

IN THE INCOME TAX APPELLATE TRIBUNAL  
BENGALURU BENCH 'A', BENGALURU

BEFORE SHRI. A. K. GARODIA, ACCOUNTANT MEMBER

AND

SHRI. LALIET KUMAR, JUDICIAL MEMBER

I.T.A No.2885/Bang/2017  
(Assessment Year : 2012-13)

The Akkialur urban Co-op Bank Ltd,  
Akkialur, Hanagal Taluk,  
Haveri District .. Appellant  
PAN : AAABT2417N

v.

Income-tax officer,  
Ward – 2, Haveri .. Respondent

Assessee by : Shri. Ramasubramanyam, CA  
Revenue by : Shri. Vikram Suryavamshi, Addl.CIT

Heard on : 20.02.2019  
Pronounced on : 28.02.2019

**ORDER**

**PER LALIET KUMAR, JUDICIAL MEMBER :**

The present appeal is filed by the assessee against the order of the CIT (A), Davangere, dt.28.09.2017, for the assessment year 2012-13.

02. Following grounds are raised by the assessee ;

1. That the order of the learned Commissioner of Income-tax (Appeals), in so far it is prejudicial to the interest of the appellant is bad and erroneous in law and against the facts and circumstances of the case.
2. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the disallowance of provision made towards non-performing investments of Rs.97,00,000/- even though the same has become irrecoverable and was made as per the direction of Reserve Bank of India.
3. Without prejudice to the above, the learned Commissioner of Income Tax (Appeals) erred in law and in facts in allowing Rs.53,250/- under section 36(1)(viiia) instead of Rs.2,39,429/-.
4. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in disallowing the provision made towards non-performing investments as provision for bad and doubtful debts u/s. 36(1)(viiia).

03. The CIT (A) had disallowed the provision for bad and doubtful debts and in this regard the CIT (A) in para 6 and 6a of his order, had recorded as under :

*6. As regards the other issue, disallowance of provision made for bad and doubtful debts u/s 36(1)(viiia) is contested. The AO noticed that the assessee had debited Rs.97,00,000/- in the Profit & Loss A/c towards BDDR. Upon verification, the AO found that the reserves for such expenses was not in accordance with Sec. 36(i)(viiia) of the Act and on reworking found that the assessee had claimed excess deduction of Rs.96,46,750/- and disallowed the same.*

*The AO proposed to disallow the excess claim of expenditure of Rs.96,46,750/- and the reply filed by the assessee was not acceptable to the AO and he disallowed the excess reserve debited to the Profit & Loss a/c and brought it to tax.*

*6a. I have gone through the submissions made before me in this regard and find that the assessee's contentions are not tenable because what is debited in P&L account is only a provision and not a crystallised liability. Any provision is to be*

*added back to the income declared, therefore it is held that the entire BDDR of Rs.97,00,000/debited to the Profit & Loss a/c is to be disallowed. The AO is directed to verify the same and accordingly, bring the same to tax. Thus the ground fails.*

04. The Ld. AR had submitted that the assessee had obtained licence from RBI to run the banking business. The assessee filed return of income for A. Y. 2012-13 declaring loss of Rs.89,12,597/-. The AO passed order u/s.143(3) where, in para 5.2 the AO had recorded that the assessee had not written off the debts in its books of account and the assessee is still showing the debts as balance in the assets of the balance sheet. Further it was pointed out by the AO that the assessee had debited the provision for bad and doubtful debts in the profit and loss account which clearly shows that the assessee had not written off such amounts in its books of account. On the basis of the above the AO had disallowed the provision for bad and doubtful debts. Before us the Ld. AR had relied upon the judgment of the Hon'ble Supreme Court in the matter of Vijaya Bank v. CIT [323 ITR166].

05. On the other hand the Ld. DR had submitted that there is no error in the order passed by the lower authorities as the assessee was not able to satisfy the conditions mentioned u/s.36(1)(vii) of the Act.

06. We have heard the rival contentions and perused the record. Undoubtedly the AO as brought on record that the assessee has not written off the debts in the books of account and the assessee is still showing the balance on the assets side of the balance sheet. In view

of the above and in view of the provisions of section 36(1)(viia), we do not find any merit in the appeal of the assessee and therefore the same is dismissed.

07. We draw our strong support from the judgment cited by the assessee, against the assessee, in Vijaya Bank [supra], wherein at para 6 and 7, Hon'ble Supreme Court held as under :

*6. The first question is no more res integra. Recently, a Division Bench of this court in the case of Southern Technologies Ltd. v. Joint CIT reported in [2010] [320 ITR 577](#), (in which one of us S. H. Kapadia J. was a party) had an occasion to deal with the first question and it has been answered, accordingly, in favour of the assessee, vide paragraph 25, which reads as under (page 604) :*

*"Prior to April 1, 1989, the law, as it then stood, took the view that even in cases in which the assessee (s) makes only a provision in its accounts for bad debts and interest thereon and even though the amount is not actually written off by debiting the profit and loss account of the assessee and crediting the amount to the account of the debtor, the assessee was still entitled to deduction under section 36(1)(vii). (See CIT v. Jwala Prasad Tiwari [1953] [24 ITR 537](#) (Bom) and Vithaldas H. Dhanjibhai Bardanwala v. CIT [1981] [130 ITR 95](#) (Guj)). Such state of law prevailed up to and including the assessment year 1988-89. However, by insertion (with effect from April 1, 1989) of a new Explanation in section 36(1)(vii), it has been clarified that any bad debt written off as irrecoverable in the account of the assessee will not include any provision for bad and doubtful debt made in the accounts of the assessee. The said amendment indicates that before April 1, 1989, even a provision could be treated as a write off. However, after April 1, 1989, a distinct dichotomy is brought in by way of the said Explanation to section 36(1)(vii). Consequently, after April 1, 1989, a mere provision for bad debt would not be entitled to deduction under section 36(1)(vii). To understand the above dichotomy, one must understand 'how to write off'. If an assessee debits an amount of doubtful debt to the profit and loss account and credits the asset account like sundry debtor's account, it would constitute a write off of an actual debt. However, if an assessee debits 'provision*

*for doubtful debt' to the profit and loss account and makes a corresponding credit to the 'current liabilities and provisions' on the liabilities side of the balance-sheet, then it would constitute a provision for doubtful debt. In the latter case, the assessee would not be entitled to deduction after April 1, 1989."*

7. *One point needs to be clarified. According to Shri Bishwajit Bhattacharya, the learned Additional Solicitor General appearing for the Department, the view expressed by the Gujarat High Court in the case of Vithaldas H. Dhanjibhai Bardanwala [1981] [130 ITR 95](#) was prior to the insertion of the Explanation vide the Finance Act, 2001, with effect from April 1, 1989, hence, that law is no more a good law. According to the learned counsel, in view of the insertion of the said Explanation in section 36(1)(vii) with effect from April 1, 1989, a mere debit of the impugned amount of bad debt to the profit and loss account would not amount to actual write off. According to him, the Explanation makes it very clear that there is a dichotomy between actual write off on the one hand and a provision for bad and doubtful debt on the other. He submitted that a mere debit to the profit and loss account would constitute a provision for bad and doubtful debt, it would not constitute actual write off and that was the very reason why the Explanation stood inserted. According to him, prior to the Finance Act, 2001, many assessees used to take the benefit of deduction under section 36(1)(vii) of the 1961 Act by merely debiting the impugned bad debt to the profit and loss account and, therefore, Parliament stepped in by way of Explanation to say that mere reduction of profits by debiting the amount to the profit and loss account per se would not constitute actual write off. To this extent, we agree with the contentions of Shri Bhattacharya. However, as stated by the Tribunal, in the present case, besides debiting the profit and loss account and creating a provision for bad and doubtful debt, the assessee-bank had correspondingly/simultaneously obliterated the said provision from its accounts by reducing the corresponding amount from loans and advances/debtors on the assets side of the balance-sheet and, consequently, at the end of the year, the figure in the loans and advances or the debtors on the asset side of the balance-sheet was shown as net of the provision "for the impugned bad debt". In the judgment of the Gujarat High Court in the case of Vithaldas H. Dhanjibhai Bardanwala [1981] [130 ITR 95](#), a mere debit to the profit and loss account was sufficient to constitute actual write off whereas,*

*after the Explanation, the assessee(s) is now required not only to debit the profit and loss account but simultaneously also reduce loans and advances or the debtors from the assets side of the balance-sheet to the extent of the corresponding amount so that, at the end of the year, the amount of loans and advances/debtors is shown as net of the provisions for the impugned bad debt. This aspect is lost sight of by the High Court in its impugned judgment. In the circumstances, we hold, on the first question, that the assessee was entitled to the benefit of deduction under section 36(1)(vii) of 1961 Act as there was an actual write off by the assessee in its books, as indicated above.*

For the purposes of claiming the deduction the assessee should have actually written off the bad debts exceeding the threshold limit prescribed by the Act. In the present case the assessee has actually not written off the bad debts in its books of account and had continued to show the same on the assets side of the balance sheet. Therefore the assessee is not entitled to any deduction u/s.36(1)(vii) of the Act. We hold accordingly.

08. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 28<sup>th</sup> day of February, 2019.

Sd/-

(A. K. GARODIA)  
ACCOUNTANT MEMBER

Sd/-

(LALIET KUMAR)  
JUDICIAL MEMBER

Bengaluru

Dated : 28.02.2019

MCN\*

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Bangalore.