IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' A '

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATH, ACCOUNTANT MEMBER

I.T. A. No.1017 to 1019/Bang/2015
(Assessment Years : 2006-07 to 2008-09)

M/s. Canara Bank,
Head Office, 112, J.C. Road,
Bangalore-560 002. …. Appellant.

Vs.

Jt. Commissioner of Income Tax, LTU,
Bangalore. ….. Respondent.

Appellant By : Shri S. Ananthan, CA
Respondent By : Shri G.R. Reddy, CIT (DR) (ITAT)-1, Bengaluru.

Date of Hearing : 21.08.2017.
Date of Pronouncement : 24.10.2017.

O R D E R

Per Bench :

These three appeals by the assessee are directed against the composite order dt.27.04.2015 of Commissioner of Income Tax (Appeals) for the Assessment Years 2006-07 to 2008-09.

2. The Grounds raised for the Assessment Year 2008-09 as under :

1. "The Order of the learned Commissioner of Income tax – Appeals, LTU, Bangalore dated 27/04/2015 is against law and facts of the case.

2. The reopening of the assessment u/s 148 is bad in law.

2.1 The learned Commissioner of Income tax –Appeals erred in holding that there was a failure on the part of the appellant Bank to disclose the facts necessary for the assessment.

The learned Commissioner of Income tax –Appeals erred in confirming that the addition is not based on mere changes of opinion.

2.2 The learned Commissioner of Income tax –Appeals erred in holding that there was no material on record existed for assessment and was only available in a subsequent assessment year.

2.3 The learned Commissioner of Income tax –Appeals erred in confirming the order of the learned Assessing Officer that there are errors in computation of the allowance and that was the cause of reassessment. But changed his opinion on the method of allowing the allowance under Rule 6ABA.

2.4 The learned Commissioner of Income tax –Appeals erred in holding that the issues of allowance which are in appeal before ITAT can be ground for reassessment u/s 147.

2.5 The learned Commissioner of Income tax –Appeals erred in holding that Rule 6ABA prescribes only fresh advances are to be considered for arriving at the Aggregate Average Advances and the confirmation made by the learned Commissioner of Income tax – Appeals regarding the definition of 'Rural branch'.

3. The learned Commissioner of Income tax –Appeals erred on facts in disallowing the provisions for bad debts claimed u/s 36(1)(viia) amounting to Rs.97,22,03,670/-.

3.1. The learned Commissioner of Income tax - Appeals erred in considering the incremental advance only for the purpose of arriving at the deduction u/s 36(1)(viia), after having accepted the 'eligible Rural branches'.

3.2. The learned Commissioner of Income tax - Appeals erred in holding that Rule 6ABA prescribes only fresh advances are to be considered for arriving at the Aggregate Average Advances.

3.3. The learned Commissioner of Income tax - Appeals erred in interpreting that Rule 6ABA clause (a) prescribes that 'advances made during the month and outstanding at the end of each month' are to be considered for arriving at the Aggregate Average Advances.

3.4. The learned Commissioner of Income tax - Appeals failed to follow the decisions of other ITAT benches on the same issue of interpretation of 'made during the month'.

3.5. The learned Commissioner of Income tax - Appeals failed to appreciate the fact that the branches have been classified as Rural branches [having population less than 10000 as per latest Census of 2001] as per guidelines of Reserve Bank of India and on that basis, licenses have been granted. After having accepted the changes made by the Appellant in the claim of the deduction, the learned Assessing Officer failed to appreciate the facts presented by the Appellant Bank.

3.6. The learned Commissioner of Income tax - Appeals failed to appreciate the fact that it is only the population of the place has to be considered and not the classification of the place as per the Census data.

3.7. The learned Commissioner of Income tax –Appeals failed to appreciate the fact that section 36(1)(viia) being an incentive provision should be interpreted liberally.

4. The learned Assessing Officer erred in law in disallowing the bad debts claim u/s 36(1)(vii) amounting to Rs.688,21,72,631/-.

4.1. The additions made by the learned Commissioner of Income tax-Appeals is based on prejudices and against the facts and the records of the case.

4.2. The additions made by the learned Commissioner of Income tax-Appeals is based on subsequent assessment year facts and not on records of the present case.

4.3. The learned Commissioner of Income tax - Appeals erred in holding that the appellant bank did not write off the debts of Rs. 688,21,72,631/-.

4.4. The learned Commissioner of Income tax - Appeals failed to appreciate the fact that the appellant bank had debited bad debts amount written off to the Profit & Loss Account.

4.5. The learned Commissioner of Income tax - Appeals erred in holding that the amount debited to Profit & Loss Account is a provision and not a write off.

4.6. The learned Commissioner of Income tax - Appeals erred in law in not appreciating the fact that debts written off relating to rural branches alone have to be adjusted against the provision allowed u/s 36(1)(viia) of the Income Tax Act, 1961.

4.7. The learned Commissioner of Income tax - Appeals failed to appreciate that no double deduction is claimed in respect of the debts pertaining to non-rural branches of the appellant.

4.8. The learned Commissioner of Income tax –Appeals failed to appreciate the fact that the Appellant has offered to tax an amount of Rs.315,17,81,455/- being the write back on account of recovery/upgradation of such kind of bad debts written off in the earlier years u/s 41 of the Income tax Act, 1961.

4.9. The learned Commissioner of Income tax - Appeals failed to appreciate the fact that on the same set of facts the jurisdictional Appellate Tribunal and Hon’ble High Court have allowed the deductions to various Banks.

5. The learned Commissioner of Income tax - Appeals erred in law and on facts in sustaining the addition of the Commission and Locker rent received in advance amounting to Rs.78,56,70,074/- as income.

5.1. The learned Commissioner of Income tax - Appeals erred in sustaining this addition without rejecting the method of accounting adopted consistently by the appellant Bank

5.2. The learned Commissioner of Income tax - Appeals ignored the consistent method adopted by the appellant Bank in not offering the Commission and locker rent received in advance, but offered in the year it is accrued.

5.3. The learned Commissioner of Income tax - Appeals failed to appreciate the fact that on the same set of facts, in the earlier years, the 'amounts received in advance' by the appellant bank was not taxed as income.

