

आयकर अपीलीय अधिकरण "F" न्यायपीठ मुंबई में।

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एन. के. प्रधान, लेखा सदस्य के समक्ष ।
BEFORE SRI MAHAVIR SINGH, VP AND SRI N.K. PRADHAN, AM

आयकर अपील सं./ ITA No. 2230/Mum/2019

(निर्धारण वर्ष / Assessment Years 2007-08)

DCIT (LTU-2), Mumbai. (Appellant)	बनाम/ Vs.	Union Bank of India 29 th floor, Center-1, World Trade Center, Cuffe Parade, Mumbai 400 005
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAACU0564G		

अपीलार्थी की ओर से/ Appellant by	:	Ms. M Samatha, DR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri C. Naresh, AR

सुनवाई की तारीख / Date of hearing:	31.08.2020
घोषणा की तारीख / Date of pronouncement:	21.09.2020

आदेश / O R D E R

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

This appeal by the Revenue is arising out of order of Commissioner of Income Tax (Appeals)-2, Mumbai in Appeal No. CIT(A)-2/IT/10408/2018-19 dated 28.01.2019. The original



assessment was framed by the ACIT LTU, Mumbai under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act') for the AY 2007-08 vide order dated 30.12.2009. Subsequently, reassessment was framed by DCIT (LTU-2) Mumbai under section 143(3) r.w.s. 147 of the Act vide order dated 26.03.2015. Apart from these two assessments, subsequently, DCIT (LTU-2), Mumbai passed rectification order under section 154 of the Act dated 27.12.2017, which is the impugned order passed by AO.

2. In this appeal, the Revenue has raised the following grounds: -

"1. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in allowing the appeal of assessee even though the Assessing Officer following the CBDT instruction No. 17/200 dated 26.11.2008 restricted the deduction u/s. 36(1)(vii-a) to the actual provision made by the assessee for bad and doubtful debts?

Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in deleting the Assessing Officer's order of restriction of deduction u/s. 36(1)(vii-a) when section 36(2)(v) clearly states that it is mandatory for banks make provision u/s 36(1)(vii-a)?"



3. We noted that the AO in his rectification order disallowed the claim of deduction under section 36(1)(viia) of the Act by holding that, *"Therefore, "deduction under section 36(1)(viia) was allowed of ₹ 598,46,24,435/- instead of correct amount of Rs. 33,00,00,000/- allowed in the assessment order passed under section 143(3) r.w.s 147 of the Act dated 26.03.2015" being a mistake apparent from record, is rectified under section 154 of the Income-tax Act."* Accordingly, the AO reduced the claim of deduction under section 36(1)(viia) of the Act. Aggrieved, assessee preferred the appeal before Commissioner of Income Tax (Appeals). Before CIT(A), the assessee raised the first ground on the jurisdiction of passing of order under section 154 of the Act restricting the claim of deduction under section 36(1)(viia) of the Act contrary to the directions of ITAT and also debatable. The CIT(A) allowed the relief to the assessee by observing as under: -

"5. Decision: I have considered the order of the AO, the grounds taken and submissions made by the appellant. I find that in appellant's own case in ITA 6349/Mum/2010 for AY 2007-08 the ITAT Mumbai, vide order dated 18.01.2013, had dismissed the revenue appeal & had allowed the deduction based on the eligibility u/s 36(1)(viia) irrespective of the provision made in the books. Further, I find that in a case reported as [2013] 33 taxmann.com 312



(Hyderabad - Trib.), the ITAT Hyderabad Bench, vide order dated 7.9.2012, in the case of State Bank of Hyderabad vs. Deputy Commissioner of Income-tax, Circle - 3(2), Range-I, Hyderabad for AY 2007-08 held on this issue as under:

"Section 36(1)(viia), read with section 36(1)(vii), of the Income-tax Act, 1961 - Bad debts - In case of banks [Computation of deduction] - Assessment year 2007-08 - Whether allowance under section 36(1)(viia) cannot be in excess of provision for bad debts actually made in accounts - Held, yes [Para 10] [In favour of revenue]"

Thus, it is clear that the issue, whether the deduction u/s. 36(1)(viia) is to be restricted to the actual provision made by the appellant for bad and doubtful debts in the books of accounts or it can be allowed in excess of the provision for bad and doubtful debts, as quantified with respect to certain percentage of the gross total income and also certain percentage of rural advances, is highly debatable and a contentious issue. The AO had passed the order dated 31.3.2015, giving effect to order of the ITAT dated 18.01.2013 for AY 2007-08, in which he allowed the



deduction based on the eligibility u/s 36(1)(viiia) irrespective of the provision made in the books. Therefore, the AO was clearly erred in holding that there was a mistake apparent from record on this issue and carrying out the said rectification u/s 154 of the Act, vide order dated 27.12.2017. The said order dated 27.12.2017 is accordingly quashed. Ground No. 1 is allowed"

Aggrieved, now Revenue is in appeal before Tribunal.

4. Before us, the learned Sr. DR M Samatha just relied on the rectification order passed by AO under section 154 of the Act. On the other hand, the learned Counsel for the assessee Shri C. Naresh stated that this issue has already been considered by the Tribunal while adjudicating the appeal of the Revenue against assessment order passed under section 143(3) of the Act by the AO originally, vide ITA No.6349/Mum/2010 for AY 2007-08 order dated 18.01.2013 wherein Tribunal has considered this issue vide para 42 as under: -

"42. After carefully considering the findings of the lower authorities, we find that the provisions of section 36(1)(viiia) are very clear which provides that in respect of 'any provision' made for bad and doubtful debts an amount not exceeding 7.5% of the total income and an amount not exceeding 10% of the aggregate average advances of the rural

branches of such bank shall be allowed as deduction. Once a provision for bad and doubtful debts are made by the scheduled bank having rural Branches, the assessee is entitled to a deduction, which is quantified not with reference to the amount provided for in the account but with respect to certain percentage of the total income and also certain percentage of aggregated advances. Thus, in view of the clear cut statutory provision, we do not find any infirmity in allowing assessee's claim by the CIT(A). Ground No. 4 is thus dismissed."

5. Further, the learned Counsel stated that this is a highly debatable issue and CIT(A) has rightly considered that this is a debatable issue and cannot be adjudicated while rectifying the mistake apparent from the record under section 154 of the Act.

6. We have considered the issue and noted that now before us Revenue has not challenged the findings of CIT(A) on jurisdictional issue that the same is debatable or not. Once, this is not challenged the order of CIT(A) on jurisdictional issue has become final and Revenue's appeal on this simple score is to be dismissed. Secondly, the issue has already been considered by the Tribunal as noted above, now, the same cannot be



adjudicated while acting under section 154 of the Act. Hence, the appeal of Revenue is dismissed.

7. In the Result, the appeal of Revenue is dismissed.

Order pronounced in the open court on 21.09.2020

Sd/-

(एन. के. प्रधान / N.K. PRADHAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 21.09.2020

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai