IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH
KOCHI

BEFORE S/SHRI B P JAIN, AM & GEORGE GEORGE K, JM

ITA No 310/Coch/2012
(Asst Year 2009-10)

The Mowancherry Coop Rural Bank Ltd PO Mowancherry Kannur Dist	Vs	The Income Tax Officer Ward 1 Kannur
(Appellant)		**(Respondent)**

PAN No.	AABAT4821C
Assessee By	None
Revenue By	Sh A Dhanaraj, Sr DR
Date of Hearing	2nd Aug 2016
Date of pronouncement	3rd Aug 2016

ORDER

PER GEORGE GEORGE K, JM;

This appeal has been restored by the Hon'ble Kerala High Court to the Tribunal vide judgment in ITA No.278 of 2013 (judgment dated 15th Feb 2016).

2 Two issues arise for our consideration namely;

(i) Whether the assessee is entitled to the benefit of deduction u/s 80P(2) of the Act; and

(ii) Whether the AO is justified in denying the status of Rural Branches of all the Branches of the assessee and disallowing the provision of bad and doubtful debts of 10% which can be claimed by the Rural Branch.

3 As regards the allowability of deduction u/s 80P of the Act, the Hon'ble jurisdictional High Court in ITA No.278 of 2013 (supra) had categorically held that the assessee, which is a cooperative credit society registered under the Kerala Cooperative Societies Act, 1969, is entitled to the benefit of section 80P (2) of the Act. The Hon'ble jurisdictional High Court had also considered the allowability of claim of deduction u/s 80P(2) when the returns are filed belatedly by the assessee. In both the instances, the Hon'ble High Court has held that the assessee, such as a present one, is entitled to the benefit of deduction u/s 80P of the Act. Therefore, this issue is decided in favour of the assessee. It is ordered accordingly.

4 As regards the issue of claim of provision of bad and doubtful debts of rural branch. The brief facts of the case are as follows:

The assessee had made provision of bad and doubtful debts amounting to Rs. 7,70,114/-. The Finance Act, 2007 had amended section 36(1)(viia) of the Act 1961, thereby extended the deduction in respect of any provision for bad and doubtful debts also to a cooperative bank other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank. As per the provisions of section 36(1)(viia) of the Act, maximum deduction allowable for bad and doubtful debts is the total of 7.5% of gross total income and 10% of aggregate average advances made by rural branches of the assessee. During the relevant year, the assessee was having 11 branches. The assessee society had term these branches as rural branches and claimed the provision of bad and doubtful debts with regard to the advances made by these rural branches u/s 36(1)(viia) of the Act. The AO treated none of the branches of the assessee branch as 'rural branches' since as per the last census data, these branches were situated in a village having population more than 10,000. The AO relied on the judgment of the Hon'ble jurisdictional High Court in the case of CIT vs Lord Krishna Bank reported in 339 ITR 606. The above view taken by the AO was confirmed by the CIT(A) and the Tribunal.

5 We have heard the ld DR and perused the material on record. The Hon'ble jurisdictional High Court in the case of Lord Krishna Bank Ltd (supra) had held that the terms 'place' mentioned in the Explanation(ia) to section 36(1)(viia) is to be interpreted as the revenue village and not as ward. The Tribunal, in the case of Kannur Dist. Coop Bank Ltd vs ACIT reported in 136 ITD 102 had held that the judgment of the Hon'ble Kerala High Court, in the case of Lord Krishna (supra) applies also to the co-operative banks.

6 In view of the judicial pronouncement, we hold that the assessee is not entitled to the benefit of section 36(1)(viia) of the Act; since none of the branches of the assessee can be classified as a rural branch. It is ordered accordingly.

7 In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on this 3rd, day of Aug 2016.

Sd/-	Sd/-
(B P JAIN)	**(GEORGE GEORGE K)**
Accountant Member	**Judicial Member**

Cochin: Dated 3rd Aug 2016
Raj*

Copy to:

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

By order

Assistant Registrar
ITAT, COCHIN