5.4. The learned Commissioner of Income tax - Appeals failed to distinguish the facts of the judicial decision to that of the Appellant bank case and drawing conclusions without verifying the facts of the case.

5.5. The learned Commissioner of Income tax - Appeals failed to appreciate the fact that it is only a revenue neutral exercise and there is no loss to the Revenue over the years.

5.6. In the alternative, the learned Commissioner of Income tax – Appeals failed to direct the Assessing Officer to exclude the above referred added amount from the income of the Appellant Bank in the subsequent years, since the same has been offered to tax.

6. The learned Assessing Officer has erred in charging interest u/s 234B, 234C and 234D of the Income Tax Act, 1961."

3. Ground No.1 is general in nature and do not require any specific adjudication.

4. Ground No.2 is regarding validity of reopening of assessment under Section 148 of the Income Tax Act, 1961 (in short 'the Act'). The assessment for all these three years were completed under Section 143(3) of the Act. However subsequently the Assessing Officer proposed to reopen the assessments by issuing a Notice under Section 148 of the Act on 25.03.2013 on the reason that the claim of deduction under Section 36(1)(viia) for the Assessment Year 2010-11 was disallowed by the Assessing Officer after examination of the details when it was found that some of the branches in respect of which the assessee claimed deduction are located in the area which cannot be defined as rural in view of the decision of the Hon'ble Kerala High Court in the case of **CIT Vs. Lord Krishna** 339 ITR 606. Further some branches are located at the place where the population of the area exceeds 10,000. The assessee filed its objections to the notices issued under Section 148 but could not find favour either from the Assessing Officer or from the CIT (Appeals).

5. Before us, the learned Authorised Representative of the assessee has submitted that the assessment was reopened after four years in respect of the Assessment Years 2006-07 and 2007-08 from the end of the respective assessment years and therefore when there is no allegation by the Assessing Officer that there is a failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment the reopening is bad in law as these beyond the limitation as well as the jurisdiction of the Assessing Officer. The learned Authorised Representative has further submitted that even otherwise rural branches have been classified by the RBI based on 1991 census and not based on

2001 census as it was not published at the relevant point of time. The learned Authorised Representative has referred to the provisions of Section 36(1)(viia) and submitted that this provision contemplates that rural branch means a branch of schedule bank situated in a place which has population of not more than 10,000 according to the last preceding census of which the relevant figures have been published before the first day of previous year. Thus the learned Authorised Representative has contended that when the figures of 2001 census were not published on the first day of previous year of the assessment years under consideration then the classification of the rural branches by the RBI on the basis of the published figures of the 1991 census are in accordance with the Clause (ia) of Explanation to Section 36(1)(viia) of the Act. He has further contended that even as per the data of 2001 census all 23 branches as classified by the assessee as rural branches are situated in the area having population of less than 10,000. The Assessing Officer adopted the classification of branches as per the data of 2001 census and therefore the reasons recorded by the Assessing Officer are not sustainable in law. Secondly, the reasons for reopening of these assessments are also factually incorrect as all these branches are situated in the area having population of less than 10,000 even as per the 2001 census. Thus when there is no failure on the part of the assessee to disclose fully and truly all the facts necessary for the Assessment of the assessee then the assessment completed under Section 143(3) cannot be reopened beyond the period of four years from the end of the assessment year. The learned Authorised Representative has further

contended that even otherwise there is no requirement under law to furnish the branch details and list along with the return of income until and unless the Assessing Officer so desires. The learned Authorised Representative has referred to the statement of income and submitted that the assessee has specifically claimed the deduction under Section 36(1)(viia) of the Act and explained the same as per Schedule 1F. This claim was duly considered by the Assessing Officer during the original assessment passed under Section 143(3) and therefore the reopening is based on change of opinion. The learned Authorised Representative has referred to the notice issued under Section 147 dt.21.3.2011 for the Assessment Year 2006-07 wherein the Assessing Officer raised this issue of correctness of deduction under Section 36(1)(viia) without corroborating with the population figure, correct average advances and monthly outstanding advances as prescribed under IT Rules, 1962 whereas all details were duly examined by the Assessing Officer in the scrutiny assessment. However subsequently the said notice was dropped vide order dt.26.12.2011 placed at 100 & 101 of the paper book. Thus the present reopening is a second notice under Section 148 issued on 25.3.2013. Therefore it is submitted that the reopening is for the Assessment Years 2006-07 and 2007-08 is not valid. He has relied upon the decision of Hon'ble jurisdictional High Court in the case of **CIT Vs. Karnataka Bank** 52 Taxmann.com 526.

6. As regards the validity of reopening for the Assessment Year 2008-09, the learned Authorised Representative of the assessee has submitted

that when the rural branches have been classified by the RBI which is applicable to all the banks therefore a separate classification cannot be done by the assessee alone. He has referred to the classification of branches by the RBI placed at page Nos.102 to 199 of the paper book. The learned Authorised Representative has submitted that the classification is available in the public domain as per the RBI Website and are applicable to all banks in India and not only to the assessee therefore the assumption by the Assessing Officer that some of the branches are not falling in the category of rural branch as per Section 36(1)(viia) is based on change of opinion when it was accepted by the Assessing Officer while passing the scrutiny assessment and assessee furnished all relevant details. Accordingly, the learned Authorised Representative has submitted that the reopening for the Assessment Year 2008-09 is nothing but based on change of opinion which is not sustainable in law.

7. On the other hand, the learned Departmental Representative has submitted that the Assessing Officer has given the reasons which are self-explanatory that in the verification and examination of this issue for the Assessment Year 2010-11 it was found that the branches which are listed in the reasons recorded for reopening of assessment are not falling in the category of rural branches because of the population was more than 10,000. The learned Departmental Representative has further contended that the reopening is not based solely on the ground of classification of the branches but the Assessing Officer has also recorded the reason that the average correct advances made by the rural branches have not been verified while allowing the claim under Section 36(1)(viia)

of the Act. Further the Assessing Officer has disposed of the objections raised by the assessee against the reopening by giving the reasons. The Assessing Officer has stated that the issue has been analysed thoroughly during the course of assessment proceedings for the Assessment Year 2010-11 in which 2001 census data has been considered for the purpose of determining the population of rural branches. Despite the publication of the census data in the Gazette, the assessee has deliberately given wrong details and showing those branches having exceeded population of 10,000 as rural branches for the purpose of claiming deduction under Section 36(1)(viia) of the Act. When the Assessing Officer has carried out exercise of verification of population of all rural branches for the Assessment Year 2010-11 then the reopening of assessment based on the enquiry conducted by the Assessing Officer for the Assessment Year 2010-11 is valid and sustainable. He has relied upon the orders of the authorities below and submitted that this particular issue of incremental advances and population for categorization of rural branches was not raised by the assessee in the appeal filed against the order passed under Section 143(3) of the Act for the Assessment Year 2010-11.

8. We have considered the rival submissions as well as the relevant material on record. The assessment for all these three assessment years 2006-07 to2008-09 were originally completed under Section 143(3) however, subsequently the assessments were reopened by the Assessing Officer by issuing Notice under Section 147 dt.25.3.2013 by recording the reasons for reopening as under :

JOINT COMMISSIONER OF INCOME TAX
Large Tax Payers Unit (LTU)
JSS Towers, 100 Feet Ring Road, Banashankari III Stage
BANGALORE - 560 085 - Telefax – 26893931

F.No./CB/148/2006-07/2013-14 Dated: 16/04/2013

To,

The General manager,
Canara Bank,
FM and S Wing,
Head Office
112, J C road,
Bangalore.

Sir,

Sub: Communication of reasons recorded for reopening your case for AY 2006-07- Reg.
Ref: Your letter dated 05/04/2013

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Please refer to the above.

The reasons recorded for reopening your case for AY 2006-07 are as under

"The assessee has claimed deduction u/s 36(1)(viia) of Rs. 498,51,70,108/- in the computation of income. In the assessment order dated 29.02.2008 the AO disallowed Rs. 21,54,18,149/- by adjusting the brought forward losses with the total income. The CIT(A) in the order ITA no. 3/CIT(A)-LTU/2008-09 dated: 23.02.2009 confirmed the disallowance made by the AO.

During the course of assessment proceedings of the assessee bank for the AY 2010-11 the claim of deduction made by the bank u/s 36(1)(viia) was examined in details. As per section 36(1)(viia) the average aggregate advances made by rural branches will be taken into consideration for calculating the deduction available u/s 36(1)(viia).

During the course of verification of details submitted by the bank it was noticed that in the following cases /branches, the branch is located in an area which cannot be defined as rural as per the decision of Hon'ble high Court of Kerala in the case of *CIT vs Lord Krishna bank 339 ITR 606.*

To be a rural branch, the branch must be located in a 'place' that is a revenue village. However, the branches below are situated in places which are defined as urban agglomerate by the census of India 2001. They are places which are defined as town panchayat, municipality etc. The evidence gathered is placed on record.

1. Nidhauli Kalan
2. Sanchi
3. Orchha
4. Palampur
5. Parwanoo
6. Kangra
7. Kolappalur
8. Kasipalayam
9. Labbaikudikadu
10. Thedavur
11. Kannivadi
12. Candolim Goa
13. Aldona Goa
14. Londa
15. Donimalai
16. Dhalavoipuram
17. Kayathar
18. Eral
19. Kuchanur
20. Nanguneri
21. Gonikoppal
22. Krishnaraja Sagara
23. Hosanagar
24. Sorab
25. Kudremukh
26. Pillanallur
27. Singaperumalkoil
28. Kuchanur

Further, in case of the following branches, the population of the area exceeds 10,000. Therefore, the place cannot be said to be rural. The explanation (ia) to clause 36(i)(viia) reads as "*rural branch means a branch of a scheduled bank or a non-scheduled bank situated in a place which has a population of not more than 10,000 according to the last*

proceeding census of which the relevant figures have been published before the first day of the previous year."

Sl No.	Name of the Village	DP No
1	Gidighaty	1733
2	Vythiri -	358
3	Bilga	2090
4	Tibber	2131
5	Kalpakkam (pudupattinam)	1440
6	Ilampillai	1048
7	Lokikere	480
8	Ankalgi	676
9	Atmakur Mandal	1325
10	barwa	1775
11	Belatikri	1712
12	Tangra	1719
13	Thevaram	1094
14	Vadakku Vallioor	1126
15	Hebri, karkala	2502
16	Vyrafirozpur	2151
17	Dankaur	2161
18	Tikri	2208
19	Namkum	2670
20	Jog-kargal	532
21	Sirugudi	1308
22	Sitharevo - Attur	1342
23	Inamkulathur	1505

Hence, it is evident that the claim deduction u/s 36(1)(viia) of Rs. 498,51,70,108/- was incorrect and the assessee has made excess claim u/s 36(1)(viia) of the IT Act, 1961. In the present case the income chargeable to tax which has escaped the assessment amounts to or is likely to amount to one lakh rupees or more for the AY 2006-07."

Yours faithfully,

(S. Palanikumar)
Joint Commissioner of Income-tax
(LTU), Bangalore.

Thus it is clear that reopening is based on the reason that during the course of assessment proceedings for the Assessment Year 2010-11 the

Assessing Officer disallowed the claim of deduction under Section 36(1)(viia) of the Act on two counts firstly the mode of computation of average correct advances made by the rural branches and secondly branches claimed by the assessee as rural are situated in area found by the Assessing Officer cannot be classified as rural branches having the population of more than 10,000. Thus the Assessing Officer was of the opinion and belief that the assessee has claimed deduction under Section 36(1)(viia) of the Act which was incorrect and excessive and consequently the income chargeable to tax has escaped assessment for these assessment years. There is no quarrel on the fact that the reopening for the Assessment Year 2006-07 and 2007-08 are after the expiry of four years from the end of the relevant assessment year. It is manifest from the reasons recorded that the Assessing Officer has not even stated or alleged that there is a failure on the part of the assessee to disclose fully and truly all the material facts necessary for these assessment years. Thus when the Assessing Officer himself has not stated that there is a failure on the part of the assessee to disclose fully and truly all the material facts then the reopening after four years from the end of the relevant assessment year is not permitted as hit by the proviso to Section 147. We find that the assessment reopened on the basis of the enquiry conducted by the Assessing Officer in the subsequent assessment year is proper so far as the said enquiry in the subsequent assessment year reveals the facts to show that the income assessable to tax escaped assessment and therefore the outcome of the enquiry in the subsequent assessment year constitutes a tangible

material for forming belief that the income assessable to tax in the earlier order has escaped assessment. However when the case is hit by the proviso to Section 147 then in the absence of the failure on the part of the assessee to disclose fully and truly all material necessary for the assessment, the reopening is not proper and valid. It is a mandatory condition as per the proviso to Section 147 that when the assessment is completed under Section 143(3) then no action shall be taken under this section after expiry of four years from the end of the relevant assessment year until and unless income chargeable to tax has escaped assessment by the reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. It is apparent from the reasons recorded by the Assessing Officer that there is no allegation by the Assessing Officer that there is failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. It is pertinent to note that the issue of reopening of assessment after four years as well as within four years based on the assessment of the subsequent assessment year has been considered by the Hon'ble Bombay High Court in the case of **Multiscreen Media (P.) Ltd. Vs. Union of India** reported in 324 ITR 48 as well as 324 ITR 54 for different assessment years. The reopening for the assessment year which was beyond four years from the end of the relevant assessment year was found to be invalid whereas the reopening in the case of the assessment year whether it was within the period of four years from the end of the assessment year was held to be valid. The Hon'ble High Court

has held in the case of **Multiscreen Media (P.) Ltd. Vs. Union of India** (supra) in paras 12 & 13 as under :

" 12. The notice issued by the Assessing Officer under section 148 does not state that there was a failure on the part of the assessee to fully and truly disclose all material facts necessary for the assessment for the assessment year 2002-03. The assessment was sought to be reopened after the expiry of a period of four years from the end of the relevant assessment year. In such a case the jurisdictional condition precedent stipulated by the proviso to section 147 is a failure on the part of the assessee to fully and truly disclose all material facts necessary for assessment for that assessment year consequent upon which income chargeable to tax has escaped assessment. That has not been fulfilled. The notice does not even purport to state so. The ground furnished in the notice for reassessment would at the highest indicate that according to the Assistant Commissioner of Income-tax, allocation of expenses as between the petitioner and the foreign principal ought to have been originally considered by the Assessing Officer when the order of assessment was passed under section 143(3). That however would not give a valid reason to reopen the assessment beyond a period of four years, even assuming that the Assessing Officer had erred in not doing so, unless there was a failure on the part of the assessee to fully and truly disclose all material facts necessary for assessment. Absent the existence of the jurisdictional condition precedent, the assessment cannot be reopened beyond a period of four years after the expiry of the relevant assessment year, as has been done in the present case. In the circumstances, the notice for reassessment is liable to be quashed and set aside solely on the ground that the Revenue has failed to establish the existence of the jurisdictional condition precedent to the exercise of the power to reopen an assessment beyond a period of four years of the expiry of the relevant assessment year.

13. The petition would accordingly have to be allowed. Rule is made absolute in terms of prayer clause (*a*), by quashing and setting aside the notice dated March 25, 2009 and the order dated September 29, 2009.ò

Thus the Hon'ble High Court while passing a separate decision for two categories of reopening held that the reopening after four years is not valid and liable to be quashed and set aside solely on the ground that the revenue has failed to establish the existence of the jurisdictional condition precedent to the exercise of power to reopen an assessment beyond a period of four years of expiry of relevant assessment year. In view of this principle laid down by the Hon'ble High Court as well as the fact that there is no failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment years 2006-07 &

2007-08, the reopening beyond four years for these two assessment years is hit by the proviso to Section 147 as a pre-requisite condition to exercise the power to reopen the assessment after four years was not satisfied by the Assessing Officer. Accordingly, we hold that the reopening of the assessment for the Assessment Years 2006-07 & 2007-08 are invalid and reassessments are quashed.

8. As regards the validity of reassessment for the Assessment Year 2008-09, we find that the reassessment is within the period of four years and based on the enquiry conducted by the Assessing Officer during the Assessment Year 2010-11 wherein the Assessing Officer disallowed the claim of deduction under Section 36(1)(viia) of the Act on these two aspects of incorrect computation and incorrect average advances and further the classification of rural branches were not in accordance with the actual population of the area. Therefore in view of the decision of Hon'ble Bombay High Court reported in 324 ITR 54 the reopening for the Assessment Year 2008-09 is valid as the facts detected and finding of the Assessing Officer for the Assessment Year 2010-11 constitutes a tangible material to form the belief that the income assessable to tax on account of excess claim under Section 36(1)(viia) of the Act allowed in the original assessment has escaped assessment. The Hon'ble High Court has discussed this issue in detail and held in para 10 as under :

" 10. In this background, the facts of the present case would have to be considered. During the course of proceedings for the assessment year 2004-05, a query was addressed by the Assessing Officer on September 7, 2006 *inter alia* requiring the assessee to make a disclosure of the nature of its business and details of the expenses towards market research. On November 15, 2006; the assessee was directed to furnish a justification and details of expenditure towards advertisements and sales promotion expenses. The assessee furnished the break-up of the expenses incurred towards advertisements and sales promotion and an order of assessment was passed under section 143(3). When the assessment proceedings for

the assessment year 2005-06 were taken up, the Assessing Officer by his letter dated August 21, 2007 called up the assessee to furnish the ledger extracts of advertisements and sales promotion expenses/market research expenses. On November 26, 2008 a notice was issued to the assessee under section 142(1). The annexure to the notice drew the attention of the assessee to the fact that the assessee had debited advertisements and sales promotion expenses of Rs. 39.99 crores ; dealer's incentives of Rs. 50.89 crores and market research expenses of Rs. 2.73 crores. The Assessing Officer noted that considering the fact that the programmes are aired by the channel, any "upside" in the revenues shall accrue to the channel company. The assessee was asked to explain why this amount should be allowed in the light of the absence of business expediency. The assessee was called upon to file a detailed explanation along with supporting documents. In the course of the assessment proceedings for the assessment year 2005-06, the assessee had filed a detailed explanation before the Assessing Officer on December 11, 2008. The assessee set out its case in regard to the allowability of its advertisements and sales promotion expenses and dealer's incentives expenses together with market research expenses under section 37(1). The case of the assessee was that the entire expenses were incurred wholly and exclusively for the purpose of its business and it was essential for the assessee to incur the expenses so as to increase its own income by way of sale of content, distribution income, advertisements as well as agency fees. The case of the assessee, therefore, was that the entire expenditure should be allowed as deduction under section 37(1) even though a third party, namely a channel company may have benefited from the same to a certain extent. The Assessing Officer while passing the order of assessment for the assessment year 2005-06 came to the conclusion after considering the submissions of the assessee that of the total expenses that were incurred, 18.75 per cent, would be allowed in the hands of the assessee while the balance shall be held as expenditure incurred on the behalf of the foreign principal of the assessee and was liable to be disallowed in the hands of the assessee. In the present case, we are not concerned with the merits of the claim of the assessee in regard to whether the expenditure that was incurred was wholly and exclusively for the purpose of the business of the assessee. What is material is that on the basis of a detailed inquiry which took place during the course of the assessment year 2005-06, the claim of the assessee of deduction of the entire expenses was not accepted and disallowance, was made to the extent of expenditure incurred over and above 18.75 per cent. The Assessing Officer did so on the basis of fresh material which came before him in view of the notice dated November 26, 2008 in pursuance of which the assessee filed a detailed representation elucidating the relevant particulars of the business of the assessee and the reasons for the expenditure. Whether the Assessing Officer was justified in the decision which he took for the assessment year 2005-06 is again not a matter to be considered at this stage of the proceedings. The point is that on the basis of the additional material which was available on record, the Assessing Officer issued a notice for reopening the assessment for the assessment year 2004-05. In our considered view, the Assessing officer did have tangible material to reopen the assessment under section 147 of the Act and to form a reason to believe that income had escaped assessment. Clause (*c*)(*iv*) of *Explanation 2* to section 147 creates a deeming fiction where though the assessment has been made, income chargeable to tax is underassessed. In such a case, law deems that income chargeable to tax has escaped assessment. For these reasons, we are of the view that recourse to the provisions of section 147 cannot be faulted."

Following the decision of Hon'ble Bombay High Court (supra) and in view of the fact that the Assessing Officer detected the fresh facts and material during the course of the assessment proceedings for the Assessment Year 2010-11 to form the belief that the income to the extent of excess claim of deduction under Section 36(1)(viia) of the Act has escaped assessment we hold that the reopening for the Assessment Year 2008-09 is valid.

On merits for the A.Y. 2008-09

9. Ground No.3 is regarding the disallowance of deduction claimed under Section 36(1)(viia) of the Act on the basis of recomputation of incrementing advances by adopting a different method by the Assessing Officer.

10. We have heard the learned Authorised Representative as well as learned Departmental Representative and considered the relevant material on record. At the outset, we note that an identical issue has been considered and decided by the co-ordinate Bench of this Tribunal in assessee's own case for the Assessment Year 2009-10 and 2011-12 vide order dt.15.09.2017 in ITA No.979/Bang/2013 & Others in paras 17 to 18.3 as under :

" 17. Ground of appeal No.3 challenges the methodology of computation of deduction in respect of profits of rural branches as provided u/s 36(1)(viia) of the Act. The assessee-bank made a claim of Rs.900 crores towards deduction in respect of rural branches under the provisions of section 36(1)(viia) of the Act. The working furnished by the AO is as under:

The total income for this purpose is	Rs.3786,43,53,698
Hence, the deduction @ 7.5% of such income is	Rs. 283,98,26,527
Deduction @ 10% of aggregate average advances of rural branches:	
Aggregate average advances of rural branches	Rs.8260,78,60,834
The deduction amount @ 10% works out to	Rs. 826,07,86,083
Thus the total eligible amount of deduction is	Rs.1110,06,12,611
Provision made in the books	Rs. 900,00,00,000
Eligible deduction claimed u/s 36(1)(viia)	Rs. 900,00,00,000

17.1 According to the AO, the assessee-bank computed wrong computation of Average Aggregate Advances (AAA) for the following reasons:

1. Population of many of the rural branches had already exceeded 10,000.

2. Further in several cases it was not rural branch and rather it was situated urban agglomeration.

3. Apart from this while the computing the AAA the assessee bank has taken into account the running balance of the advances made in the previous year as the opening balance of the subsequent year and computed the outstanding balance at the end of last day of each month comprised in the previous year. While computing the AAA the assessee bank should have considered the fresh amount of advances made by each rural branch as outstanding at the end of each month comprised in the previous year rather the running balance. In this process, substantial amount of deduction has been claimed over and above the eligible amount.

Show cause notice dated 26/9/2012 was issued to the assessee-bank. In response to the same, the assessee furnished reply vide its letter dated 18/12/2012 as under:

> ***"The details of rural branch advances are already submitted as required under rule 6ABA. The population figures considered for the purpose are of census 2001. We enclose the census certificates of rural branches collected by us/ downloaded by census department website in support of our claim".***

Finally, the AO computed deduction of Rs.324,94,36,110/- working of which is as under:

From above working, it is clear that while calculating AAA of rural branches, the AO has considered only incremental advances alone whereas the assessee-bank calculated AAA on the outstanding advances. Thus, variation between amount of claim made by the assessee-bank and allowed by the AO i.e. on account of two accounts – (i) branches which are urban and rural branches having population of more than 10,000 and branches for which no information was furnished by the assessee and on account of methodology of computation to arrive at the AAA of rural branches.

17.2 On appeal before the CIT(A), the CIT(A) held as follows:

9.6 I have considered the appellant's submissions as above along with the AO's interpretation of "advances made" to be read as "made during the month". On a simple and plain reading of the Rule I am inclined to agree with the AO since the words "made by" in the Clause (a) to Rule 6AB A (supra) and the reference to "last day of each month" therein suggests a connection through the linkage of "made during the month". The word "made" as used in the Clause (a) suggests an activity with immediacy, relevant to the current period instead of a historicity relevant to an action taken over multiple years in the past. If the assessee's interpretation is correct (including taking the opening balance at the beginning of the year into account) the appropriate language to have been used in the Rule would be "amount of advance of each rural branch outstanding....." the use of the word "made by" implies an activity to be correlated to a time/period that may be overtly mentioned or passively understood as in the present context. This interpretation is closer to the AO's understanding that

the reference is to advances made during the month and which are outstanding at the end of each month. I have also noted with concern the fact that the assessee bank failed to furnish the details of fresh advances made by each such rural branch in every month comprised in the previous year to compute the AAA, in spite of numerous opportunities provided by the AO.

