

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F', NEW DELHI**

**Before Sh. N. K. Saini, AM and Smt. Beena Pillai, JM**

**ITA No. 4090/Del/2013 : Asstt. Year : 2010-11**

Asstt. Commissioner of Income Tax, Circle-1, Moradabad	Vs	M/s Prathma Bank, Ramganga Vihar, Moradabad (U.P.)
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAAJP0988Q</b>		

**Assessee by : Sh. Piyush Kaushik, Adv.**

**Revenue by : Smt. Paramita Tripathy, CIT DR**

<b>Date of Hearing : 20.06.2017</b>	<b>Date of Pronouncement : 14.07.2017</b>
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**ORDER**

**Per N. K. Saini, AM:**

This is an appeal by the department against the order dated 17.04.2013 of Id. CIT(A), Bareilly.

2. Following grounds have been raised in this appeal:

*“1. In the facts and circumstances of the case, Ld. CIT(A) has erred in allowing relief to the assessee on the issue of deduction u/s 36(I)(viiia) by placing reliance on the order of Hon'ble Supreme Court in the case of Southern Technologies Ltd. Vs. JCIT (2010) 228 CTR (SC) 440 which is not relevant to the issue under consideration in the present case.*

*2. In the facts and circumstances of the case, Ld. CIT(A) has erred in allowing relief to the assessee on the issue of deduction u/s 36(I)(viiia) without*

*appreciating the ratio laid down by Punjab & Haryana High Court in the case of State Bank of Patiyala Vs. CIT(2005) 272 ITR 54 (P&H) on the issue under consideration.*

*3. Ld. CIT(A) has also erred in holding that the deduction u/s 36(I)(viiia) is allowable at 10% without appreciating the clear provisions of section 36(I)(viiia) which explicitly restricted the deduction to the extent of provision made for bad and doubtful debts with an upper cap of 10% of aggregate average rural advances and 7.5% of total income.*

*4. Any other ground raised during the proceedings of appeal.”*

3. From the above grounds, it is gathered that only grievance of the department in this appeal relates to the deletion of addition made by the AO on account of deduction u/s 36(I)(viiia) of the Income Tax Act, 1961 (hereinafter referred to as the Act).

4. Facts of the case in brief are that the assessee deals in banking and e-filed the return of income on 11.10.2010 declaring Nil income. Later on, the case was selected for scrutiny. The AO during the course of assessment proceedings noticed that the computation of income filed alongwith the return of income revealed that besides sales/gross receipts from business or profession of Rs.230,98,68,000/-, net income

as any other income had been disclosed at Rs.16,61,89,000/- after excluding profit/sales of fixed assets (-) Rs.1,22,000/-. It was also noticed that the provision for bad and doubtful debt had been shown at Rs.5,45,49,000/-, other provisions had been claimed at Rs.23,07,86,000/- and net profit for appropriation had been disclosed at Rs.50,50,79,000/-. He further observed that in part B-IT computation of income in column No. 3(a)(i) short term capital gain had been disclosed at Rs.24,95,386/- and finally in column No. 14 losses of current year carried forward had been claimed at Rs.28,62,39,159/-. The AO noticed that the assessee vide revised return filed on 11.10.2010 had claimed deduction u/s 36(1)(vii) of the Act at Rs.105,69,80,000/- which was 10% of the aggregate rural advances of the bank but the assessee had claimed Rs.5,45,49,000/- as provision for bad and doubtful debts in the profit and loss account. He asked the assessee to answer the following queries:

*“1. Whether all stake holders of your bank have been informed about the loss claimed by you in your books as a result of allowance of deduction u/s 36(1)(vii) of the IT Act, 1961.*

*2. Whether the balance sheet has been revised as per claim made u/s 36(1)(vii).*

3. *As a result of this claim, this year and as well as in next 2-3 years will result in of wiping out the Reserve Surplus with your bank. Whether this particular issue has been conveyed to the Reserve Bank of India. Reduction in surplus will reduce the net worth of the bank and will affect its activities in future.*

4. *Whether this issue has been put forward by the auditors of the bank in front of Board of Directors.*

5. *The last & important point, which I want to convey is that the case law which has been quoted by your AR i.e. Syndicate Bank Vs. Dy. Commissioner of Income Tax (2001) 78 ITD 103 (Banglore) was majorly on the issue of 263 done by the CIT in that case. As regards section 36(1) (viiia), ITAT Banglore in the above case, has mentioned it in passing phrase. Hence this case Law cannot be credibly followed to dispose of this case in your favour.*

6. *The language of section 36(1)(viiia) of the IT Act, 1961 states 'in respect of any provision for bad and doubtful debts made by' clearly states that deduction in this regard will be restricted to provision made by the assessee bank.*

7. *Please go through the findings of the following case law:-*

*THE HIGH COURT OF PUNJAB & HARYANA  
State Bank Of Patiala vs Commissioner Of Income-Tax And Another (2005) 272 ITR 54(P&H), Date 5/21/04”*

5. In response to the above queries, the assessee submitted as under:

*“With reference to your query regarding allow ability of deduction u/s 36(1)(viia) to the extent of the amount of reserve created in the books of accounts and your various assumptions and doubts regarding interpretation of the provisions of section 36(1)(viia), my humble submissions are as under:-*

*1- The assessee has relied upon the findings of ITAT, Bangalore Bench in the case of Syndicate Bank but, according to your good self, the findings in the said order of ITAT, Bangalore is in passing phrase, and cannot be followed. In this connection, it is submitted that the findings of the ITAT, Bangalore Bench cannot be said to be in a 'passing phrase' as observed by you. The relevant findings are reproduced herein for ready reference:*

*"20. The Learned CIT has also acted under the misconception that deduction under cl. (viia) is related to the actual amount of provisions made by the assessee for the bad and doubtful debts. The true meaning of the clause, as indicated earlier, is that once a provision for bad and doubtful debts is made by a scheduled bank having rural branches, the assessee is entitled to a deduction which is quantified not with respect to the amount provided for the accounts, but with respect to a certain percentage of the total income and also a certain percentage of the aggregate average advances made by the rural branches of the bank. In other words, this is a specific deduction given by the statute irrespective of the*

*quantum provided by the assessee in its accounts towards provision for bad and doubtful debts."*

*The above findings are quite specific and cover the issue under consideration in all respects. How such findings can be said to be in a 'passing phrase'? Further, ignoring the findings of ITAT calling the same to be in a 'passing phrase' would tantamount to contempt of court unless, of course, the contrary is established by law. Moreover, these findings find support from the verdict of the Kerala High Court."*

6. The reliance was placed on the following case laws:

- *South Indian Bank Ltd. Vs CIT 262 ITR 579 (Ker.)*
- *Southern Technologies Ltd. Vs JCIT (2010) 228 CTR 440 (SC)*

7. It was further submitted as under:

*"3. You have relied upon the judgment of Hon'ble Punjab & Haryana High Court in the case of State Bank of Patiala vs. CIT and other which, according to you restricts the deduction u/s 36(1)(viiia) to the amount of reserve created in the books of accounts. In this connection, reference is invited to the judgment of Hon'ble Kerala High Court in the case of South Indian BANK Ltd. reproduced above which makes it clear that there is no restriction of reserve in the books for deduction u/s 36(1)(viiia).*

*It may be stated that there are two divergent views of two different High Courts on the same issue. In this connection, your kind attention is invited to the landmark decision of Hon'ble Supreme Court in the case of CIT vs. Vegetable Products Ltd. [188 ITR*

*192(SC)] wherein the Apex Court has opined and observed that, "On the other hand, if two reasonable constructions of a taxing provision are possible, that construction which favors the assessee must be adopted. This is a well-accepted rule of construction recognized by this Court in several of its decisions. Hence, all that we have to see is, what is the true effect of the language to be ambiguous or capable of more meanings than one, then we have to adopt that interpretation which favors the assessee.*

*Thus, in view of this judgment of the Apex Court the interpretation of section 36(1)(viiia) which is favorable to the assessee has got to be construed and applied.*

*In view of the above submissions, it is requested that deduction u/s 36(1)(viiia) claimed by the assessee may kindly be allowed and the return may kindly be accepted and the assessment may kindly be finalized accordingly."*

8. The AO however, did not find merit in the submission of the assessee for the following reasons:

*"1. ITAT's decision which has been quoted by the Ld. AR does not belong to our jurisdictional ITAT, hence not binding on us.*

*2. The decision of the HIGH COURT OF KERALA in the case of SOUTH INDIAN BANK LTD. VS. CIT has not dealt on the issue of overall cap on the allowable deduction u/s 36(1)(viiia) of the IT Act, 1961. This case basically deals with interplay of deductions provided u/s 36(1) (vii) for bad debts and deductions*

*provided in respect of 'Provision for bad & doubtful debts' u/s 36(1)(viia).*

*3. Another decision quote by the Ld. AR is that of Supreme Court in the case of Southern Technologies Ltd., vs. JCIT [2010] 228 ITR (SC) 440. This judgment basically deals with the issue of "constitutional validity of Section 36(1)(viia) and 43D of the IT Act, 1961." It basically brings out the fact that NBFCs are not allowed to get the benefits of the section 36(1)(viia) and section 43D of the IT Act, 1961. It does not at any place deals with the limit (o which this deduction has to be restricted to.*

*As regards, the case of Sate Bank of Patiala vs. Commissioner of Income Tax and other (2005) 272 ITR 54 (P & H), the ratio of the judgment directly applies to the current case of M/s Prathama Bank, Moradabad. It concludes with the following words:-*

*"We are, therefore, satisfied that the Tribunal was right in holding that since the assessee had made a provision of Rs. 1,19,36,000/- for bad and doubtful debts, its claim for deduction under section 36(1)(viia) of the Act had to be restricted to that amount only. Since the language of the Statute is clear and is not capable of any other interpretation, we are satisfied that no substantial question of law arises in this appeal for consideration by this court."*

*The appeal is accordingly, dismissed No costs."*

9. Accordingly, the AO completed the assessment at business income of Rs.73,58,65,000/- and accepted the short term capital gain disclosed by the assessee at Rs.24,95,386/-.

10. Being aggrieved the assessee carried the matter to the Id. CIT(A) and furnished the written submission which is reproduced verbatim as under:

*“It is respectfully submitted that in the above mentioned case, there are as many as 12 grounds of appeal out of which one ground relates to wrong observation of the Ld. A.O. denying right of the assessee to carry forward loss due to so called belated return and all the other 11 grounds are centered on only one issue i.e. claim of deduction made by the assessee u/s 36(1)(viiia) of the IT. Act which has been restricted by the Ld. A.O. to the extent of the provision for bad and doubtful debts made in the books of accounts ignoring the claim of the assessee @ 10% of average monthly rural advances which is based on clear interpretation of the language used in section 36(1)(viiia) and also supported by the judgments of various courts including the Supreme Court, The facts of the case have been discussed in detail in the body of the Assessment Order. To summarize the facts, it is submitted that the assessee is a Regional Rural Bank running under the sponsorship of Syndicate Bank which is a nationalized bank. It filed return of income showing net loss of Rs.28,62,39,159/- claiming deduction u/s 36(1)(viiia) of the I.T. Act at Rs.105,69,80,000/-. The Ld. Assessing Officer, however, allowed the claim of deduction u/s*

*36(1)(viiia) at Rs.5,45,49,000/- only and disallowed the balance which is cause of grievance of the assessee in this appeal. Another grievance of the assessee is that the Ld. Assessing Officer has observed in the assessment order that the return of income having been filed late, the assessee is not entitled for carry forward and set off of loss although the return was filed within time. Detailed arguments with reference to the various grounds of appeal are discussed in the succeeding paragraphs.*

*1. Since all the grounds except ground No.2 are with reference to one single issue, the same are taken up collectively. For the sake of convenience, ground no. 2 is taken first. Ld. Assessing Officer passed a conclusive remark in the Assessment Order that the return filed "is late and does not qualify for benefit of losses claimed during the year". In this connection, it is submitted that, for assessment year 2010-11, the CBDT had extended the due date of filing the return in the cases covered u/s 44AB upto 15<sup>th</sup> October, 2010 vide order u/s 119 issued under F.No.225/72/2010/IT(A-II) dated 27/09/2010. The relevant order is reproduced below:*

***CBDT Order u/s 119 dated 27/09/2010***

***ORDER [F. NO. 225/72/2010/IT(A-II)], DATED 27-9-2030***

*"On consideration of the reports of disturbance of general life caused due to floods and heavy rains, the Central Board of Direct Taxes, in exercise of powers conferred under section 119 of the Income Tax Act, 1961, hereby extends the due date of filing*

*of returns of income for the Assessment Year 2010-11 from 30-09-2010 to 15th October 2010. Accordingly the due date for Tax Audit report u/s 44AB of the Income Tax Act is also extended to 15th October 2010.*

*Apart from corporate tax payers, the extension also applies to all other categories of tax payers who are subjected to any other audit including a tax audit. Thus, even for partnership firms, trusts, individuals etc. who are subject to tax audit, the due date for filing the tax returns stands extended to 15<sup>th</sup> October and For Jammu and Kashmir till 30th of November 2010."*

*As mentioned in the Assessment order, the assessee filed return of income on 11/10/2010 which, according to the above order of CBDT, is within time as the case of the assessee is covered u/s 44 AB. The Ld. A.O. has failed to appreciate this order and mentioned the return, "late". The observation of the Ld. A.O., is therefore, wrong and the return filed by the assessee is within time and the assessee is fully entitled for carry forward and set off its losses as per provisions of the I.T. Act. The observation made by the A.O. may, therefore, be deleted and the A.O. may be directed to allow carry forward and set off of losses.*

*2. As stated earlier, grounds No. 1 and 3 to 12 are centered on the issue of deduction u/s 36(1)(vii) of the I.T. Act hence common written submissions are made in respect of all these grounds of appeal. The Ld. Assessing Officer has reproduced, in the assessment order, the queries raised by him during*

*the course of assessment proceedings regarding claim of deduction u/s 36(1)(viiia) and also explanation and arguments advanced by the assessee in this regard. It is, however, seen that the Ld. A.O. has disallowed the claim u/s 36(1)(viiia) without mentioning the reasons of disagreement with the arguments advanced by the assessee. It may kindly be seen that the Ld. A.O. has adopted a cut short method in reaching his conclusions without making full appreciation of the specific arguments of the assessee. It may also kindly be seen that the Ld. A.O. has not made any comments in respect of some of the arguments advanced on behalf of the assessee.”*

11. The reliance was placed on the following case laws:

- *M/s Southern Technologies Ltd. Vs JCIT, Coimbatore (2010) 228 CTR 440 (SC)*
- *Syndicate Bank Vs DCIT (2001) 78 ITD 103 (Bang.)*
- *South Indian Bank Ltd. Vs CIT 262 ITR 579 (Ker.)*

12. It was further submitted that the assessee had claimed deduction u/s 36(1)(viiia) of the Act which is in respect of provision for bad and doubtful debts and hence the decision of Honøble Kerala High Court has direct bearing on the case of the assessee and the action of the AO not following the said order was arbitrary and bad in law. It was stated that the AO through a specific query pointed out to the assessee that the opening words of Section 36(1)(viiia) of the Act i.e. òin respect of provision for bad and doubtful debtsö make it clear that the amount of deduction has got to be restricted to the amount of

provision made by the assessee in the books of account. In response, the assessee submitted as under:

*“The interpretation of the language of section 36(1)(viia) as done by you does not come out from the language used therein. On the contrary, there is no restriction of the amount of deduction u/s 36(1)(viia) any where in the section except the restriction made in later part of the section which is a percentage of profit of the bank and a percentage of aggregate average rural advances. Thus, interpretation of section 36(1)(viia) as deduced from the language used therein is that the amount of deduction should not exceed the percentage of profit and percentage of rural advances. There is no restriction regarding the amount of reserve created in the books of accounts otherwise the words amount of reserve for bad and doubtful debts 'created in the books of accounts' should have been used in the section itself. Or, alternatively, a proviso restricting the amount of deduction to the amount of reserve created in the books of accounts should have been added below the section 36(1)(viia) also as has been done below section 36(1)(vii). This having not been done makes it clear that there is no intention to restrict the amount of deduction admissible u/s 36(1)(viia) to the extent of the reserve created in the books of accounts.*

*The interpretation of the opening words used in section 36(1)(viia) as pointed out by your goodself can be explained through an illustration. You have mentioned that the opening words in section 36(1)(viia) "In respect of any provision for bad and doubtful debts made by" prove that the admissible deduction under that section is restricted to the*

*amount of actual reserve made by the assessee. In this connection, your attention is invited to the similar provision of section 32(l) which is reproduced below:-*

*"32. (I) In respect of depreciation of—*

*(i) buildings, machinery, plant or furniture, being tangible assets;*

*(ii) know-how, patents, copyrights, trade marks, licenses, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after-the 1st day of April, 1998, owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed—*

*(i) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed;*

*(ii) in the case of any block of assets, such percentage on the written down value thereof as may be prescribed:"*

