



2024/KER/51733

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 8<sup>TH</sup> DAY OF JULY 2024 / 17TH ASHADHA, 1946

ITA NO. 165 OF 2019

AGAINST THE ORDER/JUDGMENT DATED 22.03.2019 IN ITA NO.215  
OF 2018 OF I.T.A.TRIBUNAL,COCHIN BENCH

APPELLANT/APPELLANT

THE SOUTH INDIAN BANK LTD.  
SIB HOUSE, MISSION QUARTERS,  
THRISSUR PAN AABCT 0022F

BY ADVS.

JOSEPH MARKOSE (SR.)

V.ABRAHAM MARKOS

ABRAHAM JOSEPH MARKOS

ISAAC THOMAS

ALEXANDER JOSEPH MARKOS

SHARAD JOSEPH KODANTHARA

RESPONDENT/RESPONDENT

THE ASSISTANT COMMISSIONER OF INCOME TAX  
CIRCLE -1(10, THRISSUR 680 001

OTHER PRESENT:

SC-JOSE JOSEPH

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON  
08.07.2024, ALONG WITH ITA.26/2020, 28/2020, THE COURT ON  
THE SAME DAY DELIVERED THE FOLLOWING:



ITA Nos.165 of 2019, 26 and 28 of 2020

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 8<sup>TH</sup> DAY OF JULY 2024 / 17TH ASHADHA, 1946

ITA NO. 26 OF 2020

AGAINST THE ORDER/JUDGMENT DATED 22.08.2019 IN ITA NO.373 OF  
2019 OF I.T.A.TRIBUNAL, COCHIN BENCH

APPELLANT/APPELLANT

SOUTH INDIAN BANK  
SIB HOUSE, P.B.NO.28 MISSION QUARTERS, THRISSUR (PAN  
AABCT 0022F) REP. BY ITS MG.DIRECTOR AND  
CEO, MR.VARIATHUKALA GEORGE MATHEW  
BY ADVS.  
JOSEPH MARKOSE (SR.)  
V.ABRAHAM MARKOS  
ABRAHAM JOSEPH MARKOS  
ISAAC THOMAS  
ALEXANDER JOSEPH MARKOS  
SHARAD JOSEPH KODANTHARA

RESPONDENT/RESPONDENT:

THE ASSISTANT COMMISSIONER OF INCOME TAX  
CIRCLE-1(1), THRISSUR-689121.  
BY ADVS.  
SRI.P.K.RAVINDRANATHA MENON (SR.)  
SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON  
08.07.2024, ALONG WITH ITA.165/2019 AND CONNECTED CASES, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



ITA Nos.165 of 2019, 26 and 28 of 2020

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 8<sup>TH</sup> DAY OF JULY 2024 / 17TH ASHADHA, 1946

ITA NO. 28 OF 2020

AGAINST THE ORDER/JUDGMENT DATED 22.08.2019 IN ITA NO.390 OF  
2019 OF I.T.A.TRIBUNAL, COCHIN BENCH

APPELLANT

SOUTH INDIAN BANK  
SIB HOUSE, PB NO.28 MISSION QUARTERS, THRISSUR  
(PAN.AABCT 0022F), REPRESENTED BY ITS MANAGING  
DIRECTOR AND CEO, MR. VARIATHUKALA GEORGE MATHEW.

BY ADVS.

JOSEPH MARKOSE (SR.)  
V.ABRAHAM MARKOS  
ABRAHAM JOSEPH MARKOS  
ISAAC THOMAS  
ALEXANDER JOSEPH MARKOS  
SHARAD JOSEPH KODANTHARA

RESPONDENT

THE ASSISTANT COMMISSIONER OF INCOME TAX  
CIRCLE-1(1), THRISSUR-689 121.

BY ADVS.

SRI.P.K.RAVINDRANATHA MENON (SR.)  
SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON  
08.07.2024, ALONG WITH ITA.165/2019 AND CONNECTED CASES, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



**J U D G M E N T**  
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Dr. A.K.Jayasankaran Nambiar, J.

As all these I.T. Appeals involve common issues, they are taken up together for consideration, and disposed of by this common judgment. I.T.A.No.165 of 2019 pertains to the assessment year 2012-13 whereas I.T.A. Nos.26 of 2020 and 28 of 2020 pertain to the assessment year 2015-16.

2. The brief facts necessary for disposal of these I.T.Appeals are as follows:

The appellant before us is engaged in the business of banking and is an assessee under the Income Tax Act ('the Act' for short) on the files of the respondent. During the assessment year 2012-13, the appellant had received dividend income of Rs.1,77,26,110/- from its investments in shares and bonds. Though during the year the dividend income received on such shares and bonds was tax free, the shares and bonds in question were held by the appellant as trading



assets. The trading and current assets were valued at cost or market price, whichever was lower at the end of the financial year, and consequent depreciation in the value of the same was taken into account in the financial accounts of the Company. The profit on the sales of shares/bonds was also returned and assessed as business income of the Bank. In respect of the expenditure incurred by the appellant for buying and selling securities, the appellant claimed deduction while computing the profits and gains of business. The said claim for deduction was however disallowed by the assessing authority under Section 14A of the Act.

