



ITA Nos.3614-15/Mum/2018  
M/s. SVC Co-op Bank Ltd.  
Assessment Years :2009-10 & 2014-15

**आयकर अपीलीय अधिकरण “जी ” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“G” BENCH, MUMBAI**

श्री मनोज कुमार अग्रवाल ,लेखा सदस्य  
एवं श्री रवीश सूद, न्यायिक सदस्य के समक्ष।  
**BEFORE SHRI MANOJ KUMAR AGGARWAL, AM**  
**AND SHRI RAVISH SOOD, JM**

आयकरअपील सं./ I.T.A. No.3614/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2009-10)

&

आयकरअपील सं./ I.T.A. No.3615/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2014-15)

<b>DCIT-1(3)(2)</b> Aaykar Bhavan, Room No.540, 5 <sup>th</sup> Floor, M.K. Road Mumbai -400 020.	<b>बनाम/</b> <b>Vs.</b>	<b>M/s. SVC Co-op Bank Ltd.</b> J.N. Road Vakola Santacruz (E) Mumbai- 400 055.
स्थायीलेखासं./जी आइ आर सं./PAN/GIR No. <b>AAAAT-0177-C</b>		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Rajiv Waghle- Ld. AR
<b>Revenue by</b>	:	Shri Vinay Sinha-Ld. CIT-DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	08/01/2020
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	14/01/2020

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. The grievance of the revenue in aforesaid appeals for Assessment Years (AY) 2009-10 & 2014-15 is common. Therefore, the appeals were heard together and are now being disposed-off by way of this consolidated order for the sake of convenience & brevity. First, we take up appeal for AY 2014-15.



**ITA No. 3615/Mum/2018, AY 2014-15**

2. The revenue contest the order of Ld. Commissioner of Income-Tax (Appeals)-3, Mumbai, [in short referred to as 'CIT(A)'], Appeal No. CIT(A)-3/DCIT 1(3)(2)/IT-220/2016-17 dated 08/01/2018 on following grounds of appeal: -

1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in allowing the assessee's claim of deduction u/s 36(1)(vii) which it had not claimed in its return of income relying upon the decision of Bombay High Court in the case of Prithvi Brokers and Shares Pvt. Ltd. 349 ITR 356(Bom) when the same was not accepted by Department on merits and against which no further appeal was filed only due to low tax effect.

As evident from grounds of appeal, the revenue is aggrieved by the fact that deduction u/s 36(1)(vii) has been allowed to the assessee which was not claimed as per return of income and was revised during the course of reassessment proceedings.

3.1 Facts on record would reveal that the assessee being a co-operative bank was assessed for year under consideration u/s 143(3) on 30/12/2016 wherein the income of the assessee was determined at Rs.109.16 Crores after certain adjustments as against returned income of Rs.106.73 Crores e-filed by the assessee on 13/10/2014.

3.2 During assessment proceedings, it transpired that the assessee had claimed deduction u/s 36(1)(vii) for Rs.22.36 Crores. It was noted that proviso to Sec. 36(1)(vii) mandates that in case of an assessee to which clause (viia) applies, the amount of deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under that clause. Further, CBDT



instruction No. 17/2008 dated 26/11/2008 mandate that for the purpose of this proviso, the opening balance of the provision u/s 36(1)(vii) should be considered. Examined in the light of this position, the assessee's claim was found to be incorrect. The assessee submitted revised computation of income wherein higher amount of Rs.24.47 Crores was claimed as deduction u/s 36(1)(vii). However, Ld.AO refused to consider the same since the same was not claimed by way of revised return.

3.3 Upon further appeal, Ld. CIT(A) admitted the claim of the assessee and allowed the same by following the ratio of decision of Hon'ble Bombay High Court rendered in **CIT V/s Pruthvi Brokers and Shareholders Pvt. Ltd. (349 ITR 336)** which was rendered after considering the ratio laid down in **Goetz (India) Ltd. (284 ITR 323)**. Aggrieved, the revenue is under further appeal before us.