*It may kindly be seen that the language of section 32(1) of the IT. Act is exactly identical to the language used in section 36(1)(viiia). Therefore, as per your interpretation, depreciation on machinery or building etc. will be restricted to the amount of depreciation provided by the assessee in the books of accounts. In a case, where an assessee provides depreciation on Plant & Machinery @ 5% in the books but claims @ 15% in the computation of income*

*after adding back the amount of depreciation provided in the books, whether the claim for depreciation in this case would be allowed @ 15% or it will be restricted to 5% only as provided in the books. The simple answer to this question is that the depreciation provided in the books @ 5% will be added back and then correct depreciation @ 15% will be allowed. Sir, kindly give a deep thought to this situation and consider as to whether the answer pointed out hereinabove regarding applicability of section 32(1) is correct or not. If the answer is correct, the same interpretation is to be given to the provisions of sections of section 36(1)(vii) (as language used in both the sections is identical) and the amount provided in the books to be added back and then deduction is to be allowed at prescribed percentage and if the answer given hereinabove is considered to be wrong, the reasons for the same and the basis on which the same is considered to be wrong may kindly be communicated so that the assessee may be able to explain its case. Through this illustration the issue stands proved that deduction u/s 36(1)(vii) is to be allowed at prescribed percentage after adding back the amount provided in the books and there is no restriction of the admissible deduction with reference to the extent of the provision made in the books of accounts.”*

13. It was further stated before the Id. CIT(A) that the arguments advanced by the assessee were ignored and the AO did not offer any comments whatsoever on the above arguments of the assessee. Therefore, the arguments of the assessee regarding interpretation of the provisions of Section

36(1)(viia) of the Act may be taken into account and the deduction under the said Section may be treated to be allowed as claimed by the assessee. It was also stated that the AO relied upon the judgment of the Honøble Punjab & Haryana High Court in the case of State Bank of Patiala Vs CIT and Others (2005) 272 ITR 54 wherein it has been held that the amount of deduction u/s 36(1)(viia) of the Act is to be restricted to the amount of reserve created in the books of accounts. It was explained that the said judgment cannot be applied in the case of the assessee because the said decision was delivered in the year 2005 whereas the decision in the case of M/s Southern Technologies Ltd. Vs JCIT, Coimbatore (supra) was delivered by the Honøble Supreme Court in the year 2010. Thus, the later decision of the higher court supercedes the earlier decision of a lower court and for all purposes, the later order of the Honøble Supreme court prevails and has got to be followed as per the principles of judicial hierarchy and judicial discipline.

14. The ld. CIT(A) reproduced the arguments advanced by the assessee before the AO at page no. 12 which read as under:

*“You have relied upon the judgment of Hon’ble Punjab & Haryana High Court in the case of State Bank of Patiala vs. CIT and another which, according to you restricts the deduction u/s 36(1)(viia) to the*

*amount of reserve created in the books of accounts. In this connection, reference is invited to the judgment of Hon'ble Kerala High Court in the case of South Indian Bank Ltd. reproduced above which makes it clear that there is no restriction of reserve created in the books for deduction u/s 36(1)(viiia).*

*It may be stated that there are two divergent views of two different High Courts on the same issue. In this connection, your kind attention is invited to the landmark decision of Hon'ble Supreme Court in the case of CIT vs. Vegetable Products Ltd. [88 ITR 192 (SC)] wherein the Apex Court has opined and observed that, "On the other hand, if two reasonable constructions of a taxing provision are possible, that construction which favours the assessee must be adopted. This is a well-accepted rule of construction recognised by this Court in several of its decisions. Hence, all that we have to see is, what is the true effect of the language employed in s. 271(l)(a)(i). If we find that language to be ambiguous or capable of more meanings than one, then we have to adopt that interpretation which favours the assessee."*

*Thus, in view of this judgment of the Apex Court, the interpretation of section 36(1)(viiia) which is favourable to the assessee has got to be construed and applied."*

15. The assessee submitted before the Id. CIT(A) that the AO totally ignored the aforesaid arguments and did not mention a single word about this argument as to why he did not follow the decision of the Supreme court relied upon by the assessee

and did not accept and follow the judgment and interpretation which was favourable to the assessee as held by the Hon'ble Supreme court but proceeded to restrict the deduction u/s 36(1)(viiia) of the Act to the extent of reserve created in the books of account.

