

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

BEFORE SHRI N.K. BILLAIYA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 53/RPR/2015
Assessment Year: 2010-11**

M/s Jila Sahakari Kendriya Bank Mardayit, Opp. Lal Ganga Shopping Mall, G.E. Road, Raipur (C.G.) PAN: AAAAJ2713L	Vs.	The Deputy Commissioner of Income Tax – 1(1), Central Revenue Building, Raipur (C.G.)
(Appellant)		(Respondent)

Assessee by : Shri R.B. Doshi (CA)
Revenue by : Shri P.K. Mishra (DR)

Date of Hearing: 06/03/2018
Date of Pronouncement: 06/06/2018

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 21.01.2015 passed by the Ld. Commissioner of Income Tax (Appeals)-I, Raipur, for the assessment year 2010-11, whereby the Ld. CIT (A) has dismissed the appeal filed by the assessee against assessment order u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee a co-operative bank, filed its return of income for the assessment year under consideration declaring the total income of Rs. 96,88,880/-. The case was selected for scrutiny. In response to the notice issued u/s 143 (2) and 142 (1) of the Act, the authorized representative of the assessee appeared before the AO

and submitted the details called for. The assessee had claimed deduction under section 36(1) (viiia) of Rs. 23,69,48,000/- under the provisions of as 10% of rural average advances and Rs. 1,99,97,585/- as 7.5% of profit before deduction under this clause and chapter VI-A of the Act, without making provisions debiting the same in the P&L account. On being asked, the authorized representative submitted that the assessee has followed the provisions as per the RBI norms. However, the AO rejecting the said plea made addition of Rs. 25,69,45,585/- and determined the total income of the assessee at Rs. 26,66,34,465/-. The assessee challenged the assessment order before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee dismissed the appeal and upheld the action of the AO.

3. Aggrieved by the impugned order passed by the Ld. CIT (A), the assessee has preferred this appeal before the Tribunal on the following effective ground:-

“In the facts and circumstances of the case and in law, the Ld. CIT (A) erred in confirming addition of Rs. 25,69,45,585/- made by the AO on account of denial of deduction u/s 36(I)(viiia). He erred in holding that deduction u/s 36(I)(viiia) claimed by the appellant is not admissible. The order of the AO and of CIT (A) is illegal and not sustainable.”

4. Before us, the Ld. counsel submitted that after the introduction of prudential norms in the year 1993, all the banks whether scheduled or non scheduled including cooperative on which Banking Regulation Act, 1949 applies are compulsorily required to make provisions under the RBI guidelines. During the year under consideration, the assessee had made provisions for bad debts as per RBI guidelines. The provision for bad and doubtful debts appearing in the books of account of the assessee is

higher than the provision calculated as per limit prescribed u/s 36(I)(viiia). However, the assessee claim is restricted to amount of provisions calculated as per section 36(I)(viiia) of the Act. Therefore, the impugned order is liable to be set aside. During the course of arguments the Ld. counsel for the assessee submitted copy of profit and loss account for the financial year 2009-10 and pointed out that the assessee has made provision for bad and doubtful debts to the extent of Rs.45,84,000/-.

5. On the other hand, the Ld. Departmental Representative (DR) relied on the findings of the Ld. CIT (A).

6. We have heard the rival submissions and also perused the material on record. The Ld. counsel for the assessee submitted that the deduction u/s 36(1)(viiia) are statutory deductions allowable under the Act and the deductions have to be allowed whether the provisions is made or not. However, in our considered view there is no merit in the argument of the Ld. counsel. We agree with the Ld. CIT(A) that in order to claim deduction under section 36(viiia) of the Act, the assessee is required to make provision and debit the same from the P & L account. Hence, the assessee was required to make the provision in accordance with the Act. The copy of P & L account submitted by the Ld. counsel prima facie shows that the assessee bank had made the provision for bad and doubtful advances to the extent of Rs. 45,84,000/-. Accordingly, deduction to that extent cannot be denied under the provisions of section 36(viiia) of the Act. Since there is no reference of this document in the orders passed by the authorities below, in our considered view the same needs verification by the AO. Hence, in the interest of justice, we set aside the findings of the Ld. CIT(A) and restore the sole ground of appeal

of the assessee to the file of AO to verify the P & L Account submitted by the assessee and to allow the deduction to the extent of provision made by the assessee bank in its books of account.

In the result, appeal filed by the assessee for assessment year 2010-2011 is allowed for statistical purposes.

Order pronounced in the open court on 6th June, 2018.

Sd/-
(N.K. BILLAIYA)

ACCOUNTANT MEMBER

Raipur, दिनांक Dated: 06/06/2018

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)/PS
आयकर अपीलीय अधिकरण, Raipur / ITAT, Raipur