ADVOCATE)

...

THESE ITAs ARE FILED UNDER SECTION 260-A OF
THE INCOME TAX ACT, 1961 ARISING OUT OF ORDER

DATED 29.08.2008 PASSED IN ITA NOS. 1010/BNG/2007 AND 1152/BNG/2007, RELATING TO ASSESSMENT YEARS 2003-2004 AND 2004-2005 RESPECTIVELY, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND TO ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, BANGALORE IN ITA No.1010/BNG/2007 AND 1152/BANG/2007, DATED 29.08.2008 IN THE INTEREST OF JUSTICE.

THESE ITAs COMING ON FOR HEARING THIS DAY, N. KUMAR, J., DELIVERED THE FOLLOWING:

JUDGMENT

As a common question of law is involved in these appeals and the assessee being the same and a common order is passed in respect of assessment years 2003-2004 and 2004-2005, they are taken up for consideration together and disposed of by this common judgment.

2. The assessee, a scheduled Bank of the Government of India had furnished return for the assessment year 2003-2004, declaring a total income of Rs.187,95,13,137/-. They claimed the deduction of Rs.21,54,50,000/- under Section 36(1)(viii) of the Income

Tax Act 1961 (hereinafter referred to as 'Act' for short). The Assessing Officer found that the claim of deduction under Section 36(1)(viii) of Rs.10,30,67,133/- was computed by the assessee in respect of population of the places in which the assessee's Rural Banks were situated with reference to the population figures of the Census 1991. But the Assessing Authority took the view that the population figures of the Census 2001 is to be adopted for the purpose. The assessee contended that the Census Data was not published and therefore, the Assessing Authority requested to consider the Census of 1991, as the same is applicable as per Act and allow the claim. However, the Assessing Authority rejected the claim, accepting the Census figures of 2001. The Assessing Authority featured the said amount with reference to the population figures of Census 2001 and tax was levied on the excess claim made. In appeal, the Commissioner of Income-Tax (Appeals) upheld the said order. The assessee preferred an appeal to the Tribunal. The Tribunal also upheld the said order and dismissed the said appeals.

3. Aggrieved by the said orders, these two appeals are filed by the assessee. The appeals were admitted to consider the following substantial question of law.

“Whether on the facts and circumstances of the case the Appellate Tribunal is erred in holding that the Assessing Authority is justified in adopting the population figures of 2001 census for the purpose of Section 36(1)(viiia) by ignoring the fact that these details were made available to the public only during March-2004?”

4. The learned senior counsel appearing for the assessee contended that the words published “before the first day of the previous year” contained in explanation 1(a) to Section 36(viia) is to be understood as publication of final population totals by the Census Department and not the provisional population totals. The final publication of the population total was made on December 2013 i.e. subsequent to the first day of the previous year and therefore, the authorities were not justified in making that as

the basis for framing assessment for the assessment years 2003-2004 and 2004-2005.

5. Per contra, the learned counsel appearing for the revenue submitted that the words used as 'published' makes no difference between the provisional population total published and the final population published, as the sole object of the publication is to find out the population as per the last preceding Census and therefore, he submits the impugned orders cannot be found fault with.

6. The facts are not in dispute, which are concerned with the assessment for the assessment years 2003-2004 and 2004-2005. The first day of the previous year for these assessment years would be 01-04-2002 and 01-04-2003. For the purpose of computing the deduction under Section 36(viia) the population figures available prior to 01.04.2002 is to be considered. The office of the Directorate of Census Operations, Karnataka, Bangalore, vide letter No. TCM.MISC/22 C & T 2007 dated 02.06.2007

published/released the provisional and final population figures of 2001 Census for Karnataka in the public domain as follows:

Sl. No.	Data	Date of Release
i	Provisional Population totals – Paper I	27.3.2001
ii	Provisional Population Total – Paper II (Rural/Urban distribution of population)	01.9.2001
iii	Final Population Totals (State/District/Taluk/City/Town)	Dec, 2003

7. If the provisional population totals as published on 27.03.2001 and 01.09.2010 is taken into consideration, then it is the Census figures of 2001, which has to be taken into consideration. If the final population published on December-2003 is taken into consideration, then it would be the final population figure of 1991 Census that has to be taken into consideration. The question is which is the final population total which has to be taken into consideration because as it is clear from the letter written by the Registry of Home Affairs, the provisional population total cannot be relied upon. In fact, acting on those letters, the Tribunal in

two cases has taken the final population totals published and ignored the provisional population total published. It is to be seen what is the object behind Section 36(a), in order to appreciate the said contention. Section 36 of the Act deals with other deductions. Section 36(viia) reads as under:

“Section 36(viia) (In respect of any provision for bad and doubtful debts made by) –

(a) a scheduled bank [not being a bank incorporated by or under the laws of a country outside India] or a non-scheduled bank [or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank], an amount [not exceeding seven and one-half per cent] of the total income [computed before making any deduction under this clause and Chapter-VIA] and an amount not exceeding [ten] percent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner:

[Provided that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed in any of the relevant assessment years, deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf, for an amount not exceeding five per cent of the amount of such assets shown in the books of account of the bank on the last day of the previous year:]

[Provided further that for the relevant assessment years commencing on or after the 1st day of April, 2003 and ending before the 1st day of April, 2005, the provisions of the first proviso shall have effect as if for the words “five per cent”, the words “ten per cent” had been substituted:]

[Provided also that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed a further deduction in excess of the limits specified in the foregoing provisions, for an amount not exceeding the

income derived from redemption of securities in accordance with a scheme framed by the Central Government;

Provided also *that no deduction shall be allowed under the third proviso unless such income has been disclosed in the return of income under the head “Profits and gains of business or profession.”]*

[Explanation.- For the purposes of this sub-clause, “relevant assessment years” means the five consecutive assessment years commencing on or after the 1st day of April, 2000 and ending before the 1st day of April, 2005]

“Explanation to Section 36(1)(viia), Clause (ia), which provides as under:

(ia) ‘rural branch’ means a branch of a scheduled bank {or a non-scheduled bank} situated in a place which has a population of not more than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year”

8. In respect of any provision for bad and doubtful debts made by the scheduled Bank, an amount not exceeding $7\frac{1}{2}$ percentage of the total income computed before making any deduction under this clause and Chapter VI A and an amount not exceeding 10% of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner are allowed as deduction. It is clear from the said provision that, the distinction has been made between the branches situated in the rural areas and the branches situated outside the rural areas. In respect of rural area, branches have to cater to the requirements of the poor and under privileged section of the society. The chances of recovery by the national bank being weaker by 10% to the aggregate average, advances made in those rural branches is given deduction towards bad and doubtful debts. The Legislature has defined what is "rural branch", as it is clear from the explanation. They have fixed the population of not more than 10,000 as determining the rural branch and that population of 10,000 should be

according to the last preceding census of which the relevant figures have been published before the first day of previous year. Therefore, this benefit of 10% of the aggregate average advances made by the rural branches of the bank is extended to the small population, living in the villages which is less than 10,000. If the population of such village is more than 10,000, then the said benefit of 10% deduction is not available. Hence, we keep this object of the Legislature in mind, then interpret with the word rural branch. The word used is 'published' before the first day of previous year. If in the Census it is found that the population of a particular village has crossed 10,000 then the schedule Bank pertains to that village would not be entitled to the deduction of 10,000 to the aggregate average advances towards bad and doubtful debts. The Census figure would be available with the Census Department. It is not possible for the common man or the bank to know what is the Census figure. Therefore, the said provision stipulates that Census figure has to be published. Therefore, it is only after publication of

the Census figures one may be able to decide whether it is a rural branch as defined under the Act or not. The last stipulated population necessarily would be with reference to particular date. That day is also prescribed as that date before first day of the previous year. Once the publication of census is made before the first day of the previous year, then the said information is in public domain. Therefore, on that basis one could find whether a branch is a rural branch or not. It is no doubt true that the Census Department initially publishes a provisional population total. Probably calling objections from the public and after considering those objections, publishes final population total. The Legislature has used the words "bad and doubtful debts" and the words "provisional" and "final" conspicuously missing in the said words. The word published has to be understood as final population as contended by the learned counsel appearing for the assessee. If other words are added it would amount to re-writing which is impermissible in law. Keeping in mind the object, before the bank is entitled to the said benefit all

that is to be seen is whether in that village where the rural branch is situated population is less than 10,000 or exceeding 10,000. Census is conducted once in ten years. After conclusion of the Census, provisional figure will be published and then final publication is made. If from the date of provisional population totals being published it has crossed the 10,000 limit as prescribed under the Law, then it does not satisfies the requirements of the rural branch and consequently assessee would not be entitled to the benefit granted to the rural branches. The publication of the final population total is only a formality. If after provisional population total shows more than 10,000 and in the final population total figure shown is less than 10,000 then it will make difference. But in both the provisional population total and the final population total if figure is mentioned above 10,000 it makes no different in the instant case. It is not the case of the assessee though the provisional figure mentioned is above 10,000 and in the final population total it has gone below 10,000. Therefore, provisional population total cannot

be acted and in that view of the matter the Tribunal was justified in upholding the order passed by the assessing authority where they have acted on the Census figures of 2001 as reflected in the provisional population totals and denied the benefit to the assessee. We do not find any error committed by the authorities. In that view of the matter, the substantial question of law is answered in favour of the revenue and against the assessee. We do not see any merit in these appeals. Accordingly, appeals are dismissed.

Sd/-
JUDGE

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JUDGE

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