

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 231/Jab/2016

निर्धारण वर्ष/ Assessment Year : 2012-13

Jila Sahakari Bank Maryadit, Sahakari Sadan, Wright Town, Jabalpur (MP) PAN : AAAJJ 0118 J	Vs	Income Tax Officer, Ward 1(2), Jabalpur
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Neeraj Agrawal, CA
Revenue by :		Shri PD Chougule, DR

सुनवाई की तारीख/Date of Hearing : 15/03/2018

घोषणा की तारीख /Date of Pronouncement: 16/03/2018

आदेश/O R D E R

PER MANISH BORAD, ACCOUNTANT MEMBER:-

This appeal of assessee for Assessment Year 2012-13 is directed against the order of the CIT(A)-I, Jabalpur dated 9th June 2016 vide appeal No.J/CIT/A/I/JBP/ITO/Ward/1(3)/JBP/079/2015-16, arising out of order under Section 144/143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") dated 27.03.2015 framed by the ITO, Ward 1(2), Jabalpur.

2. We find that present appeal is time barred by 17 days. An application along with affidavit is placed on record. We have perused the application wherein the assessee has mentioned about the medical leave taken by the CEO of the bank for certain period of time during which the appeal before the Tribunal was to be filed. On examining this fact in the light of judgment of Hon'ble Apex Court in the case of Collector, Land Acquisition vs. Mst. Katiji & Ors, reported in (1987) 62 CTR 23, we are of the considered opinion that the assessee had a sufficient cause which prevented it from filing the appeal within the statutory time limit. We, therefore, in the interests of justice, condone the delay of 17 days and admit the appeal for adjudication.

3. Briefly stated facts, as culled out from the record, are that assessee is a Co-operative Society engaged in the business of banking and working as Central Co-operative Bank. Return of income was filed on 30.11.2012 declaring income of Rs.9,22,400/-. Case selected for scrutiny and notices under Section 143(2) / 142(1) of the Act were served upon the assessee. On few occasions none appeared; accordingly, the ld. Assessing Officer passed an ex-parte order under Section 144/143(3) of the Act making various additions on the basis of financial statements and audit report available on record. Learned Assessing Officer made a disallowance u/s 40(a)(ia) of the Act at Rs.8 lakhs, denied the benefit of carry forward/set off of loss of Rs.3,98,33,209/- and disallowed the claim of provision for bad and doubtful debts of Rs.3,05,30,820/-. Income assessed at Rs.7,20,86,429/-.

4. Aggrieved, the assessee preferred appeal before the ld. CIT(A), but partly succeeded. Now, the assessee is in appeal before the Tribunal raising following grounds of appeal:-

"1. learned CIT(Appeal) erred in confirming the addition of Rs.3,05,30,820/- on account of provision for and doubtful debts which were provided in accordance with law and are under the limits prescribed u/s 36(1)(viii).

2. The learned CIT(Appeal) erred in enhancing the income of Rs. 69180/- on account of provision for bad and debts which were provided in accordance with law and are under the limits prescribed u/s 36(1)(viii) and the same were allowed by the Assessing Officer.

3. He learned CIT(Appeal) erred in confirming the addition of Rs.3,98,33,209/- on account of carry forwards and setoff of loss, on the presumption that same amount is claimed as provision for bad and doubtful debts. However amount was bad debts was erroneously stated at Rs.3,98,33,209/- instead of Rs. 3,05,30,820/-. Hence the order is bad in law.

4. The learned CIT(Appeal) wrongly concluded that the addition of Rs.800000/- on account of non deduction of lax u/s 40(a)(ia) although assessing officer has not provided any opportunity of being heard.

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5. *The learned CIT(Appeals) grossly erred in understanding the facts of the case and concluded that the assessment was done under 143(3).*

6. *That the Assessee craves leave to raise any other ground/s on or before the date of hearing to prove that the order of the CIT(Appeal) is bad."*

5. At the outset, learned Counsel for the assessee requested for not pressing ground no.4 relating to disallowance under Section 40(a)(ia) of the Act at Rs.8 lakhs. We, therefore, dismiss ground no.4 as not pressed.