3. The assessing authority was of the view that in as much as the appellant-Bank had not maintained separate accounts to show that the investment in shares and bonds had been made from surplus funds available with it and not using the borrowed funds, the expenses incurred by way of interest paid to the lending institution could not be allowed as deduction, in view of the provisions of Section 14A of the Act. The same issue arises for the appellant in I.T.A.No.28 of 2020 as well, pertaining to assessment year 2015-16.

4. In this connection, it has to be noted that the said issue,



although answered against the appellant by the Tribunal in the orders impugned before us, was ultimately resolved in favour of the assessee by Supreme Court in an appeal pertaining to an earlier year as evident from the decision reported in ***South Indian Bank Ltd. v. Commissioner of Income Tax*** [(2021) 438 ITR 1 (SC)], where the Supreme Court found that there was no necessity for maintaining separate accounts to show that the assessee had made the investments only from surplus funds and that, so long as it was evident that interest free funds were available with the assessee which exceeded their investments, the provisions of Section 14A could not be relied on by the revenue to disallow the claim for expenses made by the assessee. We are also informed that the assessing officer has since, taking note of the Supreme Court judgment, passed rectification orders rectifying the assessments in the instant cases, in line with the Supreme Court judgment.

5. The other issue that arose for the assessment year 2012-13 which is also an issue that arises in the assessment year 2015-16 in I.T.A.No.26 of 2020 is the disallowance under Section 36(1)(viii) of the Act. The disallowance arose consequent to an amendment that was effected to the provisions of Sections 36(1)(viii) with effect from



01.04.2010 through the Finance (No.2) Act, 2009. The appellant-Bank was engaged in the business of providing housing loans for purchase or construction of houses, and had been obtaining the benefit of the deduction contemplated under Section 36(1)(viii) of the Act in the years prior to the amendment. On account of the amendment referred above, and the change in the definition of eligible business, the assessing authority found that eligible business in relation to a Banking Company included only the business of 'providing long term finance for developing of housing in India' and hence, the appellant would not get the benefit if it 'provided long term finance for construction or purchase of houses in India for residential purposes'. The reasoning of the Appellate Tribunal, while confirming the view of the assessing officer, was that after the amendment, and the deletion of the words 'construction or purchase of houses in India for residential purposes' from the definition of eligible business in relation to a Banking Company, the deduction envisaged for a Banking Company could not be availed in a situation where the bank was engaged in providing long term finance for construction or purchase of house for residential purposes, since that deduction was available only to Housing Finance Companies after the amendment.



6. In this connection, it is relevant to note that the explanatory notes to the provisions of the Finance (No.2) Act, 2009 state as follows with regard to the reasons for the amendment effected in Section 36(1)(viii) of the Act with effect from 01.04.2010:

“17. Special deduction under Section 36(1)(viii) to National Housing Bank (NHB)

17.1 Clause (viii) of sub-section (1) of Section 36 [Section 36(1)(viii)] provides special deduction to financial corporations and banking companies of an amount not exceeding 20% of the profits subject to creation of a reserve.

17.2 National Housing Bank (NHB) is wholly owned by Reserve Bank of India and is engaged in promotion and regulation of housing finance institutions in the country. It provides re-financing support to housing finance institutions, banks, ARDBs, RDBs, etc., for the development of housing in India. It also undertakes financing of slum projects, rural housing projects, housing projects for EWS and LIG categories etc. NHB is also a notified financial corporation under Section 4A of the Companies Act.

17.3. A view has been expressed that NHB is not entitled to the benefits of Section 36(1)(viii) on the ground that it is not engaged in the long-term financing for construction or purchase of houses in India for residential purpose. Hence the Act has been





amended to provide that corporations engaged in providing long-term finance (including re-financing) for development of housing in India will be eligible for the benefit under Section 36(1)(viii).

17.4. Applicability- These amendments will be effective from the 1<sup>st</sup> April, 2010 and will accordingly apply in respect of assessment year 2010-11 and subsequent assessment years.

7. It is apparent from a reading of explanatory notes above that the amendment was deemed necessary to enable the National Housing Bank, which was a notified Financial Corporation under Section 4A of the Companies Act, and wholly owned by the Reserve Bank of India, to claim the deduction in respect of its activities of promotion and regulation of Housing Finance Institutions in the country, inter alia, by providing re-financing support to Housing Finance Institutions and Banks.