9.7 The AO has noted that by claiming 10% of AAA year after year on the running advance instead of advances made by each rural branch during the year which was outstanding at the end of the month the assessee had claimed benefit beyond the scope of section 36(1)(viia) over the years. This would explain why the provision of NPA as per the annual report (Rs. 788.60 crore) does not match with the credit balance of the provision computed as per the IT Act (Rs. 3898 crore). In this regard reliance is placed upon the judgment of the Hon'ble Punjab and Haryana High Court in the case of State Bank of Patiala vs CIT 272 ITR 54 where it was held that making of provision for bad and doubtful debts equal to the amount mentioned in section 36(1)(viia) was a condition precedent for allowing deduction under the said section. This order was followed by the Hon'ble ITAT Bangalore in case of Syndicate Bank vs DCIT Circle-1 Udupi in ITA no. 668 & 669/Bang/2010 in order dt. 19.06.2013. The Hon'ble Bench had directed that the deduction u/s 36(1)(viia) was to be limited to the amount of the provision claimed and could not exceed it. The appellant's matter is, therefore to be concluded in the light of this judgment. In view of the discussion as above, I find it reasonable to affirm the computation of 10% of AAA in the five steps outlined in page 50 & 51 of the AO's order. The appellant's ground raised in this regard is, accordingly, dismissed.

18. Being aggrieved, the assessee is before us vide Ground of appeal Nos.2 and 3. Learned counsel for the assessee vehemently contended that the methodology of computation of AAA for the purpose of deduction u/s 36(1)(viia) is settled by the decision of the co-ordinate in the case of (i) Nizamabad District Co-operative Central Bank Ltd. vs. ITO in ITA 1161/Hyd/ 2011 reported in 12 TMI 562 (ii) DCIT vs. Madurai District Central Co-operative Bank Ltd., (51 taxman 194) (iii) City Union Bank Ltd. in ITA No.1485/Mds/07 and (iv) DCIT vs. Indian Bank ITA No.1485 & 1507/Mds/07 [2016(7) TMI 28]. Learned counsel for the assessee submitted that for the purpose of computing AAA of amount of advance outstanding alone is to be considered not fresh advances made during the previous year.

18.1 On the other hand, ld.CIT(DR) placed reliance on the orders of the authorities below.

18.2 We heard rival submissions and perused the material on record. The Finance Act, 1979 inserted a new clause (viia) in sub-section (1) of section 36 to provide for deduction in computation of taxable profits of schedule bank in respect of provision made for bad and doubtful debts relating to advances made by the rural branches computed in the manner prescribed under IT Rules,1962. For this purpose, 'rural branches' has been defined to mean 'branch of schedule bank situated at place with population not exceeding 10,000 according to last census'. Rule 6BA of the Income-tax Rules provides the procedure for computing AAA for the purpose f provisions of section 36(1)(viia) which reads as under:

> ***"6ABA. Computation of aggregate average advances for the purposes of clause (viia) of sub-section (1) of section 36 -***
>
> *For the purposes of clause (viia) of sub-section (1) of section 36, the aggregate average advances made by the rural branches of a scheduled bank shall be computed in the following manner, namely :*
>
> *(a) the amounts of advances made by each rural branch as outstanding at the end of the last day of each month comprised in the previous year shall be aggregated separately ;*
>
> *(b) the sum so arrived at in the case of each such branch shall be divided by the number of months for which the outstanding advances have been taken into account for the purposes of clause (a) ;*
>
> *(c) the aggregate of the sums so arrived at in respect of each of the rural branches shall be the aggregate average advances made by the rural branches of the scheduled bank.*
>
> *Explanation : In this rule, rural branch and scheduled bank shall have the meanings assigned to them in the Explanation to clause (viia) of sub-section (1) of section 36."*

From a bare reading of the above rule it is crystal clear that the said rules prescribe three steps for computing AAA in the following manner:

Step One - In respect of each rural branch, note down the amounts of advances outstanding at the end of the last day of each month comprised in the previous year and aggregate the amounts so noted.

Step Two- Divide the aggregate amount arrived at in Step One by the number of months for which the outstanding amounts have been taken into account for the purpose of Step One.

Step Three- Aggregate the amounts arrived at under Step Two in respect of all the rural branches.

Thus, it is clear that the said Rules do not provide for only fresh advances made by each rural branch during each month alone is to be considered. It only prescribes that the amount of advances made by rural branch and is outstanding at the end of the last day of each month shall be aggregated. Having regard to the plain provisions of the IT Rules, it cannot be construed that only fresh loans made by rural branches outstanding at the end of each month should be considered for the purpose of calculating AAA. It is trite law that the condition not imposed by the statute cannot be imported while construing a particular provision of Rules or statutes. Thus, the reasoning adopted by the AO as well as the CIT(A) does not stand the test of law. Furthermore, co-ordinate bench of Hyderabad Tribunal in the case of Nizamabad District Co-operative Central Bank Ltd. (supra) held as follows:

> *"8. We have considered the submissions of the parties and perused the orders of revenue authorities as well as other materials on record. Before going into the issue, it is necessary to look into the relevant statutory provisions. Section 36(1)(vii) provides for deduction on account of bad debts actually written off in the books of account. However, proviso to 36(1)(vii) makes an exception by providing that in case of an assessee to which clause (viia) applies the claim of bad debt shall be limited to the amount by which such debt exceeds the credit balance in the provision for bad and doubtful debts made under clause (viia). Clause (viia) permits a cooperative bank to claim deduction of provision made for bad and doubtful debts as per the prescribed conditions. As has been correctly observed by ld. CIT(A), the only dispute between assessee and department is in respect of working out 10% of aggregate average rural advances. While assessee has made such working by considering the entire outstanding advances at the end of each month, AO has worked out by considering the aggregate average rural advances of each month and not on the entire outstanding advances. However, a perusal of the provision contained u/s 36(1)(viia) and rule 6ABA, would make it clear that the 10% of aggregate average advances has to be worked out on the entire outstanding advances and not the advances of that month alone. That being the case, we agree with the view held by ld. CIT(A).*
>
> *9. Now coming to the quantum of deduction claimed u/s 36(1)(vii) and 36(1) (viia), law is well settled that an assessee can claim deduction under both the clauses subject to the condition imposed under the proviso to 36(1)(vii). As can be seen from the working submitted by ld. AR, the provision created during the year u/s 36(1)(viia) read with rule 6ABA, amounts to Rs. 16,35,55,829.00 whereas assessee has claimed deduction of Rs. 5,16,46,976, which is well within the provision permissible under section 36(1)(viia). Therefore, there cannot be any doubt with regard to the allowability of deduction claimed by the assessee u/s 36(1)(viia).*

