

2. Brief facts of the case are that, the assessee is a co-operative society registered under co-operative societies Act carrying on banking business. It filed its original return of income for the A.Y 2010-11 on 14-10-2010 declaring a total income of Rs. 69,18,340/-. Subsequently, assessee filed its revised return of income on 02-05-2011 declaring a total income of Rs. 35,26,550/-. The original return was processed u/s 143(1) of the IT Act. Thereafter, the case was selected for scrutiny. During the assessment proceedings u/s 143(3) of the Act the A.O called for various details. The A.O observed that the assessee has filed revised return of income on 02-05-2011 for the reason that in the original return of income, it had included provisions written back to the income i.e provisions for investment written back, reserve for non-performing assets written back, reserve for overdue interest written back. The A.O refused to consider the revised return of income observing that the assessee was unable to produce the copies of returns of income of earlier years in support of its claim, but while completing the assessment, he disallowed the assessee's payment of gratuity fund, members loan written off, loss from sale of non-banking assets, belated payment

of PF etc., which are the claims made in the original return of income and also made disallowance of provision for bad and doubtful debts u/s 36(1)(vii) of the IT Act, provision for investment written off, provision for non-performing assets written back, reserve for overdue interest written back claimed in the revised return of income and made the consequential additions to the income returned as per the revised return of income filed. Aggrieved, the assessee preferred an appeal before the CIT(A), challenging the A.O's denial to consider the revised return of income and also the addition made by the A.O. The CIT(A) held that the revised return of income should be considered and partly allowed the assessee's appeal on merits. In respect of the additions confirmed by the CIT(A), the assessee is in appeal before us.

3. As far as the first issue is concerned, before the A.O it was contended that the deduction is claimed under 36(1)(vii) of the IT Act on account of bad debts which are written off as irrecoverable in the accounts of the assessee. The A.O had disallowed the same by observing that the same can be allowed only if there is a provision made towards bad and doubtful debts in the profit and loss

account during the relevant assessment year. Before the CIT(A) also, the assessee had raised a similar claim in its grounds of appeal. The CIT(A) noticed that in the revised return of income, there is no claim of bad debts written off but that the claim is u/s 36(1)(viia) of the IT Act and not u/s 36(1)(vii) of the Act. Before the CIT(A), the assessee submitted that there was already a provision of Rs. 94,62534/- as on 31-03-2009 and the assessee recalculated the provision as per the RBI guidelines and wrote back provision of Rs. 50,16,168/- and after that, still there is provision of Rs. 44,36,366/- in the books of account and as such there is no new provision made during year.

4. The CIT(A) called for a remand report from the A.O, who submitted that the assessee neither raised any additional ground in this regard nor furnished any additional evidence in support of its claim that provision was made in the earlier years. And further that the question of law that arises is whether the provision for bad and doubtful debts made during the earlier years can be allowed as deduction u/s 36(1)(viia) of the IT Act for the A.Y 2010-11 without there being any provision made in the

said assessment year. The CIT(A), after considering the assessee's submissions and the remand report held that the provision for bad and doubtful debts can be allowed as an expenditure only if it has been created during the relevant assessment year and since such provision was not created, the claim of the assessee is not allowable.

5. The Ld. Counsel for the assessee submitted that, similar issue had arisen before this Tribunal in the case of M/s AP Grameena Vikas Bank, Warangal Vs DCIT in ITA Nos. 715 and 1293 of Hyd 2015, wherein the Tribunal had held the issue against the assessee by following decision of the Hon'ble Punjab and Haryana High Court in the case of State Bank of Patiala Vs CIT reported in (2005) 272 ITR 54 (P & H). It was further submitted that the assessee therein had made an alternate claim that where the opening balance of provision for bad and doubtful debts u/s 36(1)(viii) of the IT Act was in excess of claim of deduction, then it may be allowed to such an extent, even if a fresh provision is not made, and the Tribunal had remanded alternate claim to the file of the A.O. He prayed that similar direction may be given in the case of assessee before us as well.

6. We find that the issue is covered against the Assessee by the above decision and as regards the alternate claim, we find that the assessee has not raised any ground of appeal either before the CIT(A) or before us making such an alternative claim. In the absence of such a ground, the contention of the Ld. Counsel for the assessee cannot be considered or accepted. In the result the ground of appeal No. 1 is rejected.

7. As regards ground No. 2 and the additions challenged there under, we find that all these additions are the amounts written back or claimed to have been written back by the assessee. Both the A.O as well as the CIT(A) have observed that the assessee has not filed any evidence that these amounts were not allowed in the earlier years when they were created. As rightly observed by the CIT(A), the assessee was entitled to exemption u/s 80P of the Act till the assessment year 2002-03.

8. The Ld. Counsel or the assessee submitted that the assessee had filed the computations of income for the earlier assessment years before the CIT(A). He submitted that from these documents, it is evident that the assessee had made a claim, but whether it was allowed or not would

be clear only on perusal of the assessment records for the respective assessment year. He expressed the inability of the assessee to produce the assessment orders for the earlier years to demonstrate that the claim of the assessee of provision / reserve was not allowed by the A.O in the year of its creation. He prayed that a direction may be given to the A.O to verify the assessment order of earlier years to examine the allowability of the assessee's claim in the year before us.

9. We find that all of these documents were filed before the CIT(A) and the A.O had submitted a remand report to the effect that the assessee has made a claim in its books of account. But, as rightly pointed out by the Ld. Counsel for the assessee whether such claims were allowed by the then A.O would be evident only on perusal of the assessment records for the respective assessment years, particularly, since the income of the assessee was exempt u/s 80P of the Act till A.Y 2002-03. Therefore we deem it fit and proper to remand the issues to the file of the A.O for denovo consideration. The A.O is directed to verify the assessment records of the assessee of the earlier assessment years before coming to a conclusion on the

allowability of the claim of the assessee during the assessment year before us. In view of the same the ground No. 2 is allowed for statistical purposes.

10. In the result the assessee appeal is partly allowed.

Pronounced in the open court on 24th January, 2018.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: January, 2018

KRK

- 1 M/s Andhra Bank Employee's Co./ Bank Ltd., C/o 4-4-296/297, Mithila complex, 3rd floor, Bank Street, Hyderabad-500095.
- 2 Dy CIT, Circle-2(3), Hyderabad.
- 3 CIT(A)-9, Hyderabad
- 4 Pr.CIT-2, Hyderabad.
- 5 The DR, ITAT Hyderabad
- 6 Guard File