8. Apparently, a view had been expressed that National Housing Bank was not entitled to the benefits of the unamended Section 36(1)(viii) of the Act, on the ground that it was not engaged directly in the long term financing for construction or purchase of houses in India for residential purpose. The amendment was therefore deemed



necessary to extend the said benefit even to the National Housing Bank. It follows therefore that the amendment was intended to widen the scope of the deduction in relation to Financial Corporations specified in Section 4A of the Companies Act, Financial Corporations that were Public Sectors Companies, Banking Companies and Corporative Banks other than Primary Agricultural Credit Society or Primary Corporative Agricultural and Rural Development Banks and to confine the benefit available to a Housing Finance Company only in relation to the provision by it of long term finance for the construction or purchases of houses in India for residential purpose.

9. We therefore, cannot agree with the finding of the Appellate Tribunal that in as much as the providing of long term finance for construction or purchases of houses in India for residential purpose was an activity that qualified for deduction under Section 36(1)(viii) only for Housing Finance Companies, the same activity would not qualify for deduction in relation to a Banking Company. The phrase 'Development of Housing in India' is wider in its scope and ambit and includes within its ambit the phrase 'construction or purchase of houses in India for residential purposes'.



10. We are therefore of the view that even after 01.04.2010, the appellant Bank would be entitled to the deduction envisaged under Section 36(1)(viii) of the Act in respect of the long term finance provided by it for construction and purchase of houses in India for residential purpose.

11. There is yet another aspect of matter. If the interpretation given to the provisions by the Appellate Tribunal is to be accepted, then it would result in an anomalous situation where the Housing Finance Companies would stand to benefit from the deduction and, consequently, offer attractive rates of interest in relation to the loans advanced by them for construction or purchase of houses for residential purposes, in comparison with the loans offered by the Banking Companies that would not get the benefit of deduction under S.36 (1) (viii). This would result in an arbitrary classification between Banking Companies and Housing Finance Companies that has no nexus with the object that was sought to be achieved by the legislature while amending the statutory provision, and it is trite that an interpretation that would bring about an unconstitutional result has necessarily to be eschewed.



12. The second issue that arises in I.T.A.No.26 of 2020 is with regard to the claim for deduction under Section 36(1)(viia) of the Act. The appellant had claimed a deduction in relation to the provisions made in its accounts for bad debts, particularly, in relation to the branches that were situated in rural areas. However, the authorities below found that some of the branches were not situated in rural areas and disallowed the claim of the appellant in relation to those branches.

13. The learned Senior Counsel would submit that the issue as to whether or not the area in question merits classification as rural area or urban area, is currently pending resolution before the Supreme Court. Before us, however, the limited prayer is to remit the matter to the Appellate Tribunal for examining whether, in the event of a claim not succeeding under Section 36(1)(viia) of the Act , the appellant could still maintain the claim for deduction under Section 36(1)(vii) of the Act .

14. In support of the above submission, the learned Senior Counsel relies on the judgment dated 27.03.2019 in I.T.A.No.36 of 2011 in the case of Federal Bank for the assessment year 2006-07. By



the said judgment, a Division Bench of this Court had remanded a similar issue for consideration by the Appellate Tribunal as to whether, under circumstances where the assessee bank had written off the amounts in the manner described in the case of ***Vijaya Bank v. Commissioner of Income Tax and another*** [(2010) 323 ITR 166(SC)], as verified after obtaining a report from the assessing officer on perusal of the balance sheet of the assessee for the assessment year in question. the deduction under Section 36(1)(vii) of the Act would be available to the assessee.

15. We are inclined to allow the said request of the learned Senior Counsel in respect of the said issue and remit the matter to the Appellate Tribunal for a consideration as to whether the claim for deduction made under Section 36(1)(viia) of the Act could be considered in terms of Section 36(1)(vii) of the Act.

16. In the backdrop of the aforesaid discussion, we must proceed now to consider the questions of law raised in these I.T. Appeals. They read as follows:



1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in confirming disallowance under Section 14A of the Income Tax Act?

2. Whether on the facts and in the circumstances of the case and when the shares and bonds from which tax free income by way of dividend is received is held by the Appellant as trading assets any amount can be disallowed under Section 14A with respect to such dividend income?

3. Whether on the facts and in the circumstances of the case and in the event it is held that Section 14A is applicable, the quantum of disallowance under Section 14A cannot exceed the dividend income earned by the Appellant?

4. Whether on the facts of the case, the Appellate Tribunal was right in confirming the disallowance of deduction under Section 36(1)(viii)?

5. Whether on the facts and in the circumstances of the case there is any evidence or material on record for the Tribunal to substantiate its finding that the advances given by the Appellant for construction/purchase of houses does not amount to development of housing as provided in Section 36(1)(viii)?

