IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

BEFORE SH. N. K. CHOUDHRY, JUDICIAL MEMBER
AND SH. O. P. MEENA ACCOUNTANT MEMBER

I.T.A. No. 121/Asr/2013
Assessment Year: 2009-10

The Hoshiarpur Central Coop. Bank Ltd., Railway Road, Hoshiarpur [PAN: AAAAT 0384K] **(Appellant)**	vs.	Addl. C. I. T., Hoshiarpur Range, Hoshiarpur **(Respondent)**

I.T.A. No. 120/Asr/2013
Assessment Year: 2009-10

Deputy Commissioner of Income Tax, Hoshiarpur Circle, Hoshiarpur **(Appellant)**	vs.	The Hoshiarpur Central Coop. Bank Ltd., Railway Road, Hoshiarpur [PAN: AAAAT 0384K] **(Respondent)**

I.T.A. No. 700/Asr/2014
Assessment Year: 2011-12

Asstt. Commissioner of Income Tax, Hoshiarpur Circle, Hoshiarpur **(Appellant)**	vs.	The Hoshiarpur Central Coop. Bank Ltd., Railway Road, Hoshiarpur [PAN: AAAAT 0384K] **(Respondent)**

I.T.A. No. 156/Asr/2017
Assessment Year: 2013-14

The Hoshiarpur Central Coop. Bank Ltd., Railway Road, Hoshiarpur [PAN: AAAAT 0384K] **(Appellant)**	vs.	Dy. C. I. T., Circle, Hoshiarpur **(Respondent)**

Appellant by : Sh. J. S. Bhasin (Adv.)
Respondent by: Sh. Alok Kumar CIT-DR

Date of Hearing: 17.12.2019
Date of Pronouncement: 20.12.2019

ORDER

Per O. P. Meena, AM:

The above cross appeals are filed by the Revenue and Assessee are directed to order of Commissioner of Income Tax (Appeals), Jalandhar dated 19.12.2012, for AY 2009-10 and another two appeals filed by assessee against of Ld. CIT(A) dated 09.09.2014 and 20.02.2017 for the Assessment Years 2011-12 and 2013-14 respectively. The above files were heard together hence a consolidated order is being passed accordingly.

ITA No.120/Asr/2013 (AY 2009-10) by the Revenue

2. Ground no. 1 relates in deleting the addition amounting toRs.41,00,640/- made on account disallowance of dividend distribution by the AO.

3. At the outset, the Ld. DR has pointed out that this issue is covered by the decision of tribunal in the assessee's own case in ITA No. 93/Asr/2011 for the assessment year 2007-08 vide para 6 to 8 of ITAT order dated 16.07.2018.

4. The Ld. counsel also stated that facts are identical which are also followed by the CIT(Appeal) while deleting the additions on the issue under consideration.

5. We have heard the rival submissions and perused the material available on record. We find that the issue is squarely covered by the assessee's own case in ITA No. 93/Asr/2011 dated 16.07.2018. We find that the tribunal vide para 6 to 8 has given a finding which are reproduced as under:

> *"6. The first ground of the Revenue's appeal is in respect of deletion of a sum of Rs.34,00,732/- added by the AO as income from other sources on account of non payment of dividend distribution tax by the assessee-company, which in fact claims to be not liable for the said tax. We find no basis for the said addition. Even assuming, for the sake of argument, that the dividend distribution tax was indeed payable by the assessee-company, the Revenue can only proceed under law to exact the same. It does not in any manner lead to the inference of any income having accrued to the assessee as a result. Rather, the said tax, where paid, would stand to be debited to its operating statement (P&L A/c) for the year. We decide accordingly.*
>
> *7. Vide the second ground, the Revenue contests the deletion of the disallowance of the provision on standard assets, made by the assessee-bank at the rate of 0.25%, on the ground it being only a contingent liability. The assessee alludes to the RBI/NABARD guidelines, which are to be mandatorily followed. The same, in view of the AO, would not convert the provision as toward an existing liability, only in which case would the provision be deductible u/s. 37(1), quoting from the Board Instruction No. 17/2008 dated 26.11.2008, qualifying that a*

provision in respect of uncertain or contingent liability, which had not accrued, would not qualify for deduction. In appeal, the assessee found favour with the ld. CIT(A) on the basis that the provision, though against standard assets, is yet a provision for bad and doubtful debts and, therefore, governed by section 36(1)(viia), which admits deduction at seven and a half per cent. of the total income (before making any deduction under this clause and Chapter VIA), with the said limit being not breached in the instant case.

8. We have heard the parties, and perused the material on record.

We find no infirmity in the impugned order. The AO shall compute the deduction u/s. 36(1)(viia) including the impugned disallowance, and where the total deduction does not exceed the statutory limit there-under, no disallowance could be made. Here it may also be relevant to state that section 36(1)(viia) is applicable to cooperative banks (other than those excluded) w.e.f. 01.04.2007, i.e., AY 2007-08 onwards. The assessee has not been shown to us as falling within the excluded categories, which we note to be the same as those saved u/s. 80P(4). As such, clearly either of the two sections, i.e., 36(1)(viia) or section 80P, shall apply to the assessee, who cannot take an ambivalent stand with regard to its status. The parameters of a primary agricultural credit society or a primary cooperative agricultural and rural development bank, i.e., two specified excluded categories, are well settled. The AO shall accordingly examine the matter, and decide the same issuing definite findings of fact, of course, after hearing the assessee in the matter. In fact, as it appears, the assessee has not claimed deduction u/s. 80P, for otherwise this itself would have been the subject matter of dispute between the parties, with the AO clearly adverting to section 80P(4), excluding the assessee from the purview of section 80P. Why, in that case, i.e., of the assessee being considered as eligible for deduction u/s. 80P even for AY 2007-08 onwards, all the other issues would get subsumed therein as the assessee's entire income from banking business would get deducted u/s. 80P(1) r.w.s. 80P(2)(a)(i). As such, it is

rather the AO who appears to be ambivalent by denying the assessee deduction u/s. 36(1)(viia) as well as u/s. 80P. We decide accordingly."

6. In view of above, respectively following the decision in assessee's own case, this ground of Revenue is accordingly dismissed.

7. Ground no. 2 relate to deleting the addition of Rs.6,00,75,946/- made on account of standard loan disallowed by the AO.

8. The Ld. CIT-DR relied on the order of AO.

9. Per contra the Ld counsel for the assessee submitted that this issue is covered by para 14 and 15 at page 16 to21 by the order ITAT in assessee's own case in ITA No. 47/Asr/2011 and ITA No. 93/Asr/2011 dated 16.07.2018.

10. We have heard the rival submissions and find that the issue is covered against the Revenue by the order of ITAT vide para 14 to 15 vide order of ITAT dated 16.07.2018 (supra) which are reproduced as under:

"14. Ground 4 is in respect of claim of Rs.1.43 lacs (refer para 13 above). The same was denied on the basis that the said provision could not be regarded as a provision for bad and doubtful debts. The assessee's claim is that the interest, booked as income for fy. 2006-07 (AY 2007-08), being not realized even during fy. 2007-08 (AY 2008-09), was reversed. That is, constitutes reversal of interest, so that it would not, as stated by the ld. CIT(A), stand to be debited to the provision account.

15. We have heard the parties, and perused the material on record.

The assessee bank, following accrual system of accounting, had booked income for AY 2007-08 even as the interest was pending realization. The same having not been realized even during AY 2008-09, the current year, the same was

reversed. The assessee has itself claimed this reversal as a provision for bad and doubtful debts. If the income had been, as claimed, already booked as income (for AY 2007-08), all that needs to be done is to the debit the provision (for bad and doubtful debts) account, with a corresponding credit to the respective debtors account/s, whose account/s would have been debited on charge of interest for fy. 2006-07 (AY 2007-08). We find nothing wrong in the adjudication by the ld. CIT(A), nor could the ld. AR during hearing point out to any. This decides assessee's Ground 4.

