आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री वी दुर्गा राव,न्यायिक सदस्य एवं श्री जीमंजुनाथ ., लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.:2762/CHNY/2017**

निर्धारण वर्ष / Assessment Year: 2013-14

The DCIT, Circle – 2(1), Trichy – 620 001.	v.	**M/s. The Karur Vysya Bank Ltd.,** Erode Road, Karur – 639 002. **PAN: AAACT 3373J**
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./**ITA Nos.:2765/CHNY/2017 & 332/CHNY/2018**

निर्धारण वर्ष / Assessment Year: 2013-14

M/s. The Karur Vysya Bank Ltd., Erode Road, Karur – 639 002. **PAN: AAACT 3373J**	v.	**The DCIT,** Circle – 2(1), Trichy – 620 001.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

राजस्व की ओर से /Revenue by : Shri Clement Ramesh Kumar, CIT

निर्धारिती की ओर से/Assessee by : Shri Ananthan & Ms. Abarna, CAs

सुनवाई की तारीख/Date of Hearing : 30.09.2021

घोषणा की तारीख/Date of Pronouncement : 03.11.2021

आदेश /O R D E R

Per G Manjunatha, AM:

These cross appeals filed by the assessee and Revenue in ITA Nos.2762 & 2765/CHNY/2017 are directed against order of learned Commissioner of Income Tax (Appeals) – 1, Tiruchirapalli, dated 14.09.2017 and pertains to assessment year 2013-14. The appeal filed by the assessee in ITA No.332/CHNY/2018 is directed against order of the learned Commissioner of Income Tax (Appeals) – 1, Tiruchirapalli, passed u/s 154 of the Income tax Act, 1961 dated 01.11.2017 and pertains to assessment year 2013-14. Since, facts are identical and issues are common, for the sake of convenience, these appeals are heard together and are being disposed off, by this consolidated order.

2. The Revenue has raised the following grounds of appeal in ITA No. 2762/Chny/2017:-

1. The order of the learned CIT (A) is against law and in facts and circumstances of the case.

2. The learned CIT (A) has erred in deleting the disallowance of Stale Draft Account to the tune of Rs. 4,45,07,818/- quoting the "The Depositor Education and Awareness Fund Scheme, 2014" of the RBI guideline.

3. The learned CIT(A) has erred in deleting the disallowance of ex-gratia payment following the decision of the CIT Vs. Maina Ore Transport Pvt. Ltd.

o24 ITR 100 (Born) and Kumaran Mills Pvt. Ltd. Vs. CIT (2000) 241 ITR 564 (Mad) which are distinguishable and not applicable to this case.

4. The learned CIT (A) has erred in deleting the disallowance of bad debts u/s 36(1)(vii) of the Act, following the decision of the Catholic Syrian Bank Ltd Vs CIT(2012) 343 ITR 270 (SC), which is not applicable to this case.

5. The learned CIT (A) has erred in deleting the disallowance of provision for bad and doubtful debts u/s36(1)(viia) of the Act, quoting the census 2001. However, 2011 census is officially released and available as on 30/03/2011.

6. The learned CIT (A) has erred in deleting the disallowance of Interest accrued on NPAs to the tune of Rs. 2,50,67,500/-, quoting the RBI guideline.

3. The assessee has raised the following grounds of appeal in ITA No.2765/Chny/2017:-

1. The Order of the learned CIT(A) is against law and facts of the case.

2. The learned CIT(A) erred in disallowing and also enhancing the disallowance u/s 14A to Rs.4,43,711./-.

2.1 The learned CIT(A) failed to appreciate the fact that no disallowance can be made u/s 14A since the securities of the Appellant bank are held as stock in trade.

2.2 The learned CIT(A) failed to appreciate the fact that the Appellant bank has not incurred any expenditure for earning tax free income.

2.3 The learned CIT(A) erred in disallowing the sum u/s 14A without finding that the Appellant bank had actually incurred expenditure to earn the tax free income.

2.4 The learned CIT(A) erred in disallowing a sum of Rs.4,43,711/- u/s 8D(2)(i).

2.5 The learned CIT(A) erred in disallowing a sum of Rs.66,49,140/- u/s 8D(2)(iii).

3. The learned CIT(A) erred in disallowing and enhancing the disallowance u/s 36(1)(vii) amounting to Rs.71,60,761/-.

3.1. The learned CIT(A) erred in considering debts by the non-rural branches as rural advances.

4. The learned CIT(A) erred in not considering certain branches as rural branches for the purpose of allowing the deduction u/s 36(1)(viia).

5. The learned CIT(A) erred in not allowing the claim of the Appellant bank of Rs. 23,28,45,881/- u/s 36(1)(viii) of the Income Tax Act, 1961.

5.1 The order of the learned CIT(A) is based on surmises and conjunctures.

5.2 The learned CIT(A) erred in substituting the computation of income from eligible business without pointing out any defects in the method adopted by the Appellant bank.

5.3 The learned CIT(A) erred in considering the Business Income of Rs. 564,59,16,849/- for arriving at the deduction u/s 36(1)(viii).

5.4 The learned CIT(A) failed to appreciate the fact that the Business Income of the Bank comprises Income from various sources of business not related to eligible business.

5.5 The learned CIT(A) failed to appreciate the fact that the method of computation adopted by the Appellant bank is the most appropriate method.

For all these and other grounds, which may be urged at the time of hearing, the appellant prays that its appeal be allowed.

The assessee has raised the following additional grounds vide letter dated 24.08.2021:-

1. Aggrieved by the appellate order passed by the Commissioner of

Income Tax (Appeals), Trichy, the appellant had filed the above numbered appeal before the Hon'ble Income Tax Appellate Tribunal.

2. It is humbly stated that, while filing the appeal, the appellant had not raised any ground relating to non-disallowance of Education Cess (EC) and Secondary & Higher Education Cess (SHE). It is humbly submitted that the Appellant had not raised the ground at the time of filing the appeal since it was under bonafide belief that EC & SHE were not allowable deduction.
3. It is humbly submitted that the Appellant has been advised by their A/Rs to file additional ground for claiming the deduction of EC and SHE based on the decisions of certain High Courts which held that EC and SHE are allowable deduction.
4. The Appellant humbly submits that this being the legal ground the same may be raised before the Hon'ble ITAT.
5. The appellant now seeks to raise an additional ground, as Ground No. 6 in this regard. The appellant humbly prays that the Additional Ground of Appeal, raised as Ground No. 6, may please be admitted and adjudicated upon while adjudicating the Appeal in ITA No. 2765/CHNY/2017.
6. The lower authorities be directed to allow the Education Cess and Secondary & Higher Education Cess paid by the Appellate Bank.