ITA No.26 of 2020.

“1. Whether on the facts of the case, the Appellate Tribunal was right in confirming the disallowance of deduction under Section 36(1)(viii)?

2. Whether on the facts and in the circumstances of the case there is any evidence or material on record for the



Tribunal to substantiate its finding that the advances given by the Appellant for construction/purchase of houses does not amount to development of housing as provided in Section 36(1)(viii)?

3. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the “place” referred to in the definition of Rural Branch in Explanation (ia) to Sec: 36(1)(viia) is a Revenue Village and cannot be the Ward of a Panchayat?

4. Whether the “Place” found in the definition of Rural Branch in Explanation (ia) to Section 36(1)(viia) can be said to be a Revenue Village when the Banks are permitted to open rural branches only in places sanctioned by the Reserve Bank of India on the basis of the classification of the Reserve Bank of India as to rural areas and the Rural Branches are so certified by the Reserve Bank, which also is as per latest census and according to accepted banking norms?

5. Whether in the light of the decision of the Hon'ble Supreme Court in Vijaya Bank v. CIT reported in (2010) 323 ITR 166 the Appellant is in any event entitled to deduction of the provision for doubtful debts made even under Section 36(1)(vii)?

#### I.T.A. No.28 of 2020

1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in reversing the order of the first appellate authority and confirming disallowance



under Section 14A of the Income Tax Act?

2. Whether on the facts and in the circumstances of the case and when the shares and bonds from which tax free income by way of dividend is received is held by the Appellant as trading assets any amount can be disallowed under Section 14A with respect to such dividend income?

3. Whether on the facts and circumstances of the case and in the event it is held that Section 14A is applicable, the quantum of disallowance under Section 14A cannot exceed the dividend income earned by the Appellant?

17. In the light of the discussions in the previous paragraphs of this judgment, we answer the substantial questions of law raised in these appeals as follows:

1. I.T.A.No.165 of 2019: We answer all the questions in favour of the assessee and against the revenue.
2. I.T.A No.26 of 2020: We answer questions 1 and 2 in favour of the assessee and against the revenue. However, Questions 3 and 4 are answered against the assessee and in favour of the revenue. Question No.5 is not answered in the light of the remand made by us to the Appellate Tribunal, for deciding the issue of entitlement of the assessee to the benefit of deduction under Section 36(1)(vii) of the Act.





3. ITA No.28 of 2020: We answer all the three questions in favour of the assessee and against the revenue.

The I.T.Appeals are disposed as above.

Sd/-

**DR. A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

Sd/-

**SYAM KUMAR V.M.**  
**JUDGE**

smm



APPENDIX OF ITA 165/2019

PETITIONER ANNEXURES

- ANNEXURE A TRUE COPY OF THE ASSESSMENT ORDER DATED 18-03-2015 FOR ASSESSMENT YEAR 2012-13
- ANNEXURE B TRUE COPY OF THE APPELLATE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS) DATED 21-02-2018
- ANNEXURE C TRUE COPY OF SECOND APPEAL DATED 07-05-2018 FILED BY THE APPELLANT BEFORE THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH
- ANNEXURE D CERTIFIED COPY OF ORDER DATED 22-03-2019, RECEIVED ON 04-05-2019, PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH IN IT APPEAL NO. 215/COCH/2018

APPENDIX OF ITA 26/2020

## PETITIONER ANNEXURES

ANNEXURE A	TRUE COPY OF THE ASSESSMENT ORDER DATED 20.12.2017 OF ASSESSMENT YEAR 2015-16
ANNEXURE B	TRUE COPY OF THE APPELLATE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS), THRISSUR DATED 27.02.2019
ANNEXURE C	TRUE COPY OF SECOND APPEAL- I.T.A.NO.373/COCH/2019 DATED 06.05.2019 FILED BY THE APPELLATE TRIBUNAL, COCHIN BENCH IN I.T.ANO.373/COCH/2019
ANNEXURE D	CERTIFIED COPY OF IMPUGNED ORDER DATED 22.08.2019 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH IN ITA NO.373/COCH/2019



APPENDIX OF ITA 28/2020

PETITIONER ANNEXURES

- ANNEXURE A TRUE COPY OF ASSESSMENT ORDER DATED 20.12.2017 FOR ASSESSMENT YEAR 2015-16.
- ANNEXURE B TRUE COPY OF THE APPELLATE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS), THRISSUR DATED 27.2.2019.
- ANNEXURE C TRUE COPY OF SECOND APPEAL-I.T.A. NO.390/COCH/2019 FILED BY THE RESPONDENT BEFORE THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH.
- ANNEXURE D TRUE COPY OF IMUGNED ORDER DATED 22.8.2019 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH IN I.T APPEAL NO.390/COCH/2019.