This, however, yet, leaves another aspect of the matter. The assessee has, apart from the provision of Rs.2 lacs (as at para 13 above), made further provision of Rs.850 lacs u/s. 36(1) (viia), as under, i.e., at a total of Rs.852 lacs:

(a) provision made against standard assets	*Rs.100 lacs*
(b) provision against rural advances	*Rs.750 lacs*
	Rs.850 lacs

The provision u/s. 36(1)(viia) at the rate of 7.5% of income working to Rs.98.31 lacs, the ld. CIT(A) restricted the deduction for the provision for bad and doubtful debts thereto, thus, in effect, directing a disallowance for Rs.1.69 lacs (Rs.100 lacs-Rs.98.31 lacs). The assessee's case (also refer Ground 2) is that the provision u/s. 36(1)(viia) should be considered at Rs.850 lacs, i.e., by including Rs.750 lacs, which is within the prescribed limit of 10% of the aggregate average advances made by rural branches of the bank (computed in the prescribed manner). That is, there is no scope for considering the provision (u/s. 36(1)(viia)) disjunctively. And that both the components of 36(1)(viia) must be considered together in-as-much as it is a single provision, albeit comprising of two parts, each of which is to be computed separately. As long as therefore the total provision is within the total amount computed as prescribed u/s. 36(1)(viia), no disallowance could be made

with reference to either component. In our considered view, firstly, the crystallization of the amount of provision u/s. 36(1)(viia), in-so-far as it is based on assessed income, shall have to await the finalization of and, thus, could only be after giving the effect to the assessee's other claims (or counter claims), i.e., in appeal proceedings. On merits, the assessee has aggregated the provision into its two constituents, opening and maintaining separate (provision) accounts for each of them, as is incumbent upon it. This is as though each of the two limbs is, in effect, a provision for bad and doubtful debts, the deduction for the same is to be made with reference to the upper limit for each of the two limbs, defined separately as, 'not exceeding' i.e., the specified percentage of total income in one case, and of the aggregate rural branch advances for the other. Each of the two components would therefore have to be reckoned separately, and no disallowance could be made where each of the two components does not exceed the limits specified there-for. It does not mean that the provision already made in accounts is to be disturbed to accommodate other provision, i.e., adjust the provision account, where in excess (as by Rs.1.69 lacs qua the income based provision in the instant case), with that where it is short. We say so as the section does not specify the amount of deduction per se, but permits the deduction in respect thereof up to a particular sum. As such, as along as the limit, specified separately, which is the reason for our stating of the assessee being required to maintain two provision accounts, is not breached, no disallowance could be made. Per contra, to the extent it is, disallowance for the excess claim would follow. It may be argued that the assessee could, in that case, open a single account which would make the adjustment aforesaid, i.e., transfer from one provision account to another, unnecessary. The total provision made each year would stand to be reckoned with reference to the sum of the two limbs, and as long as the aggregate of the two, i.e., 7.5% of the current year's income and 10% of the aggregate rural advances, is not breached, no disallowance could be called for. The argument needs

examination. As afore-stated, each of the two limbs, nevertheless, represent a provision u/s. 36(1)(viia). This, however, would require us to consider as to if the provision component reckoned on the basis of all rural branch advances is to be reckoned on a year-wise basis or the provision already credited in accounts is to be taken into account, i.e., if a provision for Rs.10 lacs (say) stands already made and allowed for an earlier year (AY 2007-08, say), would the assessee be eligible for another deduction of Rs.10 lacs qua rural advances assuming, for the sake of simplicity, no increase in the rural advances during the previous year relevant to AY 2008-09. This could be extrapolated for each succeeding year. It does not appear to be so, i.e., that the provision already made would have to be taken into account. This is as, where not so, the aggregate provision qua rural advances would, in time, exceed hundred per cent of such advances, i.e., as outstanding at the end of the relevant year, and which cannot be. The provision, it needs to be appreciated, is against an asset, i.e., recognizes the risk associated with its realisability and, therefore, is valid only with reference to the extant assets, i.e., as obtaining at the relevant time. The provision as on 31.03.2008 (asset) would therefore have to be reckoned with reference to the advances (by rural branches of the bank, speaking in the context of section 36(1)(viia)) as on 31.03.2008. The said provision may include that made during the earlier years, i.e., where not reversed, which thus would have to be taken into account while computing the upper limit specified qua rural advances u/s. 36(1)(viia). And in which case, therefore, the provision based on income (for each year u/s. 36(1)(viia) would have to be made, accounted for and reckoned (for the breach of the limit specified in its respect) separately. The argument aforesaid appealing at first blush, does not hold.