4. The assessee has raised the following grounds of appeal in ITA No.332/CHNY/2018:-

1. The Order of the learned CIT(A) is against law and facts of the case.
2. The order passed by the learned CIT(A) u/s 154 is not tenable in law.

2.1The learned CIT(A) failed to appreciate the fact that it is a debatable issue and cannot be rectified.

3. Without prejudice to the above the learned CIT(A) erred in adopting wrong census data.

3.1The learned CIT(A) failed to appreciate the fact that the village level census data of 2011 census was not released as on 01-04-2012.

For these and other grounds, which may be urged at the time of hearing, the appellant prays that its appeal be allowed.

Revenue's Appeal in ITA 2762/CHNY/2017

5. Brief facts of the case are that the appellant bank is a private sector bank carrying on banking business, filed its return of income for the assessment year 2013-14 on 29.09.2013 declaring total income of Rs.546,50,55,480/- and said return was subsequently revised on 27.10.2014 & 30.03.2015 and declared total income of Rs.523,99,52,160/- & Rs.516,82,49,970/- respectively. The case was taken up for scrutiny and during the course of assessment proceedings, the AO after considering necessary submissions of the assessee, has completed assessment u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') on 30.03.2016 and determined total income of Rs.1027,83,07,994/- by making various additions including additions towards disallowance of amount credited in stale drafts account, disallowance of ex-gratia payment to staff, disallowance of deduction claimed u/s.36(1)(vii) of the Act towards bad and doubtful debts, disallowance u/s.36(1)(viia) of the Act

towards provision for bad debts in respect of rural advances and addition of interest on non-performing assets. The assessee carried the matter in appeal before the first appellate authority and the ld.CIT(A) for the reasons stated in his order dated 14.09.2017 partly allowed the appeal filed by the assessee, where he has deleted additions made by the AO towards disallowance of stale drafts, disallowance of ex-gratia payment to staff, disallowance of deduction claimed u/s.36(1)(vii) of the Act, disallowance of deduction claimed u/s.36(1)(viia) of the Act and addition towards interest on non-performing assets. Aggrieved by the CIT(A) order, the Revenue is in appeal before us.

6. The first issue that came up for our consideration from Ground No.2 of Revenue appeal is deletion of addition made towards disallowance of stale drafts. The facts with regard to the impugned dispute are that the assessee is in the business of banking, has issued demand drafts to various persons and further any unclaimed demand drafts was kept in stale draft account under the head 'outstanding liabilities'. During the course of assessment proceedings, the AO noticed that an amount of Rs.18,42,40,053/- was shown under the head outstanding liabilities towards stale

draft. He further noted that opening balance in said account was at Rs.13,97,32,235/- and therefore, the differential amount of Rs.4,45,07,818/- has been treated as income of the assessee and added to total income. On appeal before the ld.CIT(A), the CIT(A) has deleted addition made by the AO by following the decision of ITAT in assessee's own case for earlier years.

6.1 The ld. DR submitted that the ld.CIT(A) has erred in deleting the disallowance made by the AO towards stale draft account without appreciating the fact that amount kept under stale draft account is nothing but income of the assessee and same need not to be paid to any person.

6.2 The ld.AR for the assessee on the other hand strongly supporting order of the CIT(A) submitted that the issue is squarely covered in favour of the assessee by the decision of ITAT in assessee's own case for assessment year 2012-13 in ITA No.3197/Chny/2017, where under identical circumstances the Tribunal has deleted addition made by the AO by holding that amount kept under stale draft account is not income of the assessee. He further submitted that the Hon'ble High Court of

Madras has considered an identical issue in case of City Union Bank Ltd., vs. CIT reported in [2020] 118 taxmann.com 96, where it has been clearly held that amount kept under stale draft account cannot be treated as income of the assessee.

6.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee is in the banking business, has received money while issuing demand drafts / pay order to various customers. The said money was held by the bank on behalf of the drawee till he/she made claim. The assessee bank had no right over the amount which is standing unclaimed. Further, the assessee banks had to remit the amount outstanding for more than 10 years to Depositors Education & Awareness Fund Scheme maintained by Reserve Bank of India. Further, as and when the drawee makes a claim, the assessee shall issue demand draft / pay order in case the amount lying with the assessee and further, if the amount is transferred to RBI account after 10 years, then the Reserve Bank settles the claim of the drawee. Therefore, under these facts and circumstances amount lying in stale draft account cannot be treated as income of the assessee. The ITAT after considering relevant facts has rightly

held that amount lying in stale draft account under the head 'outstanding liabilities' cannot be treated as income of the assessee. A similar view has been taken by the Hon'ble Jurisdictional High Court of Madras in the case of City Union Bank Ltd., vs. CIT, *supra.* Therefore, consistent with view taken by the Co-ordinate Bench, we are of the considered view that there is no error in the reasons given by the CIT(A) to delete addition made by the AO towards Stale Draft Account. Hence, we are inclined to uphold the findings of the CIT(A) and reject the ground taken by the Revenue.

7. The next issue that came up for our consideration from Ground No.3 of Revenue appeal is disallowance of ex-gratia payment of Rs.21,87,41,562/-. The AO had disallowed ex-gratia payment made by the assessee to its staff who are not covered under payment of bonus Act, on the ground that the assessee has circumvented the provisions of Bonus Act and has given bonus to employees who are not eligible for payment of bonus and thus, whatever cannot be done directly has been done indirectly by changing the nomenclature of the nature of payment. Therefore, he opined that ex-gratia payment made by the assessee to its staff cannot be allowed in guise of business expediency. The AO has also taken

support from the provisions of Section 36(1)(v) of the Act and also relied upon certain judicial precedents to come to the conclusion that ex-gratia payment to staff is covered u/s.36(1)(v) r.w.s. 36(1)(ii) and thus, the same is not deductible. It was the explanation of the assessee before the AO that ex-gratia payment to staff is not an appropriation of profits and further, it is an expenditure incurred wholly and exclusively for the purpose of business and hence, allowable u/s.37(1) of the Act.

7.1 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. An identical issue had been considered by the Tribunal in assessee's own case for assessment year 2012-13 in ITA No.3197/Chny/2017, where the Tribunal after considering relevant facts held that ex-gratia payment to staff is deductible u/s.37(1) of the Act. The relevant findings of the Tribunal are as under:

> 16. The Ld. DR submitted that the Ld. CIT(A) erred in deleting the disallowance of ex-gratia payment following the decision of the CIT vs Maina Ore Transport Pvt. Ltd., 324 ITR 100 (Bom) and Kumaran Mills Ltd vs CIT (2000) 241 ITR 564 (Mad) which are distinguishable and not applicable to this case. Per contra, the Ld. AR supported the order of the Ld. CIT(A) and relied on this tribunal decision in its case in 72 ITR (Trib) 26 (Chennai), the relevant portion is extracted as under :

"24. Ground No.4 challenges the disallowance of ex-gratia payment of Rs. 4,46,29,688/-. We dealt with this issue in assessee's own case in ITA No.1342/Chny/2013 for AY 2007-08 for the reasons stated vide para 6.3 of the order therein, we allow this ground of appeal in favour of the assessee bank. We direct the AO to allow the ex-gratia of Rs. 4,46,29,688/- as a deduction. Hence, this ground of appeal is allowed.
24.1 In the result, ground of appeal No.4 of the assessee is allowed."

Following the co-ordinate bench decision, supra, we do not find merit in the Revenue's appeal, therefore, the corresponding grounds are dismissed."

7.2 In this view of matter and consistent with view taken by the Co-ordinate Bench, we are of the considered view that there is no error in the reasons given by the ld.CIT(A) to delete additions made towards disallowance of ex-gratia payment and thus, we are inclined to uphold the findings of the ld.CIT(A) and reject ground taken by the Revenue.

8. The next issue that came up for our consideration from Ground No.4 of Revenue appeal is deletion of deduction u/s.36(1)(vii) of the Act for Rs.36,10,29,903/-. The AO has disallowed bad debts claim of the assessee bank on the ground that the assessee did not give details like full address of the borrower and PAN number. The ld.CIT(A) has deleted additions made by the AO by following the decision of Hon'ble Supreme Court in the case of TRF Ltd., vs CIT,

[2010] 323 ITR 397 on the ground that after amendment of section w.e.f. 01.04.1989, it would be sufficient if the debt is written off as irrecoverable in the books of accounts of the assessee. Therefore, he deleted addition made by the AO, however sustained an amount of Rs.73,92,699/- by holding that same should be adjusted against the provisions created in the books of accounts u/s.36(1)(viia) of the Act.

8.1 The ld.DR submitted that the ld.CIT(A) has erred in deleting disallowance of bad debts u/s.36(1)(vii) of the Act, by following the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd., vs. CIT, [2012] 343 ITR 270, which is not applicable to this case.

8.2 The ld.AR for the assessee on the other hand supporting order of the ld.CIT(A) submitted that this issue is squarely covered in favour of the assessee by the decision of ITAT in assessee's own case for earlier years, where the Tribunal by following the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd., vs. CIT, *supra,* has deleted addition made by the AO.

8.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that an identical issue has been considered by the Tribunal in assessee's own case for assessment year 2007-08 in ITA No.1497/Chny/2013 and by following the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd., vs. CIT, *supra,* held that the assessee was entitled to deduction under clause (vii) of Section 36(1) irrespective of the difference between the credit balance in the provision account made under clause (viia) and the bad debts written off in the books of accounts in respect of bad debts relating to urban or non-rural advances. The relevant findings of the Tribunal are as under:-

> 13.1 Grounds No.1 & 2 challenges the direction of ld. CIT(A) deleting the addition made u/s. 36(1)(vii) of the Act for Rs. 8,24,47,532/-. The AO made addition by disallowing the claim for deduction u/s. 36(1)(vii) of the Act solely on the ground that the credit balance available in the account of provision for bad and doubtful debts more than the amount claimed as a bad debts. On appeal before the ld. CIT(A), the CIT allowed the claim considering the fact that the bad debts were written off in the books of account, the provision of s. 36(1)(vii) of the Act are different from s. 36(1)(viia) of the Act. Both the provisions are separate and distinct and the proviso to clause (7) of s. 36(1) are not applicable, inasmuch as, there was no double deduction.
> 13.2 Being aggrieved by this decision of the ld. CIT(A), the Revenue is in appeal before us in the present grounds of appeal. The issue in the present grounds of appeal is covered against the Revenue by decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. v. CIT

[2012] 343 ITR 270 (SC), vide para 4 & 5 of judgment, which reads as under:

"4. We consider it appropriate to notice at this stage the fate of the orders passed for the previous assessment years in relation to the appellant and other banks. 5. M/s Dhanalakshmi Bank Ltd., one of the appellants before us, had also raised the same issue before the Tribunal in ITA Nos. 602- 605/Coch/1994 and 190/Coch/1995, in relation to earlier assessment years. A view had been expressed that there was no distinction made by the legislature in the proviso to s. 36(1)(vii) between rural and nonrural advances and, therefore, its application cannot be limited to rural advances. Under cl. (viia) also, a bank was held to be entitled to deduction in respect of the provisions made for rural and non-rural advances, subject to limitations contained therein. Thus, the contention of the assessee in that case, for deduction of bad debts from urban branches under s. 36(1)(vii), was rejected. The earlier view taken by the Tribunal in the case of Federal Bank in ITA Nos. 505, 854/Coch/1993, 376/Coch/1995 and 284/Coch/1995 held that the proviso to cl. (vii) only bars the deduction of bad debts arising out of rural advances, the actual right to set off bad debts in respect of non-rural and urban advances cannot be controlled or restricted by application of the proviso and the same would be allowed without making adjustment vis-a-vis the provision for bad and doubtful debts. This view was obviously favourable to the assessee. Noticing these contrary views in the cases of Dhanalakshmi Bank (supra) and Federal Bank (supra),the matter in the case of the appellant-bank, for asst. yrs. 1991-92 to 1993-94 was referred to a Special Bench of the Tribunal for resolving the issue. The Special Bench, vide its judgment dt. 9th Aug., 2002 [reported as Dy. CIT vs. Catholic Syrian Bank Ltd. (2004) 82 TTJ (Coch)(SB) 181—Ed.] had answered the question of law in the affirmative, holding that debts actually written off, which do not arise out of the rural advances, are not affected by the proviso to cl. (vii) and that only those bad debts which arise out of rural advances are to be deducted under s. 36(1)(viia) in accordance with the proviso to cl. (vii). Finally, the matter, in respect of the appellant Bank, was ordered to be placed before the AO and with respect to other banks, before the concerned Benches of the Tribunal. The order of the Special Bench of the Tribunal was implemented by the Department and was never called in question. It may be noticed here that in relation to earlier

assessments, i.e. right from 1985-86 to 1987-88 in a similar case, different banks came up for hearing in appeal before a Division Bench of the Kerala High Court in the case of South Indian Bank Ltd. (supra) wherein, as mentioned above, while discussing the scope of ss. 36(1)(viia) and 36(2)(v) of the Act, the High Court set aside the order of the Tribunal in that case and held that the assessee was entitled to the deduction under cl. (vii) irrespective of the difference between the credit balance in the provision account made under cl. (viia) and the bad debts written off in the books of accounts in respect of bad debts relating to urban or non-rural advances. It accepted the contention of the assessee and referred the matter to the AO. This judgment of the High Court is subject-matter of Civil Appeal Nos. 1190-1193 of 2011 before us."

13.3 Even in the assessee's own case, the Hon'ble Jurisdictional High Court of Madras held the issue in favour of the assessee-bank in the AY 1987-88, 1992-93 in Tax Case Nos. 43 & 44 of 2012 and MP No.1/12. Thus, in the light of above legal position, we do not find any merit in the grounds of appeal filed by the Revenue.

8.4 In this view of matter and consistent with view taken by the Co-ordinate Bench, we are of the considered view that there is no error in the reasons given by the ld.CIT (A) to delete additions made towards disallowance of deduction claimed u/s.36(1)(vii) of the Act and thus, we are inclined to uphold the findings of the ld.CIT(A) and reject ground taken by the Revenue.

9. The next issue that came up for our consideration from Ground No.5 of Revenue appeal is disallowance of deduction claimed towards provision for bad debts u/s.36(1)(viia) of the Act. The ld.AR for the assessee and ld.DR present for the Revenue made a

statement at bar that Ground No.5 of Revenue appeal become infructuous in view of order passed u/s.154 of the Act dated 01.11.2017, because a similar issue has been raised by the parties in the appeal filed against order passed u/s.154 of the Act. Thus, Ground No.5 of Revenue appeal is dismissed as infructuous.

10. The next issue that came up for our consideration from Ground No.6 of Revenue appeal is deletion of addition made towards interest on non-performing assets. The AO has made addition of Rs.2,50,67,500/- towards interest on non-performing assets (NPAs) by holding that interest on loans needs to be offered to tax on accrual basis in respect of NPAs, which are more than 90 days old but less than 180 days. According to him, Rule 6EA of the Income Tax Rules, 1962 applies only in respect of NPAs which are more than 180 days old. The ld.CIT(A) deleted addition made by the AO by holding that the approach adopted by the AO is erroneous because the AO failed to take note of the categories of loan/advances mentioned in Sub-rule (b) to (e) of Rule 6EA. He further held that Section 43D requires that the Rules to be prescribed based on RBI guidelines and hence followed the RBI guidelines for recognition of interest on NPAs.

10.1 The ld.DR submitted that the ld.CIT(A) has erred in deleting disallowance of interest accrued on NPAs by following the guidelines issued by RBI ignoring the fact that Rule 6EA of the Income Tax Rules, 1962 deals with taxation of interest on NPAs, as per which NPAs which are less than 180 days are covered under Rule 6EA of Income Tax Rules, 1962, as per which the assessee shall recognize interest on accrual basis.

10.2 The ld.AR for the assessee submitted that this issue is squarely covered in favour of the assessee by the decision of ITAT in assessee's own case for assessment year 2012-13, where under identical set of facts, the Tribunal deleted addition made by the AO towards interest on NPAs.

10.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that an identical issue has been considered by the Tribunal in assessee's own case for assessment year 2012-13 in ITA No.3197/Chny/2017, where under identical set of facts and by following the decision of Hon'ble Supreme Court in the case of Vasisth Chary Vyapar Ltd., vs. CIT(supra), held that interest income

cannot be said to have been accrued to the assessee on NPAs account. The relevant findings of the Tribunal are as under:-

> "17. The Ld. DR submitted that the Ld, CIT(A) erred in deleting disallowance on interest accrued on NPAs to the extent of Rs. 57,42,500/- quoting the RBI guidelines. In this regard, the Ld. AR supported the order of the Ld. CIT(A) and relied on this tribunal decision Per contra, the Ld. AR supported the order of the Ld. CIT(A) and relied on the SC decision in the case of Vasisth Chary Vyapar Ltd TMI 56 SC and this tribunal decisions in its case in , TMI 566- ITAT , Chennai, 72 ITR (Trib) 26 (Chennai), the relevant portion is extracted as under :
>
> > *"29. The next ground of appeal challenges the addition on account of interest accrued in NPAs accounts of Rs. 14,00,000/-. The AO had brought to tax the interest on the NPAs accounts by holding that interest had accrued in terms of the agreement entered by the appellant with borrowers. This issue is now covered in favour of the assessee-bank by decision of Hon'ble Supreme Court in the case of CIT v. Vasisth Chay Vyapar Ltd. [2019] 410 ITR 244 (SC), wherein the Hon'ble Supreme Court had confirmed the decision of Hon'ble Delhi High Court, that the interest income cannot be said to have been accrued to the assessee on the NPA accounts. Accordingly, we direct the AO to delete the addition of Rs. 14,00,000/- made on interest on NP accounts. Accordingly, this ground of appeal stands allowed.*
> > *29.1 In the result, the appeal filed by the assessee-bank is partly allowed."*
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> Following the co-ordinate bench decision, supra, we do not find merit in the Revenue's appeal, therefore, the corresponding grounds are dismissed."

10.4 In this view of matter and consistent with view taken by the Co-ordinate Bench, we are of the considered view that there is no error in the reasons given by the ld.CIT(A) to delete additions made

towards interest on NPAs and thus, we are inclined to uphold the findings of the ld.CIT(A) and reject ground taken by the Revenue.

11. In the result, the appeal filed by the Revenue is dismissed.

Assessee's Appeal in ITA 2765/CHNY/2017

12. The first issue that came up for our consideration from Ground No.2 of assessee appeal is disallowance of expenditure relatable to exempt income u/s.14A of the Act. The assessee has earned dividend income of Rs.2,21,85,558/-, however no disallowance as required u/s.14A of the Act had been made by the assessee. Therefore, the AO has disallowed 2% of such dividend income as expenses relatable to exempt income u/s.14A read with Rule 8D of the Income Tax Rules, 1962 (hereinafter the 'IT Rules'). On appeal, the ld.CIT(A) has restricted disallowance to 1.15% of exempt income which is proportionate expenditure of the Treasury Department. The CIT (A) has also disallowed an amount of Rs.65,68,526/- being 0.5% of the tax exempt securities by invoking Rule 8D(2)(iii) of the IT Rules.

