

**आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।**

IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH: CHENNAI

**श्री चंद्र पूजारी, लेखा सदस्य एवं श्री**  
**जी. पवन कुमार न्यायिक सदस्य के समक्ष**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SHRI G.PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A.No.1895/Mds/2014

निर्धारण वर्ष /Assessment year : 2005-06

M/s.Sundaram BNP Paribas  
Home Finance,  
Sundaram Towers,  
46, Whites Road,  
Chennai-600 014.

**[PAN:AADCS 4826 J]**

**(अपीलार्थी/Appellant)**

**Vs.** The Asst. Commssr. of Income Tax,  
Company Circle-VI(4),  
Chennai-600 034.

**(प्रत्यर्थी/Respondent)**

आयकर अपील सं./I.T.A.No.1981/Mds/2014

निर्धारण वर्ष /Assessment year : 2005-06

The Asst. Commssr. of Income  
Tax,  
Company Circle-VI(4),  
Chennai-600 034.

**(अपीलार्थी/Appellant)**

**Vs.** M/s.Sundaram BNP Paribas Home  
Finance, Sundaram Towers, 46,  
Whites Road, Chennai-600 014.

**[PAN:AADCS4826J]**

**(प्रत्यर्थी/Respondent)**

Assessee by  
Revenue by

: Mr.R. Vijayaraghavan, Advocate  
: Mr. Duraipandian

सुनवाई की तारीख/Date of Hearing

: 26.10.2016

घोषणा की तारीख /Date of Pronouncement

: 19.12.2016

**आदेश / O R D E R****PER CHANDRA POOJARI, ACCOUNTANT MEMBER**

These are cross appeals of the assessee and the Revenue are directed against the order of the Commissioner of Income-tax (Appeals)-VI, Chennai, dated 31.03.2014 pertaining to assessment year 2005-06.

**First we take up assessee's appeal**

2. The first issue raised by the assessee in its appeal is with regard to confirming the disallowance u/s.36(1)(viii) of the Act in respect of the interest on mortgaged back security of ₹41,72,737/- and interest from loans advanced to deposits holders of ₹1,22,963/-.

3. The facts of the issue are that the assessee claimed deduction u/s.36(1)(viii) of the Act in respect of interest on mortgaged back security of ₹41,72,737/- and interest from loans advanced to deposit holders of ₹1,22,963/- was rejected by the lower authorities on the reason that it was not mandatory investment as required by any statutory requirements by carrying on business by providing loans and housing finances. According to AO, these incomes from interest on these activities cannot be termed as derived income from long term finance. The income received as no direct nexus or is not incidental to the long term housing finance. Accordingly, the AO dismissed the claim of the assessee u/s.36(1)(viii) of the Act in respect of interest on

mortgaged back security and interest from loans advanced to deposit holders. The assessee carried the appeal before the Ld.CIT(A). On appeal, the Ld.CIT(A) confirmed the action of the AO on this issue. Against this, the assessee is in appeal before us.

4. Before us, Id.A.R submitted that only the net interest to be considered for disallowance u/s.36(1)(viii) of the Act and not the gross interest. The Id.A.R relied on the order of lower authorities.

5. We have heard both the parties and perused the material on record. As rightly pointed out by the Id.D.R, provisions of Sec. 36(1)(viii) are applicable only in respect of loans granted for construction or purchase of house in India for residential purpose, as such Ld.CIT(A) rightly confirmed the disallowance. However, while computing the disallowance u/s.36(1)(viii) of the Act, only net interest income to be considered from the activities of mortgaged back security and interest from loans advanced to deposit holders. This ground of appeal is partly allowed.

6. The second issue in its appeal is with regard to confirming the disallowance u/s.36(1)(viii) of the Act in respect of the interest of the sum of ₹61,79,045/- being the referral fee from insurance companies and other income.