At this stage, we may refer to the Revenue's Ground No. 2 (for AY 2008-09, in ITA No. 399/Asr/2011). The AO regarding the entire provision of Rs.852 lacs by the assessee as against standard loans, effected an addition for the same, i.e., Rs.852 lacs. The ld. CIT(A), while confirming disallowance of Rs.2 lacs (agitated

by the assessee per its appeal), regarding the balance Rs. 850 lacs as in excess by Rs.1.69 lacs, allowed thus, in effect, a relief of Rs.848.31 lacs, which the Revenue contests per its Ground 2. Even if against standard assets, why could not the provision be regarded as a provision for bad and doubtful debts. A provision, though normally in-admissible in computing income u/s. 28, is allowed as special measure (in computing taxable income) for banks, including cooperative banks, in view of the nature of the business. While one component of the provision is based on income, so that it would necessarily have to be a regular component, i.e., for each year, based on its income, the other part is based on the aggregate (average) advances by rural branches, limit for which stands separately already specified. The provision made during the current year shall be allowed subject to the total provision (i.e., including that already made) not exceeding the limits specified in its respect.

To conclude, the issue of disallowance of Rs.1.69 lacs sustained by ld. CIT(A) and Rs.848.31 lacs deleted by him, and qua which the opposing sides are in appeal, are correlated. This also explains our considering the two together, as also apparent from the said consideration. However, while arguments were made in respect of the assessee's appeal, the Revenue's appeal was largely considered as consequential. In the absence of proper deliberation, we do not consider it proper to conclude the two (correlated) issues. Our foregoing observations notwithstanding, which may well be relied upon by either side in the set aside proceedings, we only consider it proper that the matter is restored to the file of the AO for adjudication afresh after allowing the assessee a reasonable opportunity of presenting its case, in accordance with law. No side, we may though add, be constrained by our observations, so that is an open set aside. Ground 2 of the assessee's and the Revenue's appeal is disposed of accordingly.

In the light of the above ground is respectively following the decision of ITAT, we dismissed the appeal of the Revenue and this ground.

11. In the result, the appeal for AY 2009-10 of the Revenue is dismissed.

ITA No.121/Asr/2013 (AY 2009-10) by the Assessee

12. Ground no. 1 to 5 are relates and confirming the addition of Rs.2,17,18,237/- on account of losses of fraud committed at main branch, Hoshiarpur and Rs.2,58,57,709/- on account of contra entry of interest not decided by the CIT(Appeal). The Ld. counsel submitted that the CIT(Appeal) has allowed partly appeal in respect of disallowance of Rs.6,0075,946/- for provision made against standard loans of Rs.25 lacs and advances of rural branches at Rs. 1 crore by following the decision of his predecessor and CIT(Appeal) for AY 2008-09. However, the CIT(Appeal) did not adjudicate the ground relating to provision against fraud of Rs.2.17 crores and interest paid to head office of Rs.2.58 crores u/s 36(1)(viia) on the ground that no separate grounds are taken for the same in appeal nor the issue of disallowances arise from the assessment order also, hence the addition of Rs.4,75,75,946/- being disallowance not covered u/s 36(1)(viia) was not decided. The Ld. counsel draw our attention to para 4 of the assessment order wherein by adopting the figures of Rs.6,00,75,946/- as provision against standard loans dealt with the assessee's reply dated 10.10.2011, furnishing head-wise break up of the said amount of Rs.6,00,75,946/- only qua the two amounts of Rs.25 lacs being provision against standard loans and Rs. one crore being provision against rural advances, therefore his action to make addition, beyond the said two amounts, without confirming the assessee, was apparently erroneous, not warranting confirmation from the Ld. CIT(Appeal) also. Therefore it was requested before us that the issue may decided to the file of the AO for reexamination on this point.

