

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.7134/M/2012
Assessment Year: 2009-10**

M/s. Gopinath Patil Parsik Janata Sahakari Bank Ltd., Sahakarmurti Gopinath Shivram Patil Bhawan, Parsik Nagar, Kharegaon, Kalwa, Thane – 400 605 PAN: AAAAP 0267H	Vs.	ACIT Circle-3, Vardhan Building, M.I.D.C. Wagle Indl. Estate, Thane
(Appellant)		(Respondent)

**ITA No.7515/M/2012
Assessment Year: 2009-10**

Dy. Commissioner of Income- tax, Circle -3 Room No.2, B-Wing, 6 th Floor, Ashar IT Park, Rd. No.16Z, Wagle Estate, Thane (W)	Vs.	M/s. Gopinath Patil Parshik Janata Sahakari Bank Ltd., Sahakarmurti Gopinath Patil Bhawan, Parsik Nagar, Kalwa, Thane – 400 605 PAN: AAAAP 0267H
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ashok J. Patil, A.R.
Revenue by : Shri H.M. Wanare, D.R.

Date of Hearing : 29.09.2015
Date of Pronouncement : 31.12.2015

ORDER

Per Sanjay Garg, Judicial Member:

The above captioned are cross appeals one by the assessee and the other by the Revenue against the order dated 28.09.2012 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to

assessment year 2009-10. First we take up the assessee's appeal i.e. ITA No.7134/M/2012

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2. The assessee in its appeal has agitated the action of the lower authorities in disallowance of deduction on account of provision for bad and doubtful debts as per section 36(1)(viiia) amounting to Rs.2,44,82,235/-.

3. The brief facts of the case are that the assessee is a Co-operative Bank and engaged in the business of banking. From the details submitted by the bank, the Assessing Officer (hereinafter referred to as the AO) observed that the assessee had claimed a deduction on account of provision for bad and doubtful debts as per section 36(1)(viiia) at Rs.2,51,08,683/- on the basis of 7.5% of the total income and further 10% of the aggregate average advances of the rural branches amounting to Rs.2,93,14,152/-. The total deduction claimed in this respect was, thus, at Rs.5,44,82,235/-. The AO, however, observed that the assessee bank had claimed the rural branches of the bank at three but after the details in this respect were verified, the assessee accepted that one branch of the bank was not the rural branch as observed from the population certificates issued by the various authorities in this regard. He therefore observed that the aggregate average advances made by rural branches, thus, came to Rs.18,81,99,000/- and the 10% of the aggregate average advances of the rural branches would come at Rs.18,81,99,000/-and not at Rs.2,93,14,152/- as claimed by the assessee. The AO further observed that the assessee had only made a provision of bad and doubtful debts to the tune of Rs.3,00,00,000/- which has been debited to profit & loss account and subsequently added back in the computation of income. However, against this, the assessee had claimed a deduction of Rs.5,44,82,235/- under section 36(1)(viiia). The AO observed that as per the relevant provisions, the deduction claimed in this section is limited by the quantum of provision of bad

and doubtful debts made. He therefore disallowed the excess deduction of Rs.2,44,82,235/- and restricted the deduction to Rs.3,00,00,000/-.

4. In appeal, the Ld. CIT(A) confirmed the disallowance so made by the AO holding that the deduction under section 36(1)(viia) can only be allowed to the extent of provision of bad and doubtful debts to the books of account and debited to the profit & loss account. The Ld. CIT(A) also rejected the alternate plea that the provisions made under the bad and doubtful debts in the profit & loss account is to the extent of Rs.35,00,00,000/- which should be allowed on the ground that except the provision for bad and doubtful debts at Rs.3,00,00,000/-, other provision such as standard asset provision amounting to Rs.50,00,000/- was not of the nature specified in section 36(1)(viia).

5. Before us, the Ld. A.R. of the assessee has fairly admitted that the above issue raised by the assessee in its appeal is squarely covered against the assessee by the decision of the Pune Bench of the Tribunal in the case of “Shri Warana Sah. Bank Ltd. vs. ACIT” in ITA No.2508/PN/2012 and ITA No.347/PN/2013 vide order dated 16.04.14 wherein the Tribunal, after analyzing the provisions of section 36(1)(viia) and relying upon another decision of the Tribunal in the case of “Shri Mahalaxmi Co-op bank Ltd. vs. ITO” vide ITA No.1658/PN/2011 dated 29.10.13, has held that the deduction for provision for bad and doubtful debts should be restricted to the amount of such provision actually credited in the books of the assessee in the relevant year.

6. So far as the alternate plea of the assessee is concerned, the issue is squarely covered by the decision of the Mumbai Bench of the Tribunal in the case of “State Bank of India vs. DCIT” (2014) 148 ITD 71 wherein the Tribunal has held that when the claim of deduction has been specifically provided under section 36(1)(viia), then merely provision made on the basis of

RBI guidelines does not become allowable. In view of the above, there is no merit in the appeal of the assessee and the same is accordingly dismissed.

7. Now coming to the appeal of the Revenue i.e. ITA No.7515/M/2012.

ITA No.7515/M/2012

8. The issue involved in the appeal of the Revenue is relating to the amortization of loss on account of premium paid on HTM (Held to Maturity) investments. At the outset, the Ld. A.R. of the assessee has stated that the issue is squarely covered in favour of the assessee by the decision of the Tribunal in the case of “HDFC Bank Ltd. vs. DCIT” in ITA No.375/M/2012 & Others vide order dated 12.11.14.

9. We have gone through the case law relied upon by the assessee. In the case of HDFC Bank Ltd. (supra), the Tribunal has allowed the amortization of loss arisen on account of premium paid on ‘Investments held to maturity’ as deductible following the decision of the Hon’ble Bombay High Court in the case of “CIT vs. HDFC Bank Ltd.” (2014) 366 ITR 505.

The Ld. D.R. has fairly agreed that the issue is squarely covered by the above decision.

Further, the Ld. A.R. of the assessee has brought our attention to the another decision of the Hon’ble Bombay High Court in the case of “CIT vs. Thane Bharat Sahakari Bank Ltd. in ITA No.1117 of 2013 decided on 17.03.15 wherein the Hon’ble Bombay High Court has upheld the finding of the Tribunal holding that the expenditure on account of reclassification of ‘Held to maturity’, securities represent revenue expenditure and not capital expenditure and is thus required to be spread over the life of the security and is proportionately allowable as right off from year to year as per the guidelines issued by RBI.

10. In view of the above, we do not find any merit in the appeal of the Revenue and the same is accordingly dismissed.

11. In the result, the appeal of the assessee as well as of the Revenue is hereby dismissed.

Order pronounced in the open court on 31.12.2015.

Sd/-
(N.K. Billaiya)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 31.12.2015.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.