

Loans given for construction of individual residential houses won't make bank eligible for sec. 36(1)(viii) relief

Summary – The Cochin ITAT in a recent case of South Indian Bank Ltd., (the Assessee) held that Construction/purchase of residential houses does not tantamount to Housing Development; no deduction would be allowed under section 36(1)(viii) in respect of income from loans given for individual residential houses

Facts

- The assessee claimed deduction of Rs. 10.79 crores (later re-worked and revised at Rs. 9.53 crores) in respect of special reserve under section 36(1)(viii).
- The Assessing Officer disallowed the claim of the assessee holding that the assessee had not advanced any loan as long-term finance for development of housing in India, industrial or agricultural development or development of infrastructure facility in India.
- On appeal, the Commissioner (Appeals) allowed deduction under section 36(1)(viii) for the income generated from advancing loans to industrial or agricultural development and development of infrastructure facility in India. However, with regard to long-term finance for development of housing in India, he observed that construction/purchase of individual houses does not tantamount to housing development. Hence, he upheld the action of the Assessing Officer insofar as the disallowance of the claim of the assessee for advances given for development of housing is concerned under section 36(1)(viii).
- On the cross appeals before the Tribunal:

Held

- It is quite apparent that a Housing Finance Company will be entitled to the deduction under section 36(1)(viii) from income generated out of the business of providing long-term finance for the construction or purchase of houses in India for residential purposes. A Banking Company will be entitled to the deduction under section 36(1)(viii) from income generated out of the business of providing long-term finance for only Development of Housing in India. This makes it abundantly clear that for the purposes of section 36(1)(viii) providing long-term finance for the construction or purchase of houses in India for residential purposes and providing long-term finance for only Development of Housing in India are different.
- However, prior to the amendment of section 36(1)(viii) by the Finance Act, 2009 all Banking Companies were entitled to deduction under section 36(1)(viii) for the profits generated from the business of providing long-term finance for the construction or purchase of houses in India for residential purposes.

- The Amendment provided the deduction to National Housing Bank. But the amendment also substituted the previous words with words 'Development of Housing' which has to be interpreted in its plain dictionary meaning in absence of any definition given.
- From the above, it is clear that construction/purchase of individual houses does not tantamount to Housing Development. Hence, the action of the lower authorities insofar as the disallowance of the claim of the assessee for advances/loans given for Development of Housing is concerned is to be upheld. No deduction shall be allowed to assessee under section 36(1)(viii) for the amount claimed by assessee in respect of advances/loans given for individual houses.
- In the case of *Ernakulam District Co-operative Bank Ltd. v. Joint Director Income-tax* (TS-7866-ITAT-2017 (Cochin)) it was held that as per provisions of section 36(1)(viii), the eligible business means business of providing long-term finance for industrial or agricultural development, development of infrastructure facility in India and development of housing in India.
- Accordingly, the Commissioner (Appeals) observed that the assessee is entitled to deduction in accordance with section 36(1)(viii) for the income generated from advancing to (A) industrial or agricultural development and (B) development of infrastructure facility in India. Therefore, this ground was partially allowed. However, the Commissioner (Appeals) found that the assessee had adopted a new methodology for claiming deduction under section 36(1)(viii) which is more objective and had resulted in reduction of assessee's claim. Thus, while allowing deduction under section 36(1)(viii), the Commissioner (Appeals) directed the Assessing Officer to allow such deduction as per the new computation.
- In view of the above order of the Tribunal in the case of *Ernakulam District Co-op. Bank Ltd. (supra)*, there was no infirmity in the order of the Commissioner (Appeals) in granting relief to the assessee under section 36(1)(viii) with regard to providing long-term finance for industrial or agricultural development or development of infrastructure facility in India and the same is confirmed.