

आयकर अपीलीय अधिकरण, मुंबई "डी" खंडपीठ

Income-tax Appellate Tribunal "D" Bench Mumbai

सर्वश्री राजेन्द्र, लेखा सदस्य एवं रविश सूद, न्यायिक सदस्य

Before S/Sh.Rajendra, Accountant Member & Ravish Sood, Judicial Member

आयकर अपील सं./I.T.A./3821/Mum/2009, निर्धारण वर्ष /Assessment Year: 2005-06

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| ACIT-2(3) Room No.555, Aayakar Bhavan Mumbai. | Vs. | Dena Bank 17B, Dena Bank Building Horniman Circle, Fort Mumbai-400 001. PAN:AAACD 4249 B |
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri S. Anathan & Mrs. Lalitha Rameswarao-DR

Assessee by: Shri V. Justin

सुनवाई की तारीख / **Date of Hearing:** 12/01/2018

घोषणा की तारीख / **Date of Pronouncement:** 11/04/2018

आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1) of the Income-tax Act, 1961 (Act)

लेखा सदस्य, राजेन्द्र के अनुसार- PER RAJENDRA, AM-

Challenging the order, dated 25/3/2009 of CIT(A), Mumbai the Assessing Officer (AO) has filed the present appeal. Assessee, a banking company, filed its return of income on 29/10/2005, declaring Loss of Rs.5.32 crores. The AO completed the assessment u/s. 143(3) of Act, on 28/12/2007, determining its income at Rs.1.78 crores.

2. First ground of appeal is about adjustment in respect of debt written off of Rs.308.45 crores. During the assessment proceedings, the AO found that the assessee had written off the following amounts as bad debts of Rs. 318.85 crores (Rural debts -Rs. 10.39 crores + non-rural debts -Rs.308.45 crores). He called for an explanation from the assessee in that regard. After considering the same, he held that nonrural debts of Rs. 308.45 crores could not be adjusted against the provisions under section 36(1)(vii) of the Act, amounting to Rs. 53.53 crores.

During the appellate proceedings, the First Appellate Authority (FAA) allowed the appeal filed by the assessee.

2.1. It was brought over notice that the issue stands covered against the Department and in favour of the assessee as per the judgment of the honorable Supreme Court in the case of Catholic Syrian Bank (343 ITR 270), that while deciding the appeal for the assessment years 1997-98, 1998-99, 2003-04 and 2006-07 (ITA/2731/Mum/2011, dated 10/04/2013), the Tribunal

had relying upon the judgment of the Catholic Syrian Bank (supra) and had dismissed the appeal filed by the AO.

We are reproducing the relevant portion of the order of the tribunal dated 10/04/2013 (supra) and it reads as under:

“10. Now we will take up the appeal filed by the AO. He has filed following grounds of appeal against the order of the FAA for the same AY.:

“On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in allowing relief to the assessee to the extent impugned in the grounds enumerated below:

1. The order of CIT(A) is opposed to law and facts of the case
2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing whole of the bad debts of Rs. 2,36,91,65,153/- as this was a provision and not actual write off of bad debts.
3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the additions made on account of setting off provisions made u/s 36(1)(vii) of Rs. 68.31 Crs against bad debts of Rs. 273.62 Crs.

10.1. Effective Grounds of Appeal filed by the AO i.e. Grounds no.2 and 3 are about deduction u/s.36 (1) of the Act. During the assessment proceedings, AO found that the assessee had claimed deduction of provision made for bad and doubtful debts calculating as per the guidelines issued by the RBI at Rs.2,36,91,66,153/-. AO after making enquiries and considering the submissions of the assessee, granted deduction of actual debts written-off after adjusting provision for rural debts made at 10% and average rural advances and a provision for bad and doubtful debts calculated at 7.5% of total income. The details of actual debts written-off and provisions allowed under the Act can be summarised as under:

| | Amount (in Rs) |
|--|-----------------------|
| <i>Details of Bad debts written off:</i> | |
| <i>Rural Debts written off</i> | 9,31,69,000 |
| <i>Non-rural Debts written off</i> | 2,64,30,51,573 |
| <i>Total Debts written off</i> | 2,73,62,20,573 |
| <i>Details of provisions u/s. 36(1)(viiia)</i> | |
| <i>10% of Average Rural Advances</i> | 68,81,03,934 |
| <i>7.5% of Total Income</i> | 32,81,13,376 |
| <i>Total provisions u/s. 36(1)(viiia)</i> | 1,01,62,17,310 |