7. After hearing both the parties, we are of the opinion tht this was already decided by this Tribunal in the case of M/s.Sundaram Home Finance Ltd., Vs. ACIT in ITA Nos.27 &28/Mds./2008 for assessment years 2003-04 & 2004-05 vide order dated 14.08.2008 wherein held in para -11 as follows:

*"getting properties and persons insured is not a mandatory requirement for carrying on the business of providing long term housing finance. Therefore, the income received by way of commission has no direct nexus or its not incidental to the long term housing finance. Accordingly, this issue was decided against the assessee."*

7.1 In view of the Order of above Tribunal cited supra, we upheld the order of Ld.CIT(A) on this issue. Hence, this ground of the appeal of the assessee stands dismissed.

8. The third issue raised by the assessee in its appeal is that Ld.CIT(A) had not admitted the additional grounds raised by the assessee before Ld.CIT(A) with regard to exclusion of income earned on the land loans of ₹3,95,71,793/- which were extended by the assessee in the normal course of business, and exclusion of the entire

interest income of ₹1,02,85,893/- from the computation of eligible profits for the purpose of deduction u/s.36(1)(viii) of the Act.

8.1 The facts of the issue are that assessee company claims that the interest income earned from land loan is also eligible for deduction u/s.36(1)(viii) of the Act. According to AO, loans given for purchase of land are not same as loans given for purchase of house or for construction of house and hence the assessee cannot claim deduction u/s.36(1)(viii). When the Authorised Representative of assessee is confronted with this fact, he replied without land how can a house be constructed? Yes, it is true tht without land, no house can be constructed. Indeed a house can be constructed only on land. But then deduction u/s.36(1)(viii) is eligible only for construction or purchase of a house but not for purchase of a land. Assessee company is at its own liberty to lend for purchase of lands also but it cannot claim deduction u/s.36(1)(viii) for the interest arising from the land loan portfolio. Accordingly, AO was of the opinion that deduction of interest income on loans attributable for the purchase of undivided share of land while purchasing a house because s.36(1)(viii) itself makes a mention of purchase of a house. Purchase of a house is not complete without the purchase of undivided share of land. Hence, the assessee company is allowed deduction u/s.36(1)(viii) in respect of home loans. However, loan given for the purchase of land cannot be

equated with the loan given for purchase of a house or construction of a house. Therefore, the AO disallowed the income earned on loans given for the purchase of lands u/s.36(1)(viii) of the Act. On appeal, the Ld.CIT(A) confirmed the order of AO. Aggrieved by the order of lower authorities, the assessee is in appeal before us.

9. At the outset, Id.A.R submitted that on similar facts for assessment year 2006-07, the AO himself re-worked the deduction u/s.36(1)(viii) of the Act by revising working of total income, expenses allocation and profit derived from the home loan, home extension, home improvement and land loan. He submitted that in the same manner for this assessment year also deduction u/s.36(1)(viii) of the Act be reworked. The Id.D.R relied on the order of Ld.CIT(A).

10. We have heard both the parties and perused the material on record. We have gone through the assessment order for assessment year 2006-07 wherein the AO reworked the deduction u/s.36(1)(viii) of the Act by segregating the profit on the basis of various activities carried on by the company. On the same manner we direct the AO to compute u/s.36(1)(viii) of the Act for this assessment year also.

11. The levy of interest u/s.234B of the Act which is mandatory in nature to be computed accordingly.

11.1. In the result, the appeal of the assessee in ITA No.1895/Mds./14 is partly allowed for statistical purposes.

**Next we take up Revenue's appeal In 1981/Mds./2014**

12. The Revenue's main grievance is that Ld.CIT(A) erred in allowing that the interest income on SLR investment of 59,90,193/- is eligible for deduction u/s.36(1)(viii) of the Act.