Accordingly, we do not find any infirmity in the order of ld. CIT(A) in deleting addition of Rs. 3,88,25,673. However, as far as deduction of Rs. 18,79,704 is concerned, the same cannot be allowed u/s 36(1)(vii) considering the fact such amount has not exceeded the provision for bad and doubtful debts u/s 36(1)(viia). At the same time, alternative claim of the assessee that it is to be allowed u/s 37(1), in our view, is acceptable. On a perusal of the assessment order and the facts and materials available on record, it is quite evident that the amount was waived at the direction of the State Govt. Department has not controverted this fact. Therefore, in our view, the waiver of interest at the instance of the State Government, has to be allowed as business expenditure u/s 37(1). Accordingly, we uphold the order of ld. CIT(A) in deleting addition of Rs. 18,79,704 though, for a different reason. The grounds raised by the department are dismissed."

18.3 In the light of the above, we hold that the methodology adopted by the AO for the purpose of computing AAA is against the plain provisions of rules and also against the ratio of the decision of the co-ordinate bench in the cases cited supra. However, remit this issue back to the file of the AO to identify rural branches less than 10,000 population as per last census and the AAA of such rural branches alone should be considered for the purpose of this deduction. Thus, these grounds of appeal are allowed for statistical purposes."

Thus after considering all the rival contentions of the parties and analyzing the provisions of Section 36(1)(viia) of the Act read with Rule 6ABA, the Tribunal held that methodology adopted by the Assessing Officer for the purpose of computing aggregated average advances is against the provisions of the Act and rules as well as against the ratio of decisions as referred in the said decision.

11. As regards the classification of rural branches the assessee has contended that during the relevant period the data of 2001 census was not published and the classification of the rural branches was made by the RBI based on the data of 1991 census. The Tribunal in the said decision for the assessment years 2009-10 to 2011-12 also remitted this

issue back to the file of the Assessing Officer to identify the rural branches which have population of less than 10,000 as per the last census and the aggregated average advances of such rural branches along should be considered for the purpose of deduction under Section 36(1)(viia) of the Act. Accordingly, in view of the fact that when the assessee has strongly contended that the data of 2001 census was not published at the relevant point and following the earlier order of the Tribunal, we remit this issue to the record of the Assessing Officer for verification and identifying the rural branches and then consider the deduction in respect of such rural branches.

12. Ground No.4 is regarding the disallowance of bad debts claimed under Section 36(1)(vii) of the Act.

13. We have heard the learned Authorised Representative as well as learned Departmental Representative and considered the relevant material on record. At the outset, we note that this issue was also considered by this Tribunal in assessee's own case for the Assessment Years 2009-10 to 2011-12 vide order dt.15.9.2017 (supra) in paras 8 to 8.3 as under :

" 8. Ground of appeal No.3 relates to disallowance of claim made u/s 36(1)(viii) of the Act. The assessee-bank claimed deduction of Rs.400 crores u/s 36(1)(viii) of the Act in respect of profits derived from eligible activity viz., (i) industrial or agricultural development , (ii) Development of infrastructure facility in India; and (iii) Development of Housing in India. The computation made by the assessee-bank in respect of said activities is as under:

"Calculation of profits earned from Long Term Finance u/s 36(1)(viii)

Income from Long Term Finance	5212.45	
Less: Expenditure	3039.51	2172.94
Profit from Long Term Finance		
20% of Profits from Long Term Finance	A	434.59
Reserve created in Books	B	400.00
LIMITED TO TWICE THE AMOUNT OF CAPITAL & RESERVES		
Capital		410.00
General Reserve		4866.59
Total		5276.59
2 Times of the above	C	10553.18
Amount Eligible u/s 36(1)(viii)"		400.00

The AO was of the opinion that ratio of expenditure to income is 89.33% at entity level. Therefore AO held that deduction claimed u/s 36(1)(viii) is excessive and unreasonable and therefore, restricted the deduction to a sum of Rs.111,19,00,000/- thus making addition of Rs.288,18,00,000/-

8.1 On appeal before the CIT(A), the CIT(A) confirmed the addition. Being aggrieved, assessee is in appeal before us.

8.2 We heard rival submissions and perused the material on record. This issue had come up for consideration before the co-ordinate bench of Tribunal in the case of Joint CIT vs. Vijaya Bank for assessment year 2008-09 in ITA No.578 & 653/Bang/2012 dated 27/02/2015 wherein it was held as follows:

> *"46. We have considered the rival submissions. A plain reading of the provisions of Sec.36(1)(viii) of the Act clearly shows that what is relevant is profits derived from eligible business computed under the head "Profits and gains of business or profession" and not the profits derived by the entity as a whole as has been done by the AO and CIT(A). We therefore hold that the method of computation of deduction as done by the AO and CIT(A) is incorrect. The profits derived from eligible business computed under the head "Profits and gains of business or profession" as done by the Assessee has been accepted by the AO and CIT(A). There should be no difficulty in accepting the claim made by the Assessee for deduction u/s.36(1)(viii) of the Act. The Assessee has also filed before us an alternate method of computation of deduction u/s.36(1)(viii) of the Act to demonstrate that such alternate method will result in claim for deduction being made at Rs.37,14,84,183/-. The said computation is given as **Annexure-2 to this order**. We deem it appropriate to direct the AO to examine the computation given as annexure-2 to satisfy himself that the claim as made originally was correct. The AO is thereafter directed to consider the claim of the Assessee for the correct amount of eligible deduction u/s.36(1)(viii) of the Act. The relevant grounds are thus treated as allowed."*