12.1 The ld.AR for the assessee at the time of hearing submitted that this issue is covered in favour of the assessee by the decision

of ITAT in assessee's own case for assessment year 2012-13 in ITA No.54/CHNY/2018, where it has been held that no disallowance u/s.14A is permissible in terms of Rule 8D where the assessee is engaged in banking business. He further submitted that in a recent decision in the case of South Indian Bank Ltd., vs. CIT, the Hon'ble Supreme Court in Civil Appeal No.9606 of 2011, vide order dated 09.09.2021 held that in the case of banking companies, Section 14A is not applicable.

12.2 The ld.DR on the other hand supporting order of the CIT(A) submitted that the moment exempt income is earned, disallowance contemplated u/s.14A triggers and the AO shall compute such disallowance by invoking Rule 8D of IT Rules, 1962 and thus, there is no error in the reasons given by the authorities below to sustain addition made towards disallowance u/s.14A and their orders should be upheld.

12.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Admittedly, the issue is covered in favour of the assessee by the decision of ITAT in assessee's own case for assessment year 2012-

13, where under identical set of facts, the Tribunal by following certain judicial precedents including the decision of Hon'ble Punjab & Haryana High Court in the case of Pr.CIT vs. State Bank of Patiala, [2017] (2) TMI 125, held that no disallowance u/s.14A is permissible in terms of Rule 8D, where the assessee is engaged in banking business. A similar view is taken by the Hon'ble Supreme Court in the case of South Indian Bank Ltd vs. CIT in Civil Appeal No.9606 of 2011, and held that shares and securities held by a bank are stock-in-trade and income received on such shares and securities must be considered to be business income. That is why, Section 14A of the Act would not be attracted to such income.

12.4 In this view of matter and consistent with view taken by the Co-ordinate Bench and also by respectfully following the decision of Hon'ble Supreme Court in the case of South Indian Bank Ltd., vs. CIT, *supra,* we direct the AO to delete addition made towards disallowance u/s.14A r.w.rule 8D of the IT Rules, 1962.

13. The next issue that came up for our consideration from Ground No.3 of assessee appeal is disallowance of bad debts claimed u/s.36(1)(vii) of the Act. The ld.AR for the assessee at the

time of hearing submitted that the assessee does not want to press the ground challenging disallowance of bad debts claim sustained by the CIT(A) u/s.36(1)(vii) of the Act and thus, ground No.3 of assessee is dismissed as 'not pressed'.

14. The next issue that came up for our consideration from Ground No.4 of assessee appeal is disallowance of deduction claimed u/s.36(1)(viia) of the Act, in respect of rural advances of appellant bank.

14.1 The facts with regard to the impugned dispute are that the assessee has made a provision for bad and doubtful debts u/s.36(1)(viia) of the Act, in respect of rural advances amounting to Rs.104,67,39,845/-. The AO has disallowed provision for bad and doubtful debts on the ground that assessee-bank had not given full particulars relating to bad debts. He further noted that it is obligatory upon the assessee to prove to the AO that the case satisfies the provisions of Section 36(1)(vii) on the one hand and that it satisfies the requirements stated u/s.36(2) of the Act on the other hand. On appeal, the ld.CIT(A) has allowed the claim of the assessee however, while allowing the claim of the appellant bank,

he determined the rural branches based on 2011 census population figure. Therefore, he has disallowed the claim with respect to 3 branches by observing that these branches are not rural branches.

14.2 The ld.AR for the assessee submitted that the ld.CIT(A) has erred in confirming additions made by the AO towards disallowance of provision for bad debts u/s.36(1)(viia) of the Act, without appreciating fact that 3 branches, viz., Kelambakkam and Medavakkam in the State of TamilNadu and Manikonda in the State of Telangana are classified as rural branches by the RBI as per 2001 census. He further submitted that the assessee has considered those 3 branches as rural branches, because the population of the village / panchayat where those villages falls is less than 10,000 as per census of 2001. Therefore, he submitted that as per the provisions of section 36(1)(viia) of the Act, rural branches has been defined, as per which, "rural branch" means a branch of a scheduled bank situated in a place which has a population of not more than 10,000 as per the last preceding census of which the relevant figures have been published before the first day of the previous year. In this case, although the AO claims that census data for 2011 was made available, but as per the assessee information the

provisional and final census data of 2011 was released on 30.04.2013, for which the assessee has filed a reply received from Office of the Registrar General of India, Ministry of Home Affairs dated 04.10.2019, as per which the village level population data of 2011 census was not released on 31.03.2011 including provisional data. He further submitted that the assessee goes by classification of branches as per RBI guidelines, as per which those 3 branches have been classified as rural branches by the RBI. Therefore, when the assessee has made provision in the books of accounts as on 31.03.2011, the data available with the assessee was that of 2001 census as per which places where those 3 branches are situated, population of which is less than 10,000, hence the assessee has treated those 3 branches as rural branches for the purpose of making provision. He further submitted that although, the ld. CIT(A) has relied upon the decision of Hon'ble Karnataka High Court in the case of State Bank of Mysore vs. ACIT, [2015] 231 Taxmann 319, but said judgment is not applicable to facts of the present case, because the Hon'ble High Court has considered the fact that as on the date of provision made for bad debts, provisional population data was published which is made available to the assessee. On those facts, it was held that once provisional data is

available and further there is no difference between provisional and final population figure, then the assessee should have treated those branches as rural branches for the purpose of making provision u/s.36(1)(viia) of the Act. In this case, as per the clarification of Office of the Registrar General of India, provisional as well as final population data was published in official gazette on 30.04.2013 and thus, the same was not made available to the assessee. Therefore, the assessee has classified those branches as rural branches on the basis of RBI guidelines which are based on 2001 census. The AO and CIT(A) without appreciating these facts simply rejected arguments of the assessee.

14.3 The ld.DR on the other hand strongly supporting order of the ld.CIT(A) submitted that as per Google information, the population data of 2011 census was released on 31.03.2011. Further, the Ministry of Home Affairs has released provisional census figures in the Gazette of India on 31.03.2011. Therefore, when the provisional census figure was available, the assessee cannot consider 2001 census to classify a particular branch as rural branch. Further, the ld.CIT(A) has brought out clear facts to the effect that Kelambakkam and Medavakkam branches fall within Chennai

Metropolitan Area and urban conglomerate, as per which those two branches are definitely fall within the urban segment and thus, there is no reason for the assessee to classify those 2 branches as rural branches. Similarly, Manikonda branch of Telangana State was also fall within the area of Hyderabad Metropolitan Development Authority and the population of Hyderabad Metropolitan Area in the year 2008 was about 67 lakhs. Therefore, although, those 3 branches fall within a particular Municipality / Town Panchayat and population of said Municipality was less than 10,000, but because those branches are coming within the territorial distance of urban conglomerate, the same cannot be considered as rural branches. He, further submitted that even assuming for a moment, provisional census data was not officially published when the assessee made a provision as on 31.03.2013, but fact remains that when the assessee has finalized its accounts and audit was completed in 24.05.2013, the final population data for 2011 census was very much available, as per the official clarification issued by Registrar General of India and thus, the assessee ought to have taken cognizance of the fact, while classifying those branches as rural branches for the purpose of provision created u/s.36(1)(viia) of the Act. Since, the assessee has failed to classify those branches

as rural branches, the ld.CIT(A) has rightly considered the facts and held that those 3 branches are coming under urban limits and provision made by the assessee is not in accordance with provisions of section 36(1)(viia) of the Act.

14.4 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The fact with regard to eligibility of assessee for claiming the benefit of provisions of section 36(1)(viia) of the Act is not in dispute. In fact, the AO as well as the ld.CIT(A) have accepted the fact that the assessee is entitled for provision for bad and doubtful debts in respect of rural branches u/s.36(1)(viia) of the Act. The only dispute is with regard to 3 branches namely, Kelambakkam, Medavakkam in Chennai Metropolitan Area and Manikonda in Hyderabad Metropolitan Development Authority. As per the Revenue authorities' findings, those 3 branches are urban branches because said branches fall within Chennai Metropolitan Area and Hyderabad Metropolitan Development Authority. Therefore, the AO as well as CIT(A) opined that even though local panchayat population where the branches are situated is less than 10,000, but because those 3 branches are part of urban conglomerate or

territorial distance of Chennai Metropolitan Area and Hyderabad Metropolitan Development Authority, those 3 branches cannot be considered as rural branches for the purpose of provisions of section 36(1)(viia) of the Act. The ld.CIT(A) had discussed the issue at length in light of provision of section 36(1)(viia) of the Act and decision of Hon'ble Kerala High Court in the case of CIT vs. Lord Krishna Bank, [2011] 339 ITR 606 and observed that "place" as mentioned in section 36(1)(viia) of the Act, with reference to "place" as defined in census report of 2001 means, "*the basic unit for rural areas is the revenue village with definite surveyed boundaries. The rural area is, however, taken as the residual portion excluding the urban area and for that no strict definition is followed*." The CIT(A) further noted that if we go by the ratio of Hon'ble Kerala High Court in the case of Lord Krishna Bank, *supra,* only those branches which are located in rural areas are covered in provisions of section 36(1)(viia) of the Act, but not those branches which are part of greater urban territorial limits, even though, said branches are served by Village Panchayat, whose population is less than 10,000, as per 2001 or 2011 census.

14.5 We have given our thoughtful consideration to the reasons given by the ld.CIT(A) in light of various arguments advanced by the assessee and we ourselves do not subscribe to reasons given by the CIT(A), for the simple reason that assessee had classified bank branches into rural, semi-urban and urban branches as per guidelines issued by the RBI. In the present case, for the impugned assessment year, the assessee has strictly gone by Circular issued by RBI which is based on 2001 census, as per which those 3 branches are rural branches. Admittedly, the assessee does not have any right to classify branches according to its own wish or whims because banks are covered by RBI guidelines and further, they have to strictly follow guidelines issued by RBI for all purposes including accounting of provisions, etc. In this case, as per the evidences filed by the assessee, the RBI has classified those 3 branches as rural branches, when the assessee has made provision for bad debts u/s.36(1)(viia) of the Act. Therefore, in our considered view, provision made by the assessee u/s.36(1)(viia) of the Act is in accordance guidelines of RBI and further in accordance with law.

14.6 Be that as it may. As per the provisions of section 36(1)(viia) of the Act, *"rural branch" means a branch of a 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". In this case, for the impugned assessment year the first day of relevant previous year is 01.04.2012. Therefore, the assessee while making provisions u/s.36(1)(viia) of the Act, should consider population figure of that place as on first day of relevant previous year. If you go by said analogy then, whether the assessee needs to consider population data of 2001 census or 2011 census is the question. Admittedly, the assessee has followed 2001 census for the purpose of classification of those 3 branches as rural branches. The assessee has adduced reasons for classifying those branches, as per 2001 census. According to the assessee, population data of 2011 was not available when the assessee has finalized its accounts and provision was created u/s.36(1)(viia) of the Act. For this purpose, the assessee has furnished necessary evidences including reply received from Registrar General of India, Ministry of Home Affairs, in response to RTI application, as per which provisional and final population data of 2011 census was published in official Gazette on 30.04.2013. In this case, financial year relevant to assessment year 2013-14 ends on 31.03.2013. As per evidence available on record, the 2011 census data was not

made available to the assessee as on 31.03.2013. Therefore, we are of the considered view that once official census figure was not published in official gazette of Government of India, then the assessee has to consider official census data available in public domain when the provision was created in the books of accounts of the assessee. In this case, no doubt of whatsoever with regard to population data of 2011 which is made available to general public only in April, 2013, which is beyond relevant financial year. Although, the ld.DR has filed certain evidences including Google search information, and argued that provisional census data of 2011 was released on 31.03.2013, but said data is unauthenticated, not certified by any authorities. Therefore, based on said evidence, we cannot conclude that population data of 2011 was available in public domain as on 31-03-2011.

14.7 Insofar as, findings of ld.CIT (A) regarding those 3 branches fall within the territorial jurisdiction of Chennai Metropolitan Area and Hyderabad Metropolitan Development Authority, we are of the considered view that once a place is served by a separate Town Panchayat / Municipal Panchayat, the population figure of Municipal Panchayat / Town Panchayat is relevant to decide whether a

particular place is rural or urban depending upon the population of said village panchayat. Further, those branches may fall within the limits of urban territorial jurisdiction of Chennai Metropolitan Area and Hyderabad Metropolitan Development Authority but those, places are served by local Municipality, which is having jurisdiction over said area. In this case, those 3 branches which fall within the limits of Village Panchayat and as per 2001 census, population of those Village Panchayat is less than 10,000 and thus, we are of the considered view that those 3 branches are definitely rural branches for the purpose of provision of section 36(1)(viia) of the Act.

14.8 Insofar as, case law relied upon by the ld.CIT(A) in the case of Hon'ble High Court of Karnataka decision of State Bank of Mysore vs. ACIT, *supra,* we find that as per facts on record in that case, the Hon'ble High Court of Karnataka has recorded categorical finding that provisional population data was published before the end of relevant financial year even though, the final data was made available to subsequent date. The Hon'ble Karnataka High Court further recorded a categorical finding that there is no difference between provisional and final census data and thus, opined that in order to determine status of a bank as a 'rural branch' for allowing

claim of deduction u/s.36(1)(viia), even provisional figures of census data available on first day of relevant financial year can be taken into consideration. In this case, as per evidences filed by the assessee, provisional and final census data of 2011 was made available to public only in the month of April, 2013, which is beyond relevant financial year and hence, we are of the considered view that case law relied upon by the ld. CIT(A) in the case of State Bank of Mysore vs. ACIT, (*supra)* has no application to facts of present case.