6. Ground Nos. 1 & 2 relate to claim of assessee towards provision for bad and doubtful debts. Both the lower authorities have denied this benefit. Learned Counsel for the assessee submitted that the assessee is a Central Co-operative Bank and as per the provisions of Section 36(1)(viiia) of the Act, it is entitled to make a provision for bad and doubtful debts @ 7.5% of the total income before making any such deduction and also an amount of 10% of the aggregate average advances made by the rural branches. It was contended that the provision made by the assessee is much less than the provision which the assessee could have made as per the provisions of Section 36(1)(viiia) of the Act. It was further contended that the alleged note/comment of the auditor relates to over statement of profits which nowhere is unfair to the Revenue and both the lower authorities have not interpreted auditor's note in right perspective. On the other hand, learned Departmental Representative vehemently argued supporting the order of the lower authorities.

7. We have heard the rival contentions and perused the record placed before us. In ground nos. 1 & 2 assessee is aggrieved with the disallowance of the provision for bad and doubtful debts for Rs.3,05,30,820/- as well as enhancement of income by learned CIT(A) by Rs.69,180/-. Before moving ahead, we would first like to peruse the provisions of Section 36(1)(viiia) of

the Act, which contemplates that *“a scheduled bank not being a bank incorporated by or under the laws of a country outside India or a non-scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, an amount not exceeding 7½% of the total income (computed before making any deduction under this clause and Chapter VIA) and an amount not exceeding 10% of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner... ”* From going through the above provision, in our understanding of law, we find that the assessee which is a Central Co-operative Bank falls under the category of banks enumerated in the above provision. Banking industry has the business of taking and providing advances. Normally, advances are given to a large number of persons and the probability of debts getting doubtful or bad is regular and therefore as per the provisions of law, they are entitled to claim the provision for bad and doubtful debts to the extent of the percentage as mentioned above. If the total provision exceeds the percentage of the total income or average advances made by the rural branches, then in such situation assessee has to provide complete explanation with supporting documents. From perusal of the order of the Id. CIT(A), wherein he has taken a view that no provisions per se could be leveled as validated provision and deduction under Section 36(1)(viia) of the Act could be applied to them. We, however, do not agree with the view taken by the Id. CIT(A) and are of the considered opinion that the assessee which is a Central Co-operative Bank, is eligible for claiming the provision for bad and doubtful debts made during the year for Rs.3,05,30,820/- which are well within the permissible limit provided in Section 36(1)(viia) of the Act. We, therefore, are of the view that the assessee has rightly claimed the provision for bad and doubtful debts of Rs.3,06,00,000/- which is well within the permissible limit prescribed under

Section 36(1)(viia) of the Act. In the result, Ground Nos. 1 & 2 of the assessee's appeal are allowed.

8. Apropos ground no.3 relating to addition of Rs.3,98,33,209/- confirmed by the Id. CIT(A) by accepting the finding of the learned Assessing Officer relating to not allowing the carry forwards and set off of loss. During the course of hearing before us, learned Counsel submitted that there was a confusion before the lower authorities which have erroneously stated Rs.3,98,33,209/- instead of the figure of provision for bad and doubtful debts of Rs.3,05,30,820/-. It was further contended by the learned Counsel for the assessee that there was no such carry forwards/set off of loss made by the assessee. It was therefore requested that the issue may be sent for verification to the Assessing Officer so that the assessee can satisfy him accordingly. Learned Departmental Representative raised no objection if the issue raised in ground no.3 is sent for re-adjudication afresh.

9. We have heard the rival contentions and perused the record placed before us. In ground no.3 assessee is aggrieved with the addition of Rs.3,98,33,209/- allegedly claimed on account of carry forwards and set off of loss. During the course of hearing before the Tribunal, it was stated by the learned Counsel for the assessee that there was no such claim made by the assessee and both the lower authorities erred in treating this figure of Rs.3,98,33,209/- as carried forwards and set off of loss; whereas actually there is no such claim at all. Looking to the request of the learned Counsel for the assessee for providing one more opportunity to clear the confusion at the end of the Revenue Authorities, we deem it proper to set aside the issue raised in ground no.3 to the file of the Assessing Officer who will examine the computation of income as well as income tax return filed by the assessee and in case any such claim of carry forwards and set off of loss is

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not found to be made by the assessee, then the impugned addition of Rs.3,98,33,209/- needs to be deleted. Ground no.3 is, therefore, allowed for statistical purposes.

10. Ground Nos. 5 & 6 are general in nature which needs no separate adjudication.

11. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the Court on 16th March, 2018 at Jabalpur.

Sd/-

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

**(MANISH BORAD)
ACCOUNTANT MEMBER**

Jabalpur; Dated 16/03/ 2018
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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, / DR, ITAT, Jabalpur
6. गार्ड फाईल / Guard file.

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आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./ Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Jabalpur