There is no dispute about the eligibility of the assessee-bank for deduction u/s 36(1)(viii) of the Act. The only dispute is with regard to method of computation of deduction. The provisions of section 36(1)(viii) read as under:

> ***"36.** (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—*
>
> . . . . . .
>
> *(viii) in respect of any special reserve created and maintained by a specified entity, an amount not exceeding twenty per cent of the profits derived from eligible business computed under the head "Profits and gains of business or profession" (before making any deduction under this clause) carried to such reserve account:*
>
> ***Provided** that where the aggregate of the amounts carried to such reserve account from time to time exceeds twice the amount of the paid up share capital and of the general reserves of the specified entity, no allowance under this clause shall be made in respect of such excess.**"***

There is no dispute as to the satisfaction of the conditions prescribed in the said provision. The dispute is only with regard to method of computation of profits of eligible business. The AO was of the opinion that eligible profits should be in the same ratio as it bears to total profits of the bank to the total cost. Neither the provisions of the Act nor the rules prescribe the method of computation of eligible business. Therefore, the computation of income should be done by one of generally accepted methods. It is the contention of the assessee-bank that expenses which are directly attributed to assessee's business have been allocated to eligible business and common expenses and general overheads are allocated or apportioned among the eligible business and non-eligible business in proportion to turnover of the respective businesses. The methodology adopted by the assessee-bank is in conformity with well-accepted method. However, we remit this issue to the file of the AO to verify the methodology adopted by the assessee is in accordance with stated method or not. If so, to accept the same.

8.3 This ground of appeal is therefore partly allowed for statistical purposes."

Thus as far as the issue of methodology claimed to be adopted by the assessee for allocation and attribution of the expenses for eligible business and non-eligible business in proportion to turnover of the

respective businesses it is in conformity with the well accepted method. However it is required to be verified whether the method adopted by the assessee is in accordance with the claim as made by the assessee therefore by following the earlier order of this Tribunal, we remit this issue to the file of the Assessing Officer to verify the method adopted by the assessee is in accordance with the well accepted method as discussed in the said decision. Hence, this issue is set aside to the file of the Assessing Officer in the same terms.

14. Ground No.5 is regarding addition made on account of commission and locker rent received in advance.

15. We have heard the learned Authorised Representative as well as learned Departmental Representative and considered the relevant material on record. At the outset, we note that an identical issue has been considerd and decided by the co-ordinate Bench of this Tribunal in assessee's own case for the Assessment Year 2010-11 vide order dt.15.9.2017 cited supra in paras 23 to 25 as under :

" 23. Ground of appeal No. 7 challenges addition made on account of commission on locker rent received in advance of Rs.112,83,79,281/-. It is stated that in terms of accounting policy, revenue in the form of commission and guarantees, locker rent are accounted on receipt basis. However, in the computation of income, revenue pertaining to future period that is falling beyond the accounting year was claimed as deduction. The same was disallowed by the AO holding that once income is credited to profit and loss account, as per policy of a company, same should be offered to tax. On appeal before the CIT(A), the same came to be confirmed.

24. Being aggrieved, the assessee is before us vide ground No.7. Learned counsel for assessee vehemently contended that treatment in the books of account has no relevance for deciding taxability or otherwise of an item of income. The fact of receipt was accounted as income in the books of account has no bearing on the taxability or otherwise of the

income under the provisions of the Act. Learned counsel for the assessee further submitted that this practice is being continuously followed by the assessee bank and having regard to the rule of consistency, no addition should be made. Reliance in this regard was placed on the decision of the Hon'ble Apex Court in the case of CIT vs. Excel Industries (358 ITR 295)(SC), and also on the decision of the Hon'ble Calcutta High Court in the case of CIT vs. Bank of Tokyo Ltd. (71 Taxman 85)(Cal) and the decision of the co-ordinate bench of Tribunal in the case of BNP Paribas SA vs. Dy.Director of Income-tax (IT) in ITA No.2022 & 2048/Mum/2008 dated 20/06/2012).

On the other hand, the ld.CIT(DR) placed reliance on the orders of the lower authorities.

25. We heard rival submissions and perused the material on record. The only issue raised in this appeal relates to assessability of income from commission on letter of credit and locker rent. The assessee-bank is following the accounting income on account of these two heads on receipt basis whereas in computation of total income, income from this was spread over the period to which commission related and locker related, which means income was offered to tax proportionate to the period covered under the accounting year under consideration. It is not the case of the AO that income escaped assessment forever. The income is only spread over. It is settled principle of law that treatment given in the books of account of a particular item of income or expenditure has no relevance to decide taxability or otherwise of it under the provisions of the Act. Therefore, though the amount was shown as receipt and credited to P&L account, the assessee was entitled to offer income by following different method of recognition of income. No doubt, the assessee was only following the mercantile system of accounting. The only issue to be decided is whether income accrued to assessee. The Hon'ble Calcutta High Court in the case of Bank of Tokyo Ltd. (supra) held that even though the assessee-bank received entire commission for the guarantee Commission no debt is actually created in favour of the assessee-bank for the entire amount. A right always remains vested in the customers to recall payment in unexpired period in the case of earlier redemption of guarantee. Similarly even in respect of locker rent also, same reasoning can be applied. Therefore, having regard to the decision cited supra and also the principle of consistency, we hold that no addition is warranted in respect of guarantee Commission on letter of credit or locker rent received in advance. Thus, Ground of appeals No.7 is allowed."

Following the earlier order of this Tribunal in assessee's own case, we allow the claim of the assessee and consequently addition made by the Assessing Officer is deleted.

16. Ground No.6 is regarding levy of interest under Sections 234B, 234C and 234D which are consequential in nature.

17. In the result, the appeal for the Assessment Years 2006-07 and 2007-08 are allowed and Appeal for the A.Y. 2008-09 is partly allowed.

Order pronounced in the open court on the 24th day of Oct., 2017.

Sd/-	Sd/-
(G. MANJUNATH)	**(VIJAY PAL RAO)**
Accountant Member	Judicial Member

Bangalore,
Dt.24.10.2017.

*Reddy gp

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Senior Private Secretary
Income Tax Appellate Tribunal
Bangalore.