13. Per contra the Ld. CIT-DR relied on the CIT(Appeal).

14. We have heard the rival submissions and perused the material available on record. We find that while considering the figure of Rs.6,00,75,946/- as provision against the standard loans, the assessee has submitted a reply vide letter dated 10.10.2011 giving the break up of the details of Rs.6,00,75,946/- as under:

"Para no. 17. ***Details of provisions made against standard loans/rural advances & other charges to profit & Loss Account.***

The details of Rs.60075946.42 is as under:-

S. No.	*Particulars*	*Amount in Rs.*
a)	*Provision made against Rural Advances as per Income Tax Act under section 36(i) (VIIA).*	*10000000.00*
b)	*Provision made against Standard Loan*	*2500000.00*
c)	*Provision made against Main B.O., Fraud*	*21718237.00*
d)	*Interest paid to Main Branch Hoshiarpur*	*25857709.42*
	Total	*60075946.42"*

We find that while disallowing the total amount of Rs.6,00,75,946/-. The AO has also included the amount of Rs.2.17 crores being provisions made against main branch office of fraud and Rs.2.58 crores being interest paid to main branch Hoshiarpur without confronting the assessee on this issue. Therefore, we are of the considered opinion that this issue is set aside to the file of the AO for examination

and reconsideration of the same after affording a reasonable opportunity of being heard to the assessee. In view of this ground of appeal is set aside to the file of the AO in entirety for reconsideration of the disallowances made at Rs.6,00,75,946/- accordingly.

15. Ground no. 6 relates to confirming the addition of Rs.8,39,825/- made by the AO being disallowance of fuel and hire charges debited to the P&L account.

16. At the outset, the Ld. counsel for the assessee submitted that this issue is covered against him by the decision of tribunal in assessee's own case vide para 4 and 5 page 8 to11 of ITAT order dated 16.07.2018. The Ld. CIT-DR has also agreed for the same.

17. We have heard the rival submissions and perused the material available on record. We find that the ITAT in ITA No. 47, 93/Asr/2011 dated 16.07.2018 has given his finding on the above issue as per para 4 and 5 at page 8 to 11 which is reproduced as under:

> *"4. The next issue, per Gd. 3, is in respect of disallowance of fuel and hire charges u/s. 37(1) of the Act. The assessee-bank was during assessment proceedings asked to explain the business purpose of the said expenditure, suffered and claimed at Rs.5,89,875/- for the current year, in-as-much as the same stood incurred in respect of the assessee's vehicles used by the Department of Cooperative Societies, Punjab. The letter by the Registrar of Cooperative Societies, Government of Punjab, itself clarifies that the expenditure was without any legal mandate for the same, and neither could the same be said to be incurred for assessee's business. The disallowance being affected thus, stood confirmed in first appeal for principally the same reasons. There is nothing in the charter of either the Registrar of Cooperative Societies or of the assessee-bank, for the*

former to require the assessee to bear a part of the administrative burden of its' office. Aggrieved, the assessee is in second appeal.

5. We have heard the parties, and perused the material on record. The facts are not in dispute. The law per section 37(1), under which section the deduction for expenditure is being claimed, or is otherwise allowable, mandates deduction of any expenditure incurred wholly and exclusively for the purposes of its business by an assessee. As is well-settled, the word 'wholly' in the said expression refers to its quantum, while 'exclusively' therein refers to the object or purpose for incurring the expenditure. The other conditions, not applicable in the instant case, are that the expenditure should not be in the nature of capital or personal expenditure or of the nature referred to in sections 30 to 36. The scope and ambit of the word 'wholly and exclusively' stands explained by the Apex Court per its decisions, interalia, in Sassoon J. David & Co. P. Ltd. v. CIT [1979] 118 ITR 261, 275 (SC); Sri Venkata Satyanarayna Rice Mill Contractors Co. v. CIT [1997] 223 ITR 101 (SC); CIT (Addl.) v. Kuber Singh Bhagwandas [1979] 118 ITR 379, 386-88 (MP)(FB); CIT v. Sales Magnesite (P.) Ltd. [1995] 214 ITR 1 (Bom). Again, the expression 'for the purpose of the business', as explained in CIT v. Mallayalam Plantations Ltd. [1964] 53 ITR 140, 150 (SC), extensively followed, is that the scope of the said expression is wider than that of the expression 'for the purpose of earning profits', obtaining in the analogous provision (s. 10(2) (xv)) of the 1922 Act. The same would include not only day to day running of the business but also rationalization of its administration and modernization of machinery; it may include measures for the preservation of the business or for the protection of the assets and property thereof from expropriation coercive process or assertion of hostile title; it may comprehend many other acts incidental to the carrying on of a business. In short, the words connote 'commercial expediency', considered from a businessman point of view and, therefore, would not include the condition of being incurred 'necessarily'. In the present case, however, we are unable to find

any commercial expediency. The assessee's only explanation, as we see it, and even as put forth by the ld. counsels before us, is that the Registrar of Societies being a regulatory body, the assessee could not refuse to accede to its prescriptions for all the cooperative banks meeting the maintenance cost of the vehicles being used by its officers. On being ask by the Bench as to how could it be said that the assessee could not refuse in the absence of any legal or contractual obligation, no satisfactory answer was forthcoming. In fact, the Registrar of Cooperative Societies (ROCS) is a registering authority, and not a regulatory authority. It is the NABARD (or RBI) under whose superintendence, direction and control, i.e., the banking policy as well as the policy framework is concerned, that is the regulatory body for the assessee-bank. Further, even so, the use of the vehicles being for the purposes of its officers, it is the purpose of the ROCS for which the expenditure stands incurred, and not for the assessee's business. In fact, even the letter dated 15.09.2008 by the ROCS, referred to during hearing (PB pgs. 40-41), even as pointed out by the ld. DR, states of the need to control the expenditure in view of its misuse, by fixing a quantitative cap in terms of litres of fuel per month. It does not point out the provision/prescription under which the contribution was being requisitioned, which is only in the nature of an exaction, apart from the fact that it does not serve any business purpose of the assessee. We may here refer to the decision in Lakshmiji Sugar Mills Co. Pvt. Ltd. v. CIT [1971] 82 ITR 376 (SC). The assessee in that case emphasized the statutory obligation under which the contribution (for constructing roads) was made by it, pointing out to the element of compulsion therein. The Apex Court did not, however, stop thereat. It proceeded to examine the purpose for which the contribution, i.e., for the development of road, was being defrayed by the assessee. The expenditure was allowed, finding it to have been incurred to facilitate the transportation of sugarcane. The expenditure was thus incurred essentially for the benefit of the business, which got an advantage of an enduring benefit for itself. In

other words, the (statutory) obligation was by itself not sufficient if the purpose of the expenditure was not for the benefit of or the running of the assessee's business. In the instant case, we find neither of these two conditions being satisfied; the former being in fact incidental in-as-much as a voluntary expenditure, shown to be for the purpose of the assessee's business, would qualify for deduction. In our considered view, therefore, the impugned expenditure does not meet the test of section 37(1), and stands rightly disallowed by the Revenue. We decide accordingly, and the Revenue succeeds"

Therefore respectively following the above issue is decided against the assessee.

18. In the result, the appeal for AY 2009-10 of the assessee is partly allowed.

ITA No. 700/Asr/2014 (AY 2011-12) by the Revenue

19. Ground no. 1 and 2 relates to deleting the addition of Rs.35,67,180/- made on account of dividend tax.

20. We have heard the rival submissions and find that the issue is covered against the Revenue by the decision of tribunal for AY 2007-08 in ITA No. 93/Asr/2011 AY 2007-08 vide para 6 of the ITAT order. We further find that this issue is decided against the Revenue by us in appeal for AY 2009-10 as discussed in earlier part of this order in ITA No. 120/Asr/2013, therefore, our findings his given therein would apply for this ground also for this year accordingly following the same. This ground of appeal of the Revenue is accordingly dismissed.

21. Ground no. 3 to 4 relates to deleting the addition of Rs.2,25,00,000/- which was made by the AO rejecting the claim of the assessee on account of provision for bad and doubtful debt.

22. Briefly stated fact are that the AO made an addition of Rs.2.25 croes by disallowing provision for bad and doubtful debt against advances made by rural branch on the plea of contingent liability. The AO carried out the matter before CIT(Appeal) wherein written submission filed by the assessee were forwarded to the AO and who vide his letter dated 19.08.2014 submitted his report after considering the same. The CIT(A) noted that the AO has made impugned additions looking to the past history of the case and on the other hand, the assessee has submitted that similar addition made in AY 2007-08 and 2008-09 by the AO has been deleted by the CIT(Appeal) Jalandhar. Respectively following the same, the CIT(Appeal) has directed to delete the additions.

23. Being aggrieved the Revenue has filed this appeal before this tribunal. The Ld. counsel submitted that the issue is covered by the order of tribunal in ITA No. 93/Asr/2011 for AY 2007-08 and ITA No. 399/Asr/2011 dated 16.07.2018.

24. Per contra the Ld. CIT-DR has agreed with the issue is covered by the decision of tribunal vide para 7 & 8 of ITA No. 47/Asr/2011 which are reproduced as under:

> *"7. Vide the second ground, the Revenue contests the deletion of the disallowance of the provision on standard assets, made by the assessee-bank at the rate of 0.25%, on the ground it being only a contingent liability. The assessee alludes to the RBI/NABARD guidelines, which are to be mandatorily followed. The same, in view of the AO, would not convert the provision as toward an existing liability, only in which case would the provision be deductible u/s. 37(1), quoting from the Board Instruction No. 17/2008 dated 26.11.2008, qualifying that a provision in respect of uncertain or contingent liability, which had not accrued, would not qualify for deduction. In appeal, the assessee found favour with the ld. CIT(A) on the basis that the provision, though against standard assets, is yet a*

provision for bad and doubtful debts and, therefore, governed by section 36(1)(viia), which admits deduction at seven and a half per cent. of the total income (before making any deduction under this clause and Chapter VIA), with the said limit being not breached in the instant case.

8. We have heard the parties, and perused the material on record.

We find no infirmity in the impugned order. The AO shall compute the deduction u/s. 36(1)(viia) including the impugned disallowance, and where the total deduction does not exceed the statutory limit there-under, no disallowance could be made. Here it may also be relevant to state that section 36(1)(viia) is applicable to cooperative banks (other than those excluded) w.e.f. 01.04.2007, i.e., AY 2007-08 onwards. The assessee has not been shown to us as falling within the excluded categories, which we note to be the same as those saved u/s. 80P(4). As such, clearly either of the two sections, i.e., 36(1)(viia) or section 80P, shall apply to the assessee, who cannot take an ambivalent stand with regard to its status. The parameters of a primary agricultural credit society or a primary cooperative agricultural and rural development bank, i.e., two specified excluded categories, are well settled. The AO shall accordingly examine the matter, and decide the same issuing definite findings of fact, of course, after hearing the assessee in the matter. In fact, as it appears, the assessee has not claimed deduction u/s. 80P, for otherwise this itself would have been the subject matter of dispute between the parties, with the AO clearly adverting to section 80P(4), excluding the assessee from the purview of section 80P. Why, in that case, i.e., of the assessee being considered as eligible for deduction u/s. 80P even for AY 2007-08 onwards, all the other issues would get subsumed therein as the assessee's entire income from banking business would get deducted u/s. 80P(1) r.w.s. 80P(2)(a)(i). As such, it is rather the AO who appears to be ambivalent by denying the assessee deduction u/s. 36(1)(viia) as well as u/s. 80P. We decide accordingly."

Therefore respectively following the above order, this ground of appeal of the Revenue is dismissed.

25. In the result, the appeal of the Revenue for AY 2011-12 is dismissed.

ITA No. 156/Asr/2017 (AY 2013-14) by the Assessee

26. Ground no. 1 relates to sustaining the addition of Rs.6,06,090/- for the alleged debit of self assessment tax to P&L account, when the assessee had suo moto added back by the assessee while filing the return.

27. The AO noted that an amount of Rs.6,06,090/- relating to self assessment tax paid by the assessee for AY 2012-13 has been pointed out by the auditor, hence the AO has disallowed the same. In appeal the CIT(Appeal) has confirmed the same.

28. Being aggrieved the assessee filed this appeal before this tribunal. The Ld. counsel submitted that the amount of Rs.6,06,090/- relates to payment of self assessment tax which has already been added back by the assessee while filing the return of income and same is covered by disallowance of Rs.25,17,221/-.

29. Per contra the Ld. CIT-DR relied on the lower authorities.

30. We have heard the rival submissions and find that the assessee has contended that the amount of Rs.6,06,090/- has already been added back by the filing return of income, therefore this issue is to set aside to the file of the AO to examine whether the said amount has already been added in the return of income, if so no addition is required to be made on this amount, if no then addition made by the AO would be sustained. This ground of appeal is set aside to the file of the AO.

31. Ground no. 2 relates to sustaining the addition of Rs.25,17,221/- while the said amount has been added back by the assessee.

32. We have heard the rival submissions and perused the material available on record. We find that as per the claim of the assessee, the amount of Rs. 25,17,221/- has already been added back to the total income of the assessee, if that is so, therefore this issue is set aside to the file of the AO for verification, if the said amount has already been disallowed by the assessee in the return of income then no addition is required to be made. This ground is dispose off, therefore set aside to the file of the AO.

33. Ground no. 3 relates to sustaining the addition of Rs.6,99,344/- made by the AO by way of disallowance of vehicle expenses.

34. At the outset, the Ld. counsel submitted that this issue is covered against the assessee by the order of the tribunal vide para 4 page 5 in ITA No. 93/Asr/2011 for AY 2007-08 dated 16.07.2018.

35. We have heard the rival submissions and find that this issue is decided again by the tribunal in para 4, 5 of order dated 16.07.2018. Further we have also followed the same while deciding the appeal of the assessee for AY 209-10 in ground no. 6 has discussed above in earlier part of this order. Therefore respectively our findings and findings of the tribunal in assessee's own case for AY 2007-08, this ground of appeal of the assessee is therefore dismissed.

36. In the result, the appeal of the assessee for AY 2013-14 is partly allowed.

37. In the result, the appeal of the Revenue in ITA No. 120/Asr/2013 for AY 2009-10 is dismissed, in ITA No. 121/Asr/2013 for AY 2009-10 of assessee is partly allowed and set aside. The appeal of Revenue in ITA No. 700/Asr/2014 for AY 2011-12 is dismissed and appeal of the assessee in ITA No. 156/Asr/2017 for AY 2013-14 is partly allowed and partly set aside.

Order pronounced in the open court on December 20, 2019

Sd/-	Sd/-
(N. K. Choudhry)	(O. P. Meena)
Judicial Member	Accountant Member

Date: 20.12.2019
/GP/Sr. Ps.

Copy of the order forwarded to:

(1) The Appellant:
(2) The Respondent:
(3) The CIT(Appeals),
(4) The CIT concerned
(5) The Sr. DR, I.T.A.T.

True Copy

By Order