16. The ld. CIT(A) after considering the submissions deleted the addition by observing as under:

*"I have carefully perused the assessment order and gone through the detailed submissions of the counsel for the appellant and also the various judicial pronouncements cited by the counsel for the appellant. The main issue involved in appeal before me is the claim of deduction made by the assessee u/s 36(1)(viiia) of the I.T. Act which has been restricted by the A.O. to the extent of the provision for bad and doubtful debts made in the books of accounts ignoring the claim of the assessee @ 10% of average monthly rural advances which is based on clear interpretation of the language used in section 36(1)(viiia). It is seen that provision for bad and doubtful debt has been shown at Rs. 5,45,49,000/-. Other provisions of Rs. 23.07,86,000/ have also been claimed. The appellant revised the return and claimed deduction u/s 36(1)(viiia) of the Act at Rs. 1,05,69,80,000/ which is 10% of the aggregate rural advances of the bank. It is seen that the claim of the appellant finds support from the decision of Hon'ble Supreme Court of India in the case of Southern Technologies Ld Vs JCIT reported n (2010) 228 ITR (SC) 440. In this case, the Apex Court had occasion to analyze the provisions of section 36(1)(viiia) and held that-*

*"Analysis of Section 36(1)(viiia)*

*"Section 36(1)(vii) provides for a deduction in the computation of taxable profits for the debt established to be a bad debt. Section 36(1)(viia) provides for a deduction in respect of any provision for bad and doubtful debt made by a Scheduled Bank or Non-Scheduled Bank in relation to advances made by its rural branches, of a sum not exceeding a specified percentage of the aggregate average advances by such branches. Having regard to the increasing social commitment, Section 36(1)(viia) has been amended to provide that in respect of provision for bad and doubtful debt made by a scheduled bank or a non-scheduled bank, an amount not exceeding a specified per cent of the total income or a specified per cent of the aggregate average advances made by rural branches, whichever is higher, shall be allowed as deduction in computing the taxable profits."*

17. The Id. CIT(A) held that the assessee was entitled to claim deduction u/s 36(1)(viia) of the Act at 10% in view of the decision of the Honøble Apex Court and other various judicial pronouncement cited by the assessee.

18. Now the department is in appeal. The Id. DR although supported the order of the authorities below and reiterated the observations made by the AO in the assessment order dated 20.03.2013 and further submitted that non-banking finance companies (NBFC) are not allowed to get the benefits of Section 36(1)(viia) and Section 43D of the Act. Therefore, the AO was justified in disallowing the claim of the assessee for

deduction u/s 36(1)(viia) of the Act. It was further submitted that the AO rightly disallowed the claim of the assessee by following the judgment of the Honøble Punjab & Haryana High Court in the case of State bank of Patiyala Vs CIT and Another (2005) 272 ITR 54 (supra).

19. In his rival submissions the Id. Counsel for the assessee reiterated the submission made before the authorities below and further submitted that the AO disallowed the claim of the assessee by following the decision of the Punjab & Haryana High Court but ignored the later judgment of the Honøble Supreme Court in the case of M/s Southern Technologies Ltd. Vs JCIT, Coimbatore reported at (2010) 228 CTR 440 wherein it has been held that the provisions of Section 36(1)(viia) of the Act provides for a deduction in respect of any provision for bad and doubtful debts made by Scheduled bank and non-Schedule Bank in relation to advances made by its rural branches of a sum not exceeding specified percentage of the aggregate advances by such branches. It was further submitted that the deduction u/s 36(1)(viia) of the Act is a specific deduction given by the statute. Therefore, the AO was not justified in disallowing the claim of the assessee. It was also stated that in the preceding year i.e. assessment year 2009-10, the Id. CIT exercised his power u/s 263 of the Act, however,

on the appeal of the assessee, the ITAT Delhi Bench set aside the said order. Therefore, the issue under consideration is now stands covered in favour of the assessee by the order of the ITAT in assessee's own case for the assessment year 2009-10 reported at (2016) 52 ITR(Trib.) 454 (Del.). The reliance was placed on the following case laws:

- *Southern Technologies Vs JCIT 320 ITR 577 (SC)*
- *Catholic Syrian Bank Ltd. Vs CIT 343 ITR 270 (SC)*
- *South Indian Bank Ltd. Vs CIT 262 ITR 579 (Ker.)*
- *Syndicate Bank Vs DCIT 78 ITD 103 (ITAT)*
- *Prathma Bank Vs CIT (2016) 52 ITR (Trib.) 454*

20. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, the assessee claimed deduction u/s 36(1)(vii-a) of the Act at 10% of the average agricultural advances made by its rural branches. The said claim was disallowed by the AO. However, the ld. CIT(A) allowed the claim by following the ratio laid down by the Honorable Supreme Court in the case of *Southern Technologies Ltd. Vs JCIT 320 ITR 577 (supra)* wherein it has been held as under:

*“Section 36(1)(vii-a) provides for a deduction in respect of any provision for bad and doubtful debt made by a scheduled bank or non-scheduled bank in relation to advances made by its rural branches, of a sum not exceeding a specified percentage of the aggregate average advances by such branches. Having regard to the increasing social commitment, section 36(1)(vii-a) has*

*been amended to provide that in respect of provision for bad and doubtful debt made by a scheduled bank or a non-scheduled bank, an amount not exceeding a specified per cent, of the total income or a specified per cent, of the aggregate average advances made by rural branches, whichever is higher, shall be allowed as deduction in computing the taxable profits.”*

21. It is also an admitted fact that for the preceding year on an identical issue the Id. CIT invoked the provisions of Section 263 of the Act and this Bench of the Tribunal having same combination, set aside the said order in assessee's own case as reported in (2016) 52 ITR (Trib.) 454 (supra) and observed in para 18 of the order dated 25.04.2016 as under:

*“18. In the present case, the assessee had given the break-up of each branch (copies of which are placed at pages 15 to 28). In the instant case, the assessee in its computation of revised total income/loss (copy of which is placed at page 1 of the assessee's paper book) clearly mentioned that deduction under section 36(1)(viiia) of the Act was claimed at 10 per cent of average agricultural advances of Rs.801.56 crores. Thereafter, the Assessing Officer after examining the aforesaid details came to the conclusion that the claim of the assessee was allowable and he accordingly allowed the claim of the assessee under section 36(1)(viiia) of the Act. The said claim was in accordance with law and as provided in the provisions of section 36(1)(viiia) of the Act.”*

22. On a similar issue, the Hon<sup>ble</sup> Supreme Court in the case of Catholic Syrian Bank Ltd. Vs CIT 343 ITR 270 (supra) held as under:

*“The clear legislative intent of the provisions and unambiguous language of the circulars with reference to the amendments to section 36 of the Act is that the deduction on account of provisions for bad and doubtful debts under section 36(1)(viia) is distinct and independent of the provisions of section 36(1)(vii) relating to allowance of the bad debts. After introduction of section 36(1)(viia) by the finance Act, 1979, with effect from April 1, 1980, Circular No. 258, dated June 14, 1979, was issued by the Central Board of Direct Taxes to clarify the application of the new provisions. The provisions were introduced in order to promote rural banking and assist scheduled commercial banks in making adequate provision from their current profits for risks in relation to their rural advances. The deductions were to be limited as specified in the section. The circular mentions that the provisions of new clause (viia) of section 36(1), relating to the deduction on account of provisions for bad and doubtful debts, is distinct and independent of the provisions of section 36(1)(vii) relating to allowance of deduction of the bad debts. In other words, scheduled commercial banks would continue to get the benefit of the write off of the irrecoverable debts under section 36(1)(vii) in addition to the benefit of deduction of the provision for bad and doubtful debts under section 36(1)(viia).”*

23. In the present case, the AO himself admitted in the assessment order at page no. 3 that the assessee had claimed deduction u/s 36(1)(viia) of the Act at Rs.105,69,80,000/- which is 10% of the aggregate rural advances of the bank. The aforesaid claim was allowable to the assessee as per the ratio laid down by the Honøble Supreme court in the aforesaid

referred to cases of Southern Technologies Ltd. Vs JCIT 320 ITR 577 and Catholic Syrian Bank Ltd. Vs CIT 343 ITR 270. The impugned order passed by the Id. CIT(A) is in consonance with the observations made by the ITAT Bench, New Delhi having same combination in assessee's own case for the assessment year 2009-10 i.e. Prathma Bank Vs CIT (2016) 52 ITR (Trib.) 454 (Del.) (supra). We, therefore, considering the totality of the facts as discussed hereinabove, do not see any valid ground to interfere with the findings given by the Id. CIT(A). Accordingly, we do not see any merit in this appeal of the department.

24. In the result, appeal of the department is dismissed.  
(Order Pronounced in the Court on 14/07/2017)

**Sd/-**  
**(Beena Pillai)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 14/07/2017**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**