

G.A no.291 of 2016
ITAT no.76 of 2016
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

Principal Commissioner of Income Tax, Jalpaiguri

Versus

Uttarbanga Kshetriya Gramin Bank

BEFORE:

The Hon'ble JUSTICE ANIRUDDHA BOSE

The Hon'ble JUSTICE ARINDAM SINHA

Date: 7th May, 2018.

Mr. Nizamuddin, Adv.
..for the Revenue.

Mr. Khaitan learned Sr. Adv.
..for the Assessee.

The Court: Revenue seeks to prefer this appeal from order dated 8th July, 2015 passed by the Income Tax Appellate Tribunal Kolkata, "C" Bench, in ITA nos.846/KOL/2012 and 1745/KOL/2012 respectively pertaining to assessment years 2008-09 and 2009-10.

The following questions have been suggested by the Revenue for admission of appeal:

"i. Whether on the facts and in the circumstances of the case the Ld. Tribunal has erred in law in allowing deduction under section 36(1)(viia) of the I.T.Act, 1961, for the same advances made for all previous years leading to multiple deductions in

every assessment year by misinterpreting the Rule 6ABA of the I.T. Rules, 1962 and also against the ratio of judgment in the case of J.K Synthetics Ltd. vs. UOI 199 ITR 43 (SC).”?

ii. Whether on the facts and in the circumstances of the case conclusion arrived at by the Ld. Tribunal in granting the aforesaid relief to the assessee, is perverse?”

Relevant facts are that the assessee is a regional rural bank and its main business is banking activity. The assessee claimed deduction for the assessment years under section 36(1)(viia)(a) of the Income Tax Act, 1961 from its total income. The case of the assessee is that it had 71 rural branches. 10 per cent of aggregate monthly average advance under section 36(1)(viia) read with Rule 6ABA of the Income Tax Rules, 1962 came to Rs.22,25,33,875/- for assessment year 2009-10. The ITO however calculated the sum at Rs.81,88,683 on the basis of aggregate of monthly average advances of Rs.8,18,86,830/- being the sum total of advances made during the financial year relevant to assessment year 2009-10. For assessment year 2008-09 the issue in this regard was whether the assessee could make provision for bad debts on its advances.

The assessee being aggrieved preferred appeal before CIT(A). The Appellate Authority confirmed the action of the ITO by saying as follows:

"I have carefully considered the submission of the Ld. AR and also perused the assessment order. After amendment of section 36(1)(viia), from the AY 2007-08, the assessee bank is now entitled to deduction of provision for bad debt and doubtful debt as under:

- i) 7.5% of the total income computed before making a deduction under this Clause and chapter VI-A of the Income Tax Act and*
- ii) 10% of aggregate monthly average advances made by the rural branches of such bank computed in the prescribed manner.*

The plain reading of the provision of section 36(1)(viia)(a) made it clear that the aggregate average balance of advances made by the rural branches has to be calculated considering the loans and advances made during the year only by the rural branches of the bank in the prescribed manner as envisaged under Clause (viia)(a) of section 36(1), not on the cumulative balance of loans and advance of the bank over the years. Bad debt, if any, arises out of advances made in the earlier years would be covered under clause (viia) of section 36(1) of the I.T.Act.

In the light of above discussion, the AO is, it is found that the AO has rightly computed the

deduction allowable to the assessee bank under Clause (viia)(a) of section 36(1). His action is confirmed."

The assessee's appeal, however, was allowed by the Tribunal. The Tribunal's interpretation of the aforesaid statutory provisions would appear from the following passage:-

"From this Rule, it is apparent that for the purpose of section 36(1) (viia), the aggregate average advance made by the rural branches of as scheduled bank shall be computed by taking the amount of advances made by each rural branch as outstanding at the end of the last day of each month comprised in the previous year has to be aggregated separately. The CIT (Appeals) instead of giving the direction to the Assessing Officer to take the amount of advances as outstanding at the end of the last day of each month in the previous year directed the Assessing Officer to take loans and advances made during the year only, we therefore, set aside the order of CIT(Appeals) on this issue and amend the direction of the CIT(Appeals) and direct the Assessing Officer to compute 10% of the aggregate monthly average advances made by the rural branch of such Bank by taking the amount of advances by each rural branch of such Bank by taking the amount of advances by each rural branch as outstanding at the end of the last day of each month comprised in the previous year and aggregate

the same separately as given under Rule 6ABA of the Income Tax Rules, 1962."

Mr. Nizamuddin, learned advocate appeared on behalf of the Revenue and submitted the amended direction made by the Tribunal on the ITO has resulted in the assessee getting double deduction which is not permissible on computation made under Rule 6ABA. He submitted a double deduction in the manner thus obtained by the assessee has not been expressly provided. He relied on a judgment of the Supreme Court in the case of **Escorts Ltd. v. Union of India** reported in **(1993) 199 ITR 43**, on the following portion in the said judgment appearing in page 64 of the report.

"A double deduction cannot be a matter of inference, it must be provided for in clear and express language, regard being had to its unusual nature and its serious impact on the revenues of the State."

Mr. Khaitan, learned senior Advocate appeared on behalf of the assessee and submitted that the computation to be made as prescribed by Rule 6ABA is for the purpose of fixing the limit of the deduction available under section 36(1)(viia). Clauses (a) and (b) in Rule 6ABA cannot be given the restricted interpretation. The amounts of advances as outstanding at the last day of each month would be a fluctuating figure depending on the outstanding as increased or reduced respectively by advances made and repayments received. The assessee might

provide for bad and doubtful debts but the deduction would only be allowed at the percentage of aggregate average advance, computation of which is prescribed by Rule 6ABA.

We find from the amended direction made by the Tribunal that such direction is in terms of Rule 6ABA. The ITO had made the computation of aggregate monthly advances taking loans and advances made during only the previous year relevant to assessment year 2009-10 as confirmed by CIT(A). The Tribunal amended such direction, in our view, correctly applying the rule.

For the reasons aforesaid we do not find the questions suggested to be substantial questions of law involved in the case. As such the application and appeal are dismissed.

(Aniruddha Bose, J.)

(Arindam Sinha, J.)