4. We have carefully heard the rival submission and considered the material on record. It is discernible from the factual matrix as enumerated in preceding paragraphs that the assessee had already made a claim u/s 36(1)(vii) while filing the original return of income. However, the said claim was revised during the course of assessment proceedings in the light of statutory provisions read with CBDT instruction no.17/2008 dated 26/11/2008. Incidentally, the claim worked out to be at higher figures, which was denied by Ld. AO since the same was not claimed by way of revised return of income. The learned CIT(A) admitted and allowed the same by relying upon the ratio laid down by Hon'ble Bombay High Court rendered in **Pruthvi Brokers and Shareholders Pvt. Ltd. (349 ITR 336)** wherein it was held that there



would be no bar for appellate authorities to consider a new claim raised before them. The Ld. AR has relied upon the decision of Bangalore Tribunal in **Schneider Electric IT Business India Pvt. Ltd. V/s JCIT (200 TTJ 20 30/04/2019)** which also supports the same view. Another noteworthy factor is that the revenue has not disputed the quantum of deduction u/s 36(1)(vii) which would be allowable to the assessee and therefore, it could safely be presumed that the claim, on merits, was in accordance with law. Therefore, no fault could be found in the action of Ld. CIT(A) in allowing the revised claim, by following the ratio laid down by Hon'ble Bombay High Court.

5. Resultantly, the appeal stands dismissed.

**ITA No. 3614/Mum/2018, AY 2009-10**

6.1 In this year, the revenue contest the order of Ld. Commissioner of Income-Tax (Appeals)-3, Mumbai, [in short referred to as 'CIT(A)'], Appeal No. CIT(A)-3/DCIT 1(3)(2)/IT-222/2016-17 dated 15/01/2018 on following grounds of appeal: -

1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in allowing the assessee's claim of deduction u/s 36(1)(vii) which it had not claimed in its return of income relying upon the decision of Bombay High Court in the case of Prithvi Brokers and Shares Pvt. Ltd. 349 ITR 356(Bom) when the same was not accepted by Department on merits and against which no further appeal was filed only due to low tax effect.
- ii. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred while re-computing the deduction u/s 36(1)(vii) allowable to the assessee considering the relief given to assessee u/s 36(1)(vii) when the same is based on Prithvi Shares and Brokers and the same has not been accepted by the Department.

As evident from grounds of appeal, the revenue is similarly aggrieved by the fact that revised deduction u/s 36(1)(vii) has been allowed to the



assessee which was not claimed by way of revised return but claimed during the course of assessment proceedings.

6.2 Facts are more or less the same in this year. The assessee was assessed u/s. 143(3) r.w.s. 147 on 30/12/2016 wherein the income of the assessee was determined at Rs.64.09 Crores after certain additions / adjustments, as against assessed income u/s 143(3) for Rs.63.63 Crores.

6.3 The reassessment proceedings were triggered in view of the fact that deduction of provision for bad and doubtful debts u/s 36(1)(vii) was allowed to the assessee before deduction u/s 36(1)(viii) and 36(1)(vii) which resulted into excess deduction for Rs.171.71 Lacs. Another triggering factor was the reason that deduction u/s 36(1)(viii) was allowed in excess to the extent of Rs.153.44 Lacs. Both these adjustments were made by Ld. AO while framing the assessment order. Consequently, the assessee revised its claim u/s 36(1)(vii) which was denied by Ld. AO on similar reasoning.

6.4 Upon further appeal, Ld. CIT(A) admitted and allowed the claim of the assessee by following the ratio of decision of Hon'ble Bombay High Court rendered in **CIT V/s Pruthvi Brokers and Shareholders Pvt. Ltd. (349 ITR 336)** which was rendered after considering the ratio laid down in **Goetz (India) Ltd. (284 ITR 323)**. Aggrieved, the revenue is under further appeal before us.

6.5 Facts being pari-materia the same as in AY 2014-15, taking the same view, we confirm the order of Ld. CIT(A), in this regard.



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7. Resultantly, the appeal stands dismissed.

**Conclusion**

8. Both the appeals stand dismissed.

*Order pronounced in the open court on 14<sup>th</sup> January, 2020.*

**Sd/-**

**(Ravish Sood)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 14/01/2020

*Sr.PS, Jaisy Varghese*

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**