IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 5TH DAY OF SEPTEMBER 2016/14TH BHADRA, 1938

ITA.No. 80 of 2016

AGAINST THE ORDER IN ITA 453/COCH/2015 of I.T.A.TRIBUNAL,
COCHIN BENCH DATED 16-10-2015

APPELLANT/APPELLANT/ ASSESSEE:

THE THODUPUZHA URBAN CO-OPERATIVE BANK LIMITED,
NO 394, REPRESENTED BY ITS GENERAL MANAGER,
JACOB MATHEW, AGED 57 YEARS, S/O V.J. MATHEW, THODUPUZHA P.O.,
IDUKKI DISTRICT, PIN 685 584.

BY ADVS.SRI.C.A.JOJO
SRI.JACOB CHACKO
SRI.MATHEWS JOSEPH

RESPONDENT/RESPONDENT:

JOINT COMMISSIONER OF INCOME TAX,
RANGE 4, KOCHI 682 018.

SC SR.K.M.V. PANDALAI

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 05-09-2016, ALONG WITH ITA. 81/2016, ITA. 84/2016 & ITA. 85/2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC
&
DAMA SESHADRI NAIDU, JJ.

I.T. Appeal Nos.80, 81, 84 & 85 of 2016

Dated this the 5th day of September, 2016

JUDGMENT

Antony Dominic, J.

These appeals are filed by the Thodupuzha Urban Co-operative Bank Limited aggrieved by the common order passed by the Income Tax Appellate Tribunal, Cochin Bench, a copy of which has been produced as Annexure-F by which I.T.A. Nos.451 and 454/Coch/2015 filed by the assessee, were rejected.

2. We heard the learned counsel for the appellant and the learned counsel for the assessee.

3. The common questions of law that are framed for consideration are the following:

> "1. Whether the learned Joint Commissioner of Income Tax (Appeals) is right in ignoring the Circular of NABARD which specifically declares the amendment made by the RBI

in exercise of the powers conferred on it under the provision and has revised the definition of "Rural Area" as the area comprised in any village including the area comprised in any town, the population of which does not exceed 50,000 (as against 10,000 fixed earlier)?

2. Whether the learned CIT(A) is right in law in not allowing deduction of employer's contribution to Pension Fund?

3. Whether the learned Commissioner of Income Tax (Appeals) is right in law in reckoning the population of rural area with reference to village for the purpose of computing the deduction u/s 36(1)(viia) of the Income Tax Act?

4. Whether the learned Commissioner of Income Tax (Appeals) erred in not allowing the deduction under Section 36(1)(viia) of the Income Tax Act computed with reference to the average advances made by the rural branches of the appellant bank?"

4. Insofar as the claim of the assessee for the benefit of Section 36(1)(viia) which is disallowed by the assessing officer and confirmed by the first appellate authority is concerned, the Tribunal also is seen to have followed the

judgment of this Court in the case of **Lord Krishna Bank Limited v. CIT (I.T.A. No.234 of 2009)**. However, the correctness of this finding, though was conceded before the Tribunal, was disputed by the learned counsel for the assessee placing reliance on Annexure-A, a circular issued by the National Bank for Agriculture and Rural Development (NABARD). A reading of the circular shows that for the purposes of Section 2(q) of NABARD Act, 1981, the Reserve Bank of India (RBI) had clarified that "rural area" shall mean villages with the population of less than ten thousand. By Annexure-A circular, NABARD has informed that the RBI has revised its definition of rural area and has specified that areas with a population of not exceeding fifty thousand shall henceforth be considered as rural areas.

5. It is relying on Annexure-A, the counsel contends that the finding that the rural area for the purpose of Section 36(1)(viia) of the Income Tax Act shall be villages with a population of ten thousand is incorrect. Insofar as

this contention of the learned counsel is concerned, this contention is plainly untenable for the reason that rural branch has been defined in explanation (ia) to Section 36(1)(viia) as 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. So long as the rural branch has been so defined in the Income Tax Act itself and the population limit specified is ten thousand, Annexure-A circular issued for the purposes of the NABARD Act, 1981, is of no avail to the assessee.

6. We also find that the third issue before the Tribunal was whether the assessee had created provisions for doubtful debts was not even contested before the Tribunal. In such a situation, the finding of the Tribunal on the first issue does not give rise to any question of law.

7. As far as the second question of law raised is

concerned, i.e. disallowance of deduction of employees contribution to pension fund, this issue is also covered by in view of Section 36(1)(iv) of the Income Tax.

8. We are not satisfied that the order gives rise to any question of law for consideration.

We do not find any merit in these appeals. These appeals, therefore, are dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
DAMA SESHADRI NAIDU
JUDGE

kns/-

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P.S. TO JUDGE