10.2. Assessee preferred an appeal before the FAA. After considering the submissions of the assessee-bank, FAA held that only the Opening Balance in the provision for bad debts could be adjusted, that provision made at the end of the FY could not be allowed, that the provision made at the end of the year had to be allowed in full, that rural and non-rural bad debts are to be considered separately that if bad debts written-off related to debts other than for which provision was made under Clause-(viiia) such debts fell squarely under the main part of the Clause-(vii) of Section 36 of the Act, that in appellant's case, provision in respect of rural debt has been made by it at Rs. 68.1 Crores, that debts written-off of Rs. 264.31 Crores were other than the rural debts, that same were liable under Clause-(vii) of Section 36, that no adjustment in respect of same could be done against rural provision created by the assessee. He directed the AO to allow deduction of Rs. 273.62 Crores in respect of debts actually written-off u/s. 36(1)(vii) as claimed by the assessee after duly verifying that there was no opening Balance available in rural and other provisions Account made u/s. 36(1)(viiia) of the Act. He further directed the AO as how to treat the provisions made in respect of rural advance at the end of the year amounting to Rs. 68.81 Crores and provisions @ 7.5% of total income. He finally held that the provisions allowed, of Rs. 68.81 Crores and 7.5% of total income, would become the opening provision for the subsequent AYs. He referred to the judgment delivered by the Hon'ble Kerala High Court in the case of South India Bank Ltd. (262 ITR 579).

10.3. Before us, DR supported the order of the AO. AR submitted that FAA had rightly directed the

AO to calculate the bad debts and provisions in a particular manner, that section 36(1) of the Act allowed writing off of bad debts as well as provisions in certain circumstances. We have heard the rival submissions and perused the material on record. We find that similar issue was decided by the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. (343ITR 270).

“The provisions of clause (viia) of section 36(1) relating to the deduction on account of the provision for bad and doubtful debt(s) are distinct and independent of the provisions of section 36(1)(vii) relating to allowance of the bad debt(s). In other words, scheduled commercial banks would continue to get the full benefit of the write off of the irrecoverable debt(s) under section 36(1)(vii) in addition to the benefit of deduction for the provision made for bad and doubtful debt(s) under section 36(1)(viia). Normally, a deduction for bad debt(s) can be allowed only if the debt is written off in the books as bad debt(s). But in the case of rural advances, a deduction would be allowed even in respect of a mere provision without insisting on an actual write off. However, this may result in double allowance in the sense that in respect of the same rural advance the bank may get allowance on the basis of clause (viia) and also on the basis of actual write off under clause (vii). This situation is taken care of by the proviso to clause (vii) which limits the allowance on the basis of the actual write off to the excess, if any, of the write off over the amount standing to the credit of the account created under clause (viia). The CBDT itself has recognized the position that a bank would be entitled to both the deductions, one under clause (vii) on the basis of actual write off and another, on the basis of clause (viia) in respect of a mere provision. It would be meaningless to invoke the proviso where there is no threat of double deduction. In case of rural advances, which are covered by the provisions of clause (viia), there would be no such double deduction. The proviso limits its application to the case of a bank to which clause (viia) applies. Clause (viia) applies only to rural advances. This has been explained by circulars issued by the CBDT. Thus, the proviso is limited in its application to bad debt(s) arising out of rural advances of a bank. It follows that if the amount of bad debt(s) actually written off in the accounts of the bank represents only debt(s) arising out of urban advances, the allowance thereof in the assessment is not affected, controlled or limited in any way by the proviso to clause (vii).”

Respectfully following the principles enumerated by the Apex Court in the above referred matter we uphold the order of the FAA. We find that he has directed the AO to verify the fact and then take a decision. In our opinion his order does not suffer from any legal infirmity.

In these circumstances ground nos.2 and 3 filed by the AO are decided against the AO.”

Considering the above, first ground of appeal, raised by the AO, stands dismissed.

3. Next ground of appeal deals with adjustment of deduction against opening credit balance, as per the provisions of section 36(1)(vii) of the Act. It was brought over notice that while deciding the appeal in the case of Oman International Bank SAOG (ITA/1981-82/Mum/2001, dated 29/06/2012) has decided the issue against the Department. We are reproducing the relevant portion of the order and it reads as under:

“4. Ground No.2 of assessee's appeal in both the years is also common. The facts as mentioned in A.Y 1996-97 are discussed hereafter and the facts for 1997-98 are similar. It was found that the assessee had written off bad debt of Rs. 1,97,11,511/-. The opening balance of the provision for bad debt allowed for a sum of Rs.26,18,604/- was adjusted against the written off amount and remaining amount of Rs. 1,70,92,907/- was claimed. The AO observed that the assessee is entitled to a provision for bad debt under section 36(1)(vii)(a) of the Income Tax Act, 1961 (the Act) which is equal to 5% of the total income before deduction allowable under Chapter-VI. The total balance in the provision account would be the opening balance as increased by the amount of provision allowed under section 36(1)(vii)(a). The AO observed that such view has consistently

and uniformly been held in other cases as well as in assessee's case for earlier years. Accordingly the income of the assessee was computed. Ld. CIT(A) has upheld the action of AO.

4.1 Similarly for assessment year 1997-98 assessee had written off bad debt amounting to Rs. 1,15,26,864/- against which deduction of Rs. 59,50,678/- was claimed. Later on it was claimed that the provision of doubtful debt which should be added back and reduced in the computation should have been Rs.8,76,500/- and it was pointed out that mistake occurred as only the provision in the bad debt account was added back, whereas an amount of Rs.4,72,000/- was wrongly debited to other expenditure account was omitted. The AO did not accept such submission and disallowed an amount of Rs.8,76,500. The finding of Ld. CIT(A) with regard to this issue are as under:-

“I think the same is the position under accounting principles. However, since consistently view has been taken in the case of the appellant bank that the claim of the bad debts would be allowable only in excess of closing provision as at the end of the year for bad and doubtful debts, the same need not be entered with. In A.Y 1996-97 the total claim of bad debts was Rs. 197.11 lakhs against which the A.O adjusted the closing balance in the provision account i.e. opening balance as increased by the provision made during the year and allowed only the balance. The contention of the A.R in this regard has to be accepted that the opening balance at the beginning of the year as already adjusted against the bad debts in A.Y 1995-06, only the provision made for bad and doubtful debts during the previous year should have been reduced from the bad debts claimed. The AO has himself done so in A.Y 1997-98 by adjusting against the claim of bad debts of Rs. 115.2 lakhs the provision made during the year for bad and doubtful debts of Rs.8.76 lakhs. In my opinion, what the AO on both the years should have allowed full claim of bad debts if it exceeded the deduction allowable for provision for bad and doubtful debts made during the previous year and should not have in addition allowed any separate deduction u/s. 36(viia). Alternatively the AO should have allowed deduction u/s. 36(1)(vii) the excess of the bad debts written off during the year over the provision made for bad and doubtful debts during the previous year and accordingly also allowed separately deduction u/s. 36(1)(viia) for provision for bad and doubtful debts allowable during the year. In A.Y.1996-97 the total bad debts of Rs.197.11 lakhs exceeded the provision of Rs. 60.09 lakhs so what was ultimately allowable in totality was only bad debt claim of Rs. 197.11 lakhs and nothing else. The AO, as against this, has actually allowed deduction for bad debts written off after adjusting the opening balance in the provision account which should not have been done. The AO is directed to allow deduction for gross bad debt claimed of Rs. 197.11 lakhs in A.Y 1996-97. In A.Y 1997-98 the AO has allowed deduction only for excess of bad debts over the provision made for bad and doubtful debts during the previous year i.e. Rs. 106.50 lakhs. He should allow in addition deduction for provision made for bad and doubtful debts u/s. 36(1)(viia) to the tune of Rs. 8,76,500/-. The grounds are accordingly disposed of.”

4.2 On these facts it was submitted by ld. Sr.Counsel for the assessee that this issue is covered by the decision of the Tribunal in assessee's own case for assessment year 1990-91 and 1991-92 vide order dated 15/12/2003 in ITA No.7775/Bom/95 and 5694/Bom/95. Copy of such order is placed at pages 25 to 33 of the paper book. The issue has been decided by the Tribunal with the following observation.

6. The ground no. 3 is as under:

“The CIT(A) erred in upholding the action of DCIT in deducting from the claim made towards bad debts written off, the provision for doubtful debts to the extent of Rs. 12 lakh made during the previous year relevant to the AY 90-91.”

7. The relevant facts are that the assessee bank is entitled to deduction u/s. 36(1)(vii) as well as under clause (viia) of the IT Act. During the previous year relevant to the AY 90-91, the

assessee wrote off bad debts of Rs. 72,74,000/- on 7.2.90. Deduction for this amount was claimed. The assessee, further, claimed deduction of Rs. 12 lakh u/s. 36(1)(vii) in respect of the provision for bad and doubtful debts. The AO reduced the provision of Rs. 12 lakh from the bad debts written off and amounting to Rs. 72,74,000/- and thus restricted the deduction to Rs. 60,74,000/-. When the matter came up before the Id. CIT(A), he found that the provision for bad and doubtful debts at the end of the year as on 31.3.90 amounted to Rs. 33,59,298/- and therefore the aforesaid provision should have been deducted from the bad debts of Rs. 72,74,000/-. On that basis, the Id. CIT(A) was of the view that the assessee was entitled to a deduction of Rs. 39,14,702/- only (72,74,000/- minus 33,59,298/-). Accordingly, after allowing opportunity to the assessee to explain as to why enhancement should not be made, the Id. CIT(A) directed the AO to allow deduction for a sum of Rs. 39,14,702/- instead of Rs. 60,74,000/- allowed by the AO. This resulted into enhancement of Rs. 21,59,298/-

8. The Id. counsel for the assessee argued before us that the Revenue authorities have misinterpreted the provisions of clause (vii) and (vii) of Sec. 36(1). It is submitted that as per the proviso to clause (vii), in a case to which clause (vii) also applies, the claim of bad debt under clause (vii) shall be allowed only to the extent it exceeds the credit balance in the provision for bad and doubtful debts account made under clause (vii). It is submitted that the credit balance has to be adopted as at the beginning of the accounting year, which in the present case would be 1.4.89. Any provision made to the extent it is allowable under clause (b) shall be separately & allowable under clause (vii). It is pointed out that the opening credit balance in the provision account as on 1.4.89 was Rs. 21,58,798/- and therefore, the assessee is entitled to a deduction of Rs. 51,15,202/- (72,74,000/- minus 21,58,798/-). The assessee would be further entitled to a deduction of Rs. 12 lakh under clause (vii) in respect of provision made at the end of the accounting year. Thus, the total deduction allowable under clause (vii) and (vii) would be Rs. 63,15,202/-. The Id. DR supported the order of the Id. CIT(A).

9. We have considered the rival submissions vis-à-vis the facts of the case. We find that similar issue was decided by us ('H' Bench, Mumbai) vide order dated 21.7.2003 in ITA No. 5509/Mum/98 in the case of Banque Nationale De Paris. The facts of that case and the finding - recorded by the Bench may be reproduced below from paras 8 to 12 of the order:

"8. The ground no. 3 is as under:

On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in holding that the bad debts should be adjusted against the opening balance u/s. 36(1)(vii) of the Act as against the closing balance done by the AO,"

"9. The controversy emerging from this ground of appeal pertains to the question as to whether bad debts allowable u/s 36(i)(vii) are to be adjusted. against the opening balance or closing balance of the provisions made u/s. 36(1)(vii). The relevant facts may be stated in brief. During the previous year relevant to the AY under appeal, the assessee has written off bad debts amounting to Rs. 4,98,19,000/- and the profit and loss account was accordingly debited. The assessee claimed deduction for bad debts in the return of income to the debts exceeded the opening balance of the provisions created u/s 36(1)(vii) of the IT Act. On this basis, the deduction was claimed at Rs. 3,37,19,000/- calculated as under:

| | |
|---|-------------------|
| Bad debts written off | Rs.4,98,19,000/- |
| Less: Credit balance in provision account computed as per Sec. 36(i)(vii) | Rs: 1,61,00,000/- |
| | ----- |
| Bad debts claimed as deduction | Rs.3,37,19,000/- |
| | ===== |

The AO was of the view that the bad debts written off should be adjusted against the closing balance of the provision and not opening balance. The AO, therefore, allowed deduction of Rs. 1,84,62,298)- only.”

“10. The Id. DR submitted that as per the relevant provisions of law, the requirement is that bad debts written off can be allowed to the extent as exceeding the credit balance in the provision for bad and doubtful debts account. It is argued that the correct interpretation would be the closing credit balance in the provision account and not the opening balance. It is, therefore, argued that the Id. CIT(A) was not justified in deleting the disallowance made by the AO.”

“11. The Id. counsel for the assessee invited our attention to the relevant clause (vii) and (viiia) of sub-section (1) of Sec. 36 of the IT Act, the relevant portions of which are reproduced below: -

“36(1)(vii) subject to the provisions of sub-section (2), the amount of [any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year]:

Provided that in the case of (an assessee) to which clause (viiia) applies, the amount of deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under that clause.

Explanation For the purposes of this clause, any bad debt or part thereof written off as irrecoverable in the accounts of the assessee shall not include any provision for bad and doubtful debts made in the accounts of the assessee; (viiia) in respect of any provision for bad and doubtful debts made by—

(b) a bank, being a bank incorporated by or under the laws of a country outside India, an amount not exceeding 5% of the total income (computed before making any deduction under this clause and Chapter VIA).”

The Id.counsel laid emphasis on the phraseology of clause (b) which stipulates that the provision for bad and doubtful debts shall not exceed 5% of the total income computed before making any deduction under clause (viiia) and Chapter VI A. It is argued that if the bad debts written off during the year are adjusted against the closing balance, the provision will not be workable. Before finding out the assessee’s total income, any deduction claimed u/s. 36(1)(vii) will have to be allowed, which is possible only when the bad debts allowable under that clause are first adjusted against the opening balance. The Id. counsel also invited our attention to Board’s circular No. 421 dated 12.6.85 reported at 156 ITR (ST) 130, a copy of which is compiled at page 62 of the PB. The Id. counsel referred to para 17.4 of the circular which is as under:

“Sec. 36(1)(vii) of the Act has also been amended to provide that in the case of a bank to which sec. 36(1)(viiia) applies, the amount of bad and doubtful debts shall be debited to the provision for bad and doubtful debts account and that the deduction admissible u/s 36(1)(vii) shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account.”

We have carefully considered the rival submissions vis-à-vis the relevant provisions of law. In the case of the assessee, a provision not exceeding 5% of the total income is permissible. The total income can be computed only at the end of the previous year. Further, while computing such income, deduction u/s. 36(1)(vii) will have to be allowed. If bad debts are written off in the books of account during the course of the previous year, such bad debts be deducted as admissible u/s 36(1)(vii) before quantifying the assessee’s total income for the

purpose of clause (viia). Apparently, the deduction allowable, under clause (vii) in respect of bad debts written off will have to be adjusted against the opening credit balance in the provision account to arrive at the quantum of deduction allowable while computing the total income. In our view, the interpretation of the Ld. CIT(A) is correct and does not call for any interference. Accordingly, his order on this issue is confirmed.”

From the above, it is seen that similar question was decided in assessee's favour and in accordance with the interpretation of the relevant section now advocated before us by the ld. counsel for the assessee and consistent with the view adopted by us, we hold that the deduction of Rs. 51,15,200/- under clause (vii) and a deduction of Rs. 12 lakh under clause (viia) are admissible “ to the assessee and the AO is accordingly directed to allow the deductions.”

4.3 In this view of the situation, after hearing both the parties we allow these grounds of the assessee for both the years and direct the AO to allow appropriate relief to the assessee in accordance with aforementioned decision of the Tribunal. These grounds of the assessee for both the years are allowed.”

Respectfully, following the above order of the Tribunal, we decide second ground of appeal in against the AO, as the issue in both the matters is identical.

As a result, appeal filed by the AO stands dismissed.

फलतः निर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है.

Order pronounced in the open court on 11th April, 2018.

आदेश की घोषणा खुले न्यायालय में दिनांक 11th अप्रैल, 2018 को की गई।

Sd/-

Sd/-

(रविश सूद /Ravish Sood)

(राजेन्द्र / RAJENDRA)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक/Dated : 11.04.2018.

Jv.Sr.PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR “ D ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ, आ.अधि.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.