

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखासदस्य एवं श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष  
BEFORE SHRI ABRAHAM P.GEORGE, ACCOUNTANT MEMBER AND  
SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. Nos.287, 288, 289, 290 & 291/CHNY/2018  
निर्धारण वर्ष /Assessment years : 2009-10, 2010-11, 2011-12,  
2012-03 and 2014-2015.

The Virudhunagar District  
Central Co-operative Bank Ltd,  
104/1, Madurai Road,  
Virudhunagar.

**Vs.** The Assistant Commissioner of  
Income Tax,  
Virudhunagar Circle,  
Virudhunagar.

[PAN AAAAV 0147N]

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri. S. Sridhar, Advocate  
प्रत्यर्थी की ओर से /Respondent by : Shri. M. Srinivasa Rao, CIT.

सुनवाई की तारीख/Date of Hearing : 04-07-2018  
घोषणा की तारीख /Date of Pronouncement : 04-07-2018

**आदेश / ORDER**

**PER BENCH:.**

These are appeals filed by the assessee directed against orders dated 28.11.2017 of Id. Commissioner of Income Tax (Appeals)-2, Madurai for the impugned assessment years. Grounds raised by the assessee in its appeals for assessment years 2009-10 to 2012-2013,

include those which assail the validity of the re-assessments for the said years. Ld. Counsel for the assessee submitted that he was not pressing such grounds assailing the validity of the re-assessments. Accordingly, grounds assailing validity of the re-assessment for assessment years 2009-10 to 2012-13 are dismissed as not pressed.

2. This leaves us with grounds which are common for all the assessments, which assails disallowance of deduction claimed by the assessee u/s.36(1) (viiia) of the Income Tax Act, 1961 (in short "the Act"). Ld. Counsel for the assessee submitted that it had claimed the following amounts as deduction u/s.36(1)(viiia) of the Act, for the impugned assessment years as under:-

Assessment years	Amount (₹)
2009-10	8,20,59,000/-
2010-11	9,53,84,153/-
2011-12	12,83,31,937/-
2012-13	16,74,89,495/-
2014-15	21,76,96,162/-

As per the Id. Authorised Representative, assessee had created the following provisions in its account for these years.

Assessment year : 2009-2010:-

(i)	Provision for standard asset	₹13,99,324/-
(ii)	Reserve for short provision waiver.	₹3,20,95,000/-
	<b>Total</b>	<b>₹3,34,94,324/-</b>

Assessment year : 2010-2011:-

(i)	Provision for standard asset	₹28,31,740/-
(ii)	Unearned interest written off	₹6,50,91,288/-
	<b>Total</b>	<b>₹6,79,23,028/-</b>

Assessment year : 2011-2012:-

(i)	Provision for standard asset	₹40,89,625/-
(ii)	Reserve for DCB difference	₹8,88,307/-
(iii)	Provision for NPA	₹1,28,00,220/-
	<b>Total</b>	<b>1,77,78,152/-</b>

Assessment year : 2012-2013:-

(i)	Provision for standard asset	₹32,04,605/-
(ii)	Reserve for DCB difference	₹31,76,574/-
(iii)	Provision for NPA	₹1,18,39,364/-
	<b>Total</b>	<b>1,82,20,543/-</b>

Assessment year 2014-2015:-

(i)	Provision for standard asset	₹5,49,38,976/-
(ii)	Reserve for DCB difference	₹7,92,125/-
(iii)	NPA Provision	₹1,35,44,676/-
(iv)	Waiver loans	₹1,06,64,481/-
(v)	Sundry debtors over 3 years	₹2,00,736/-
(vi)	Bullet Jewel loan provision	₹21,45,389/-
(vii)	Overdue interest reserves	₹1,50,99,621/-
	<b>Total</b>	<b>₹9,73,86,004/-</b>

Submission was that, assessee's claim u/s.36(1) (vii) of the Act was denied by the lower authorities for a reason that provision as required under the said Section was not created. As per the Id. Authorised Representative, lower authorities had held that creation of a provision for bad and doubtful debts was a necessary pre-requisite for preferring a claim u/s. 36(1) (vii) of the Act. Further, As per the Id. Authorised Representative, lower authorities relied on CBDT instruction No.17/2008, dated 26.11.2008, and decision of a Co-ordinate Bench in the case of *M/s. Salem District Central Co-operative Bank Ltd vs. DCIT ( ITA No.1168/Mds/2016)* for taking this view. Contention of the Id. Authorised Representative was that though

assessee did not name the charge made in its profit and loss account as provision for bad and doubtful debts, there were debits like Reserve for DCB difference, Waiver of loans, Write –off of sundry debtors over three years, bullet jewel loan provision, overdue interest reserves and NPA provisions. Contention of the Id. Authorised Representative was that nomenclature was not relevant since assessee had debited provisions under different heads and hence claim u/s.36(1) (viiia) of the Act was to be allowed.

**3.** Per contra, Id. Departmental Representative strongly supporting the orders of the lower authorities submitted that assessee had not created a provision as required under the Section 36(1) (viiia) of the Act and therefore could not make a claim under the said section.

**4.** We have considered the rival contentions and perused the orders of the authorities below. Section 36 (1) (viiia) of the Act is reproduced hereunder:-

*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-*

(i).....

(ii).....

(iii).....

*(viiia) in respect of any provision for bad and doubtful debts made by-*

*(a) 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 seven and one-half per cent. of the total income (computed before making any deduction under this clause and Chapter VI-A) and an amount not exceeding ten per cent. of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner :*

*Provided that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed in any of the relevant assessment years, deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf, for an amount not exceeding five per cent. of the amount of such assets shown in the books of account of the bank on the last day of the previous year :*

*Provided further that for the relevant assessment years commencing on or after the 1st day of April, 2003 and ending before the 1st day of April, 2005, the provisions of the first proviso shall have effect as if for the words "five per cent.", the words "ten per cent." had been substituted :*

A reading of the above sub-section clearly indicate that allowance is for any provision for bad and doubtful debts. In our opinion, the use

of the word "any" before the words "provision for bad and doubtful debts" indicate that nomenclature under which the provision is made may not be a critical factor in determining the allowance. Once a provision under whatever name is debited in the profit and loss account, then it can be allowed, provided it is within the limits specified. No doubt assessee had preferred claims in its return which were in excess of what was allowable u/s.36(1) (viiia) of the Act, since debits to the profit and loss account whether it was called provision for standard asset, reserve for DCB difference, NPA provision, waiver loans, sundry debtors over three years, bullet jewel loan, overdue interest reserves, sundry debtors over three years, even if they were all aggregated was lower than the amount assessee could have claimed u/s.36(1) (viiia) of the Act. However, none of the lower authorities had carefully gone through the nature of each of the debits mentioned above before coming to a conclusion that these were actually not provision for bad and doubtful debts, but something else, like creation of a Reserve. Though peculiarities of nomenclature by itself will not render the assessee ineligible for claiming deduction available to it u/s.36(1) (viiia) of the Act, it is required for the assessee to show that these were indeed provisions for bad and doubtful debts. In the circumstances of the case, we are of the opinion that this issue requires a fresh look by the Id. Assessing Officer. We set aside

the orders of the lower authorities and remit the question whether assessee could be given any deduction u/s.36(1) (vii) of the Act back to the file of the Id. Assessing Officer for consideration afresh in accordance with law.

5. In the result, the appeals of the assessee are partly allowed for statistical purpose.

Order pronounced in the open court at the time of hearing on Wednesday, the 4<sup>th</sup> day of July, 2018, at Chennai.

**Sd/-**  
**(जॉर्ज माथन)**  
**(GEORGE MATHAN)**  
न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**  
**(अब्राहम पी. जॉर्ज)**  
**(ABRAHAM P. GEORGE)**  
लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated:4<sup>th</sup> July, 2018.

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |