

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

ITA No. 5273/Del/2015  
Asstt. Year: 2012-13

DCIT, Circle 1 Moradabad	Vs.	M/s. Prathma Bank Ramganga Vihar Moradabad (UP) PAN AAAJP0988Q
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by:	Shri Surender Pal, Sr.DR
Assessee by :	Shri Piyush Kaushik, Adv.
Date of Hearing	14/09/2018
Date of pronouncement	03/10/2018

**ORDER**

**PER L.P. SAHU, A.M**

This is an appeal filed by the revenue against the order of the Ld. CIT(OSD) (Appeals)-Moradabad dated 9.6.2015 for the assessment year 2012-13 on the following grounds :-

*“ 1. On the facts and circumstances of the case and in law the Ld. Principal Commissioner of Income Tax (OSD) (Appeals), Moradabad erred in deleting the addition made by the Assessing Officer by restricting the claim of deduction u/s 36(1)(viiia) of the Income Tax Act, 1961 to the extent of*

*the provisions for bad and doubtful debts made in the books of accounts.*

*2. That the order of the Principal Commissioner of Income Tax (OSD) / (Appeal), Moradabad being erroneous in law and on facts may be cancelled and the order of the Assessing Officer may be restored.”*

2. Brief facts of the case are that assessee was engaged in the banking business. Assessee filed return on 29.9.2012 declaring NIL income. The case was selected for scrutiny and statutory notices were issued to the assessee. During the course of assessment proceedings Ld. AO observed that the assessee has claimed bad and doubtful debts and claimed deduction u/s 36(1)(vii) which was 10% of average rural advances of Rs. 1,40,17,50,100/- . Further, he noted that the Assessee had claimed Rs.26,35,77,000/- as a provision for bad and doubtful debts but the AO allowed the claim of deduction u/s 36(1)(viiia) at Rs. 26,35,77,000/-.

3. Being aggrieved from the order of the AO, the assessee preferred an appeal before the Ld. CIT(A) and Ld. CIT(A) after considering the submissions of the assessee and relying on the order of the ITAT, allowed the appeal of the assessee holding that the claim of the assessee is justified as per section 36(1)(viiia). The findings of the Ld. CIT(A) is as under :-

*“I have taken into consideration the grounds of appeal, detailed written submissions made by the counsel for the appellant and have gone through various judicial pronouncements cited the counsel. . The only issue to be adjudicated upon is the claim of deduction made by the assessee u/s 36(1)(viiia) of the J.T. Act which has been restricted by the A.O. to the extent of the provision for bad and doubtful debts made in the books of accounts ignoring the claim of the assessee @ 10%, of average monthly rural advances which is based on clear interpretation of the language used in section 36(1)(viiia) It is also noticed that the point of the AO was that the clear findings of Bangalore Bench of ITAT "does not belong to our jurisdictional ITAT, hence not binding on us" particularly in view of the fact that there is no contrary decision of*

*jurisdictional bench of the ITAT. The submissions of the appellant in appeal is that the AO has erred both in law and on facts in not applying the ratio laid down by the Apex Court reported in (2010) 2211 ITR 440 (SC) in the case of Southern Technologies Ltd. Vs JCIT by simply stating that the said order deals with NBFCs. while the Apex Court has specifically analyzed the provisions of section 36(1)(vii) in the cases of banks. The Assessing Officer erred both in law and on facts in not making any observation on the argument advanced by the assessee regarding interpretation of the provisions of section 36(1)(vii) vis-a-vis section 32(1) of the I.T. Act when the language used in both the sections is identical. Thus it was contended that the AO was wrong in following the clear findings of Bangalore Bench of ITAT stating that the said decision "does not belong to our jurisdictional ITAT, hence not binding on us" The AR also referred to the decision of Hon'ble Punjab & Haryana High Court in the case of State Bank of Patiala vs CIT disregarding the verdict of Kerala high Court in the case of South Indian Bank Ltd. Vs CIT relied upon by the assessee in view of the landmark judgment of Supreme court in the case of CIT vs Vegetable Products [188 ITR 192 (SC)] holding therein that "if two reasonable constructions of a taxing provision are possible, that construction which favors the assessee must be adopted". It is seen that the Hon'ble Apex court in the case of MIS Southern Technologies Ltd. Vs Joint Commissioner of Income-tax, Coimbatore, (2010) 228 CTR(SC) 440 had occasion to analyse the provisions of section 36(1)(vii) and held as under*

*"Analysis of Section 36(1)(vii)*

*Section 36(1)(vii) provides for a deduction in the computation of taxable profits for the debt established to be a bad debt. Section 36(1)(vii) provides for a deduction in respect of any provision for bad and doubtful debt made by a Scheduled Bank or Non-Scheduled Bank in relation to advances made by its rural branches, of a sum not exceeding a specified percentage of the aggregate average advances by such branches. Having regard to the increasing social commitment, Section 36(1)(vii) has been amended to provide that in respect of provision for bad and doubtful debt made by a scheduled bank or a non-scheduled bank, an amount not exceeding a specified per cent of the total income or a specified per cent of the aggregate average advances made by rural branches, whichever is higher, shall be allowed as deduction in computing the taxable profits."*

*Apart from above, I have also gone through a Circular No 258 dated 14/06/1979, issued by the CBDT which read as under: .'*

*"13.1 Under section 36(1)(vii), a taxpayer carrying on business or profession is entitled to a deduction, in the computation of the, taxable profits, of the amount of any, debt, which is established to have become bad during the previous year, subject to certain*

conditions. However, a mere provision for bad and doubtful debts is, not allowed as a deduction in the computation of the taxable profits.

13.2 In order to promote rural banking and assist the scheduled commercial banks in making adequate provisions from their current profits to provide for risks in relation to their rural advances, the Finance Act, 1979 has inserted a new clause (viia) in sub-section (1) of section 36 to provide for a deduction, in the computation of the taxable profits of all scheduled commercial banks, in respect of provisions made by them for bad and doubtful debts relating to advances made by their rural branches. The deduction will be limited to 1 ½ per cent of the aggregate average advances made by the rural branches computed in the manner to be prescribed by rules in the Income-tax Rules, 1962. For this purpose, a "rural branch" means a branch of a scheduled bank situated in a place with a population not exceeding 10,000 according to the last preceding census of which the relevant figures, have been published before the first day of the previous year. The expression, "scheduled bank" has the same meaning as in the Explanation below section 11(2)(b) but does not include a co-operative bank. The expression "scheduled bank" would therefore, cover the State Bank of India constituted under the State Bank of India Act, 1955, any subsidiary bank of the State Bank of India as defined in the State Bank of India (Subsidiary Banks) Act, 1959, a nationalized bank as specified in section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or any other bank included in the Second Schedule to the Reserve Bank of India Act, 1934. It may be mentioned that all co-operative banks have been excluded from the purview of this provision in view of the position that under section 80P(2)(a)(i), the profits and gains of a co-operative society engaged in the business of banking or providing credit facilities to its members are completely exempt from income-tax.

*Finance Act, 1979*

13.3 It may be relevant to mention that the provision of new clause (viia) of section 36(1) relating to the deduction on account of provisions for bad and doubtful debts is distinct and independent of the provisions of section 36(1)(vii) relating to allowance of bad debts. In other words, the scheduled commercial banks would continue to get the full benefit of the write off of the irrecoverable debts under section 36(1)(vii) in addition to the benefit of deduction of the provision for bad and doubtful debts under section 36(1)(viia).

13.4 This provision will take effect from 1-4-1980 and will, accordingly, apply in relation to the assessment year 1980-81 and subsequent years. (Circular No 258 dated 14/06/1979: Explanatory notes on Finance Act, 1979: Finance Act, 1979 Deduction in respect of provisions made for bad and doubtful debts relating to rural branches of scheduled commercial banks -Section 36(1)(viia)

[Section 6(b) of the Finance Act]"

*The landmark judgment, of Supreme court in the case of CIT vs Vegetable Products [188 ITR192 (SC)] holding" therein .that "if two reasonable constructions of a taxing provision are possible, that construction which favors the assessee must be adopted".*

*From what has been discussed above it is Clear that the provisions of new clause (viia) of section 36(1) relating to the deduction on account of provisions for bad and doubtful debts is distinct and independent of the provisions of section 36(1)(vii) relating to allowance of bad debts. In other words, the scheduled commercial banks would continue to get the full benefit of the write off of the irrecoverable debts under section 36(1)(vii) in addition to the benefit of deduction of the provision for bad and doubtful debts under section36(1)(viia). The Hon'ble ITAT, Bangalore Bench in the case of Syndicate Bank vs Dy. Commissioner of Income-tax (2001) 78 ITD 103 (Bang) has held that -*

*The true meaning of the clause, as indicated earlier, is that once a provision for bad and doubtful debts is made by a scheduled bank having rural branches, the assessee is entitled to a deduction which is quantified not with respect to the amount provided for in the accounts, but with respect to a certain' percentage of the total income and also a certain percentage of the aggregate average advances made by the rural branches of the bank. In other words, this is a specific deduction given by the statute irrespective of the quantum provided by the assessee in its accounts towards provision for bad and doubtful debts*

*The above findings of the ITAT Bangalore Bench, is crystal clear as regards the quantum of deduction admissible u/s 36(1)(viia) of the LT. Act. The A.O. has arbitrarily brushed side these findings stating that this decision does not belong to our jurisdictional ITAT. The action of the AO is not reasonable in view of the landmark judgment of the Apex court's in the case of CIT vs Vegetable Products [188 ITR 192 (SC)] holding therein that "if two reasonable constructions of a taxing provision are possible, that construction which favors the assessee must be adopted."*

4. Feeling aggrieved from the order of the Ld. CIT(A) the revenue is in appeal before the ITAT.

5. Ld. DR relied upon the order of the AO. On the other hand Ld. AR relied on the order of the Ld. CIT(A) and he submitted that the order of the Ld. CIT(A) is right and he submitted that the Ld. CIT(A) has done good reasoned order therefore it should not be disturbed. He further submitted that the Hon'ble Coordinate bench of the Delhi Tribunal has allowed the appeal of the assessee in ITA No. 4090/Del/13 for the asstt. Year 2010-11 vide order dated 14.7.2017 on the same issue and therefore deduction u/s 36(1)(viia) has been

correctly allowed by the Id. CIT(A). Assessee has submitted the paper book containing 68 pages. The findings recorded by the Tribunal in the aforesaid order read as under :

*“20. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, the assessee claimed deduction u/s 36(1)(vii) of the Act at 10% of the average agricultural advances made by its rural branches. The said claim was disallowed by the AO. However, the Id. CIT(A) allowed the claim by following the ratio laid down by the Hon’ble Supreme Court in the case of Southern Technologies Ltd. Vs JCIT 320 ITR 577 (supra) wherein it has been held as under:*

*“Section 36(1)(vii) provides for a deduction in respect of any provision for bad and doubtful debt made by a scheduled bank or non-scheduled bank in relation to advances made by its rural branches, of a sum not exceeding a specified percentage of the aggregate average advances by such branches. Having regard to the increasing social commitment, section 36(1)(vii) has ITA No. 4060/Del/2013 Prathma Bank 22 been amended to provide that in respect of provision for bad and doubtful debt made by a scheduled bank or a non-scheduled bank, an amount not exceeding a specified per cent, of the total income or a specified per cent, of the aggregate average advances made by rural branches, whichever is higher, shall be allowed as deduction in computing the taxable profits.”*

*21. It is also an admitted fact that for the preceding year on an identical issue the Id. CIT invoked the provisions of Section 263 of the Act and this Bench of the Tribunal having same combination, set aside the said order in assessee’s own case as reported in (2016) 52 ITR (Trib.) 454 (supra) and observed in para 18 of the order dated 25.04.2016 as under:*

*“18. In the present case, the assessee had given the break-up of each branch (copies of which are placed at pages 15 to 28). In the instant case, the assessee in its computation of revised total income/loss (copy of which is placed at page 1*

*of the assessee's paper book) clearly mentioned that deduction under section 36(1)(viiia) of the Act was claimed at 10 per cent of average agricultural advances of Rs.801.56 crores. Thereafter, the Assessing Officer after examining the aforesaid details came to the conclusion that the claim of the assessee was allowable and he accordingly allowed the claim of the assessee under section 36(1)(viiia) of the Act. The said claim was in accordance with law and as provided in the provisions of section 36(1)(viiia) of the Act."*

22. *On a similar issue, the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. Vs CIT 343 ITR 270 (supra) held as under:*

*"The clear legislative intent of the provisions and unambiguous language of the circulars with reference to the amendments to section 36 of the Act is that the deduction on account of provisions for bad and doubtful debts under section 36(1)(viiia) is distinct and independent of the provisions of section 36(1)(vii) relating to allowance of the bad debts. After introduction of section 36(1)(viiia) by the finance Act, 1979, with effect from April 1,1980, Circular No. 258, dated June 14, 1979, was issued by the Central Board of Direct Taxes to clarify the application of the new provisions. The provisions were introduced in order to promote rural banking and assist scheduled commercial banks in making adequate provision from their current profits for risks in relation to their rural advances. The deductions were to be limited as specified in the section. The circular mentions that the provisions of new clause (viiia) of section 36(1), relating to the deduction on account of provisions for bad and doubtful debts, is distinct and independent of the provisions of section 36(1)(vii) relating to allowance of deduction of the bad debts. In other words, scheduled commercial banks would continue to get the benefit of the write off of the irrecoverable debts under section 36(1)(vii) in addition to the benefit of deduction of the provision for bad and doubtful debts under section 36(1)(viiia)."*

23. *In the present case, the AO himself admitted in the assessment order at page no. 3 that the assessee had claimed deduction u/s 36(1)(viiia) of the Act at Rs.105,69,80,000/- which is 10% of the aggregate rural advances of the bank. The aforesaid claim was allowable to the assessee*

*as per the ratio laid down by the Hon'ble Supreme court in the aforesaid ITA No. 4060/Del/2013 Prathma Bank 24 referred to cases of Southern Technologies Ltd. Vs JCIT 320 ITR 577 and Catholic Syrian Bank Ltd. Vs CIT 343 ITR 270. The impugned order passed by the Id. CIT(A) is in consonance with the observations made by the ITAT "F" Bench, New Delhi having same combination in assessee's own case for the assessment year 2009-10 i.e. Prathma Bank Vs CIT (2016) 52 ITR (Trib.) 454 (Del.) (supra). We, therefore, considering the totality of the facts as discussed hereinabove, do not see any valid ground to interfere with the findings given by the Id. CIT(A). Accordingly, we do not see any merit in this appeal of the department.*

*In the result, appeal of the department is dismissed."*

Respectfully following the decision of co-ordinate Bench, we find the appeal of the Revenue devoid of merit and the same deserves to be dismissed.

6. In the result appeal of the revenue is dismissed.

Order pronounced in the open court on 03/10/2018

**sd/-**

**(BHAVNESH SAINI)**

**JUDICIAL MEMBER**

Dated: 03/10/2018

***Veena***

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

**sd/-**

**(L.P. SAHU)**

**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT, New Delhi