14.9 In this view of matter and considering facts and circumstances of this case, we are of the considered view that the assessee has rightly followed census data available as on 1st day of relevant previous year for the purpose of provision made u/s. 36(1)(viia) of the Act, in respect of 3 branches namely, Kelambakkam & Medavakkam of TamilNadu State and Manikonda of Telangana State, because 2011 census data is not available in public domain when provision was made in books. Further, in this case, for impugned assessment year 2013-14, first day of relevant previous year is 1-4-2012 and as per assessee as on that date only 2001 census data is available. But, as per AO and ld. CIT(A),

provisional census data of 2011 is published in official gazette on 31-03-2011 itself. Facts are not clear. Therefore, we are of the considered view that for limited purpose of ascertaining correct facts with regard to date when provisional and final census data of 2011 is published, the matter is set aside to the file of the AO and we direct the AO to examine when village/panchyat level provisional census data of 2011 was released for public. In case, as claimed by the assessee, provisional and final census data is made available to public on 30-04-2013, then the AO is directed to accept classification made by the assessee for above three branches as per 2001 census for the purpose of section 36(1)(viia) of the Act. In case, provisional census data is officially published on 31-03-2011 or even before 1-4-2012, as claimed by the AO, then the case of the assessee is covered by Hon'ble Karnataka High Court in case of State Bank of Mysore vs. ACIT(Supra) and thus, the AO is directed classify those three branches as per 2011 census for the purpose of provision for bad debt u/s 36(1)(viia) of the Act.

15. The next issue that came up for our consideration from Ground No.5 of assessee appeal is disallowance u/s.36(1)(viii) of the Act for Rs.23,28,45,881/-. The appellant bank has claimed a deduction of

Rs.47,68,45,881/- u/s.36(1)(viii) of the Act and the same was allowed by the AO. The ld.CIT(A) in the same manner in which he dealt the issue in assessment year 2012-13, disallowed claim of the appellant bank by substituting his own method and disallowed a sum of Rs.23,28,45,881/-.

15.1 The ld.AR for the assessee submitted that the order passed by the ld.CIT(A) is pari-materia and same as his order passed for assessment year 2012-13. Further, the ITAT vide its order dated 10.01.2020 in assessee's own case in ITA No.54/CHNY/2018 for assessment year 2012-13, partly allowed the ground of the assessee by remitting the issue back to the AO to examine the issue afresh in accordance with law. Therefore, this year also the issue may be set aside to the file of the AO with a direction to follow the directions given by the Tribunal for earlier assessment years.

15.2 The ld.DR on the other hand strongly supporting order of the CIT(A) submitted that although the CIT(A) has given various reasons for disallowing partial amount claimed by the assessee u/s.36(1)(viii) of the Act, but because the issue has been restored to the file of the AO by the Tribunal in earlier years, this year also

the issue may be set aside to the file of the AO with similar directions.

15.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to eligibility of assessee for claiming deduction u/s.36(1)(viii) of the Act. The only dispute is with regard to the manner in which such deduction should be computed. The assessee has followed a particular method which has been accepted by the AO, but the CIT(A) has substituted his own method and has disallowed a sum of Rs.23,28,45,881/-. A similar issue had been considered by the Tribunal right from assessment years 2010-11 to 2012-13, where the Tribunal has set aside the issue to the file of the AO and directed him to reconsider the issue in accordance with provisions of section 36(1)(viii) of the Act. We further noted that the AO had passed an order dated 04.11.2019 to give effect to the orders of the Tribunal. In the said order, the AO has examined computation submitted by the assessee and allowed deduction as per the computation of the assessee. Since, the AO had already accepted computation methodology adopted by the assessee-bank for assessment years 2010-11 & 2011-12, based on directions of

ITAT, we are of the considered view that this year also the issue needs to go back to the file of the AO to consider the issue in light of directions of the Tribunal for earlier years. Hence, we set aside the issue to the file of the AO and direct him to follow the directions given by the Tribunal for earlier assessment years.

16. The next issue that came up for our consideration from additional grounds of appeal filed by the assessee is deductibility of Education Cess and Secondary & Higher Education Cess.

16.1 The assessee has filed a petition for admission for additional ground and argued that the issue raised in petition is purely a legal issue, which can be raised at any state of proceedings including appellate proceedings before the Tribunal. In this regard, placed his reliance on the decision of Hon'ble Supreme Court in the case of National Thermal Power Company Ltd., vs. CIT, [1998] 229 ITR 383.

16.2 The ld.DR on the other hand strongly opposed petition filed by the assessee for admission of additional ground and argued that the assessee has failed to prove the fact, of all relevant materials

available before the AO to admit additional ground and hence, additional grounds filed by the assessee may be rejected.

16.3 We have heard both the parties and considered petition filed by the assessee for admission of additional grounds, taking a ground on taxability of Education Cess and Secondary & Higher Education Cess. We find that additional grounds filed by the assessee is purely a legal issue, which can be raised for the first time at any time of the proceedings including appellate proceedings before the Tribunal, in view of the clear ratio of the Hon'ble Supreme Court in the case of National Thermal Power Company Ltd., vs. CIT, *supra.* Therefore, additional ground filed by the assessee is admitted to decide the issue on merits.

17. As regards ground of appeal raised by the assessee regarding taxability of Education Cess and Secondary & Higher Education Cess, we find that a similar issue has been considered by the Hon'ble Bombay High Court in the case of Sesa Goa Ltd., vs. JCIT, 2020 (3) TMI 347, where the Hon'ble Bombay High Court held that Education Cess and Secondary & Higher Education Cess is deductible u/s.37 of the Act. Therefore we are of the considered

view that Education Cess and Secondary & Higher Education Cess is deductible u/s.37(1) of the Act. But, facts remains that the assessee has taken this issue for the first time by filing additional ground and fact with regard to said claim was not before the AO at the time of assessment proceedings. Therefore, we are of the considered view that this issue needs to go back to the file of the AO to consider the issue in light of the decision of Hon'ble Bombay High Court in the case of Sesa Goa Ltd., vs. JCIT, *supra.* Hence, we set aside the issue to the file of the AO and direct him to reconsider the issue in accordance with law and also by considering ratio laid down by Hon'ble Bombay High Court.

18. In the result, appeal filed by the assessee is partly allowed for statistical purpose.

Assessee's appeal in ITA No.332/CHNY/2018

19. The first issue that came up for our consideration from Ground No.2 of assessee appeal is legality of rectification order passed u/s.154 of the Act, by the ld.CIT(A).

19.1 The facts with regard to the impugned dispute are that the AO moved an application u/s.154 of the Act, requesting ld.CIT(A) to rectify the appellate order passed u/s.250(6) of the Act dated 14.09.2017 pointing out certain mistake apparent from record and sought rectification of those mistakes. The AO has brought to the notice of the ld.CIT(A) that certain branches of appellate bank should have been considered as rural branches as the population of the places where those branches were located exceeds 10,000, as per the 2011 census. It was further pointed out that few branches fall within the Metropolitan Areas / Municipalities thereby disqualifying them as rural branches. The ld.CIT(A) after considering relevant submissions of the AO and also taken note of Press Information Bureau, Government of India, Ministry of Home Affairs census data released on 31.03.2011 by the Registrar General of India in press statement opined that provisional census data of 2011 was released on 31.03.2011 and thus, for the purpose of section 36(1)(viia) of the Act, to classify a particular branch as rural branch, the data is very much available before 01.04.2012 i.e., first day of the relevant financial year. Therefore, by taking into account the census data 2011 and also by following the decision of Hon'ble Karnataka High Court in the case of State Bank of Mysore vs. CIT,

[2015] 231 Taxman 319, held that 15 branches of the bank as per list annexed to appellate order are not rural branches and thus, provisions made in respect of advances of those branches are not eligible for deduction u/s.36(1)(viia) of the Act. Therefore, he has reworked eligible deduction u/s.36(1)(viia) of the Act and made addition of Rs.4,15,55,556/-. Being aggrieved by the CIT(A) order, the assessee is in appeal before us.

19.2 The ld.AR for the assessee submitted that the ld.CIT(A) has erred in considering rectification application filed by the AO to rectify the purported mistake apparent on record in the order of the CIT(A) without appreciating the fact that mistakes apparent on record claimed by the AO is a debatable issue and said issue could be decided only by looking into extraneous records and long drawn process of investigation. He further submitted that this issue was not considered either in the original assessment proceeding nor during the appellate proceeding and thus, it cannot be considered u/s.154 of the Act. He, further referring to certain judicial precedents including the decision of Hon'ble Supreme Court in the case of T.S. Balaram vs. Volkart Brothers & Ors., [1971] 82 ITR 50 (SC), submitted that rectification u/s.154 of the Act can only be

made when a glaring mistake of fact or law committed by the AO passing the order and said mistake must be apparent from record. Therefore, he submitted that order passed by the ld.CIT(A) u/s 154 of the Act, is completely erred in law and liable to be set aside.

19.3 The ld.DR on the other hand supporting order of the CIT(A) submitted that whether census data of 2001 or 2011 to be considered for the purpose of classifying a branch as rural branch is a mistake apparent on record, which can be decided without going into any extraneous records and there is no need of long drawn process of investigation and hence, there is no merit in the arguments of the ld.AR for the assessee that order passed by the ld.CIT(A) u/s 154 is not valid.

19.4 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The provisions of section 154 of the Act, deals with rectification of mistakes, as per which any mistake apparent from record can be rectified by the AO either himself or by an application by the assessee. As per the provisions of section 154 of the Act, a mistake which can be rectified u/s.154 is one, which is apparent, which is

obvious and whose discovery is not dependent on argument or elaboration. From the above, it is clear that only those mistakes which are glaring and apparent on record can be rectified. Any issue which could be decided only by looking into certain extraneous records and long drawn process of investigation cannot be considered as a mistake apparent on record, which can be rectified u/s.154 of the Act. This principle is supported by the decision of Hon'ble Supreme Court in the case of T.S. Balaram vs. Volkart Brothers & Ors., *supra.*

19.5 If you go by said legal principle, one has to understand whether application of 2001 census or 2011 census for classification of a particular branch as rural branch for the purpose of making provision u/s.36(1)(viia) of the Act is definitely an issue which can be ascertained by looking into certain extraneous records and long drawn process of investigation. Further, whether census data of 2001 or census data of 2011 is to be considered itself is a debatable issue, more particularly, in the absence of clarity on date on which said data was officially made available to the general public. In this case, the AO is of the opinion that provisional census data of 2011 was released by the Press Information Bureau on 31.03.2011,

whereas the claim of the assessee was that said data was released only in the month of April, 2013. Therefore, we are of the considered view that the issue of application of census data of 2001 or 2011, is highly debatable which can be resolved by referring to various extraneous documents and also long drawn process of investigation and thus, said mistake cannot be considered as a glaring mistake which is apparent from record which can be rectified u/s.154 of the Act. We, further of the opinion that reference to documents outside the record is definitely not within the scope of Section 154 of the Act. This legal proposition is supported by the decision of Hon'ble Supreme Court in the case of CIT vs. Keshri Metal Pvt. Ltd., [1999] 237 ITR 165 (SC). The Hon'ble Madras High Court had also considered an identical issue in the case of Lakshmi Card Clothing Mfg. Co (P) Ltd., [2018] (10) TMI 612.

19.6 In this view of the matter and by respectfully following the ratio of case laws discussed herein above, we are of the considered view that issue of application of census data of 2001 or 2011 is highly a debatable issue which cannot be considered as glaring mistake apparent from record, which can be rectified u/s.154 of the

Act. Therefore, we set aside order passed by the ld.CIT(A) u/s.154 of the Act and allow appeal filed by the assessee.

20. In the result, appeal filed by the assessee is allowed.

21. As a result, the appeal filed by the Revenue in ITA No.2762/CHNY/2017 is dismissed and the appeals filed by the assessee in ITA Nos.332/CHNY/2018 is allowed and ITA No.2765/CHNY/2017 is partly allowed for statistical purpose.

Order pronounced in the court on 3rd November, 2021 at Chennai.

Sd/-	Sd/-
(वी दुर्गा राव)	(जी मंजुनाथ .)
(V. Durga Rao)	**(G. Manjunatha)**
न्यायिक सदस्य/Judicial Member	लेखा सदस्य /Accountant Member

चेन्नई/Chennai,
दिनांक/Dated, the 3rd November, 2021

RSR

1. निर्धारिती/Assessee	2. राजस्व/Revenue	3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त /CIT	5. विभागीय प्रतिनिधि/DR	6. गार्ड फाईल/GF.