12. After hearing both the parties, we are of the opinion that the same issue came up for consideration in assessee's own case for assessment years 2003-04 & 2004-05 in ITA Nos.27 & 28/Mds./2008 cited supra wherein held that:-

*"4. As regards the first point regarding investment for maintaining SLR, the Id.A.R has contended before us that the interest received on securities held by the assessee as statutory liquidity reserve (SLR) was earned in the course of carrying on the business of long term finance as referred in Sec. 36(1)(viii) of the Act. He has further submitted that NHB the regulatory authority governing the assessee requires that the assessee has to maintain the statutory liquidity reserve in specified securities and its non-compliance would debar the assessee from carrying on business of housing*

*finance. Thus, he has contended that the income derived from the investment to maintain the SLR is part of its business for providing long term finance, as investment in Sec.36(1)(viii) of I.T.Act. It is further contended that the statutory liquidity reserve is required to be maintained in accordance with the National Housing Bank Act 1987. As such the income has direct nexus to the business of the assessee being mandatory in nature. Thus the income derived from these investments for maintaining SLR should be treated as profit derived from the business of providing long term housing finance. He has further relied upon the following cases:*

- i) Canfin Homes.Ltd. vs.JCIT (2006) 103 TTJ 108;*
- ii) Mehsana District Central Co-operative Bank Ltd. vs. ITO (2001) 251 ITR 522 (SC);*
- iii) CIT vs. Karnataka State Co—operative Apex Bank (2001) 251 ITR 194 (SC).*

*On the other hand, the learned Departmental Representative has contended that the interest earned on the investment cannot be regarded as the income derived from the business of providing long term finance as required under Sec.36(1)(viii). Therefore the interest income from bank deposits and other investments for maintaining the SLR cannot be considered as from the business for providing long term finance. He has relied on the orders of the lower authorities and the order of this Tribunal in the case of Tamil Nadu Urban Finance & Infrastructure Development Corporation Ltd. in ITA No.1667/Mds/04 & 1928/Mds/04.*

*5. After considering the rival contentions and material on record, we note that the assessee has made certain investment in Govt. securities, fixed*

*deposits and NHB Bonds to maintain the statutory liquidity reserve as required by the National Housing Bank Act, 1987 and consequently the assessee has earned income o these Investments. The assessee claimed said interest income on these investments under section 36(1)(viii) income derived from business for providing long term housing finance. The Income-tax Authorities disallowed the said deduction on the ground that the interest income earned by the assessee is not directly derived from loan from housing finance. It Is undisputed fact that the Investment made, by the assessee is strictly as per the statutory requirement of NHB Act and without compliance of this requirement the assessee cannot carry on its business of providing long term finance. Thus the investment made in the notified security as per the statutory requirement in our view has direct nexus with the business of the assessee because if there is any violation of said statutory requirement the assessee cannot carry on the business of long term finance. Accordingly, the income from such SLR investments are incidental to the business activity of the assessee and is to be treated as business income under the head profits and gain of the business or profession.*

*6. & 7---*

*8. In the order of this Tribunal in the case of Tamil Nadu Urban Finance & Infrastructure Development Corporation Ltd.(supra) it was held that the interest from short term deposit does not fall under the ambit of Explanation 'e' to u/s.36(1)(viii) and accordingly the deduction was disallowed. Thus, we are of the opinion that the issue decided in the said case is not identical with the issue in this case. Therefore, the said case is not applicable in the facts and circumstances of the*

*present case. Accordingly, we decide this issue in favour of the assessee and against the Revenue.”*

In view of the above order of the Tribunal, we are inclined to decide the issue against the Department and in favour of the assessee. Hence, the appeal of Revenue stands dismissed.

14. In the result, the appeal of the assessee is partly allowed for statistical purposes and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 19<sup>th</sup> December, 2016, at Chennai.

Sd/-  
(जी. पवन कुमार)  
(G.PAVAN KUMAR)  
**न्यायिक सदस्य/JUDICIAL MEMBER**

Sd/-  
(चंद्र पूजारी)  
(CHANDRA POOJARI)  
**लेखा सदस्य /ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 19<sup>th</sup> December, 2016

**K S Sundaram**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |