

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. Kuldip Singh, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 2096/Del/2017 : Asstt. Year : 2013-14

Deputy Commissioner of Income Tax, Circle-2, Meerut	Vs	M/s Sarva UP Gramin Bank, C-39/5, Jagriti Vihar, Meerut
(APPELLANT)		(RESPONDENT)
PAN No. AACAS9891G		

**Assessee by : Sh. Vivek Gupta, CA
Revenue by : Sh. Saras Kumar, Sr. DR**

Date of Hearing: 16.01.2020	Date of Pronouncement: 24.02.2020
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the revenue against the order of Id. CIT (A), Meerut dated 31.01.2017.

2. Following the grounds have been raised by the revenue:

"1. Whether in the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) has erred in law and fact in deleting the addition of Rs. 31,99,62,000/- made by the AO on a/c of disallowance of excess deduction claimed by the assessee u/s 36(1)(vii) of the Income Tax Act, 1961 on a/c of Provision for Bad and Doubtful Debts despite failure of assessee as well as its statutory auditor in justifying the need of said provision and basis thereof and whereas separate provision towards NPA for Rs. 52.13 lac was already made by the assessee.

2. Whether in the facts and circumstances of the case, the Id. Commissioner of Income tax (Appeals) has erred in law and fact in deleting the addition of Rs. 31,99,62,000/- made by the AO on a/c of disallowance of excess deduction claimed by the assessee u/s 36(1)(vii) of the Income Tax Act, 1961 on a/c of Provision for Bad and Doubtful Debts despite AO's observation that taxable profit is computed as per the provisions of Income Tax Act and not as per

income recognition norms of RBI and also his well reasoned calculation of allowable deduction at Rs. 43,58,000/- only with proper justification before making disallowance of excess deduction.

3. Without prejudice to the above, whether in the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) has erred in law and facts in not confirming the addition of Rs. 26,72,00,000/- made by the A.O. on a/c of it being unjustified as it was a Provision against total monthly average advances of Rural Branches of the bank for Bad and Doubtful Debt, over and above the Provision required to be made in accordance with the prudential norms suggested by RBI for previous year, though separate addition was not made on this a/c as the same was included in total disallowance of Rs. 31,99,62,000/- already made.

4. That in the facts and circumstances of the case, the order of the Commissioner of Income Tax (Appeals) may be set aside and that of the A.O. be restored."

3. Brief facts of the case are that the Assessing Officer has disallowed an amount of Rs.31,99,62,000/- claimed by the assessee u/s 36(1)(vii) of the Income Tax Act, 1961. The reasoning given by the Assessing Officer for disallowing the claim is as under:

(a) Assessee failed to give clarification and justification regarding the PBDD made.

(b) Statutory auditor also failed to justify this amount.

(c) Assessee failed to provide exact mechanism or procedure by which this amount was calculated.

(d) Even for the amount of Rs. 2672.20 lacs, statutory auditor also commented that this amount was created by the bank over and above the required provisions made by the bank as per prudential norms.

(e) During the year, over and above provisions from the prudential norms was increased exponentially from Rs. 3.70 Crores for preceding year to 26.72 Crores for current year. For such a high increase, no explanation or justification was offered by the assessee.

(f) Provisions was made by random figure without any justification and requirement which directly affect the taxable income of the assessee.

4. The Id. CIT (A) deleted the addition on two grounds viz.

1. From the assessment years 2008-09 to 2011-12, the case was assessed u/s 143(3) and u/s 148 on the same issue and no disallowance has been resorted to by the revenue.

2. Relied on the orders of ITAT Bangalore in the case of ING Vysya Bank Ltd. 62 SOT 26 (2014), ITAT Chennai in the case of TNS Estate Apex Cooperative Ltd. 62 SOT 113 and the Hon'ble Supreme Court in the case Catholic Syrian Bank 206 Taxman 182 wherein it was held that the additional provision for bad and doubtful debts is allowable as a deduction.

5. The case of the assessee for the assessment year 2012-13 has been adjudicated by the ITAT in ITA No. 1937/Del/2016 in assessee's own case wherein the deduction was allowed taking into consideration, the CBDT Circular No. 421 dated 12.06.1985, UCO Bank Ltd. 237 ITR 889 (SC), Catholic Syrian Bank 88 ITD 185, South Indian Bank 233 CTR 214. Since, the factual matter remains unchanged, in the absence of any other judgment contrary to the facts available on record, the addition made by the revenue is hereby ordered to be deleted.

6. For the sake of brevity, the operative portion of the order of the ITAT in the case of the assessee for the assessment year 2012-13 is reproduced as under:

"8. Heard the arguments of both the parties and perused the material available on record. We find that the judgment dated 21st May, 2004 pertains to AY 1985-86. The board has issued directions verifying the benefit of deduction allowable to banks vide CBDT Circular 421 dt. 12.06.1985 which has been mentioned above. After considering the facts and the entire submissions of both the parties, we find that (ii) U/s 119, the CBDT is entitled to issue Circulars to explain or tone down the rigours of law and to ensure fair enforcement of its provisions. These circulars have the force of law and are binding on the

income tax authorities, though they cannot be enforced adversely against the assessee. Normally, these circulars cannot be ignored. A circular may not override or detract from the provisions of the Act but it can seek to mitigate the rigour of a particular provision for the benefit of the assessee in certain specified circumstances. So long as the circular is in force, it aids the uniform and proper administration and application of the provisions of the Act (UCO Bank vs. CIT 237 ITR 889 (SC) followed)

9. We have also gone through the guidelines given by the Supreme Court in the case of DCIT vs. Catholic Syrian Bank 88 ITD 185. In that case, the Hon'ble Court had to consider whether a bank was eligible to claim a deduction for bad debts u/s 36(1)(vii) in respect of its (rural & urban) advances and also claim a provision for bad and doubtful debts u/s 36(1)(viia) in respect of its rural advances in view of the Proviso to s. 36(1)(vii) which provides that only the excess over the credit balance in the provision for bad and doubtful debts account made u/s 36(1)(viia) can be claimed. The Special Bench of the Tribunal in DCIT vs. Catholic Syrian Bank 88 ITD 185 held that as s. 36(1)(viia) was confined to rural advances, a claim for bad debts of urban advances was not subject to the limitation of the Proviso to s. 36(1)(vii). However, the Full Bench of the Kerala High Court took a contrary view in CIT vs. South Indian Bank 233 CTR 214 (Ker) (FB) and held that a bank was entitled to claim deduction of bad debts u/s 36(1)(vii) only to extent it exceeded the provision allowed as deduction under s. 36(1)(viia). On appeal to the Supreme Court, HELD reversing the Full Bench of the High Court:

Per Court:

(i) The clear legislative intent of s. 36(1)(vii) & 36(1)(viia) together with the circulars issued by the CBDT demonstrate that the deduction on account of provision for bad and doubtful debts u/s 36(1)(viia) is distinct and independent of s. 36(1)(vii) relating to allowance of bad debts. The legislative intent was to encourage rural advances and the making of provisions for bad debts in relation to such rural branches. The functioning of such banks is such that the rural branches were practically treated as a distinct business, though ultimately these advances would form part of the books of accounts of the head office. An interpretation which serves the legislative object and intent is to be preferred rather than one which subverts the same. The deduction u/s 36(1)(vii) cannot be negated by reading into it the limitations of s. 36(1)(viia) as it would frustrate the object of granting such deductions. The Revenue's argument that this would lead to double deduction is not correct in view of the Proviso to s. 36(1)(vii) which provides that in respect of rural advances, the deduction on account of the actual write off of bad debts would be limited to excess of the amount written off over the amount of the provision which had already been allowed u/s 36(1)(viia) (Southern Technologies 320 ITR 577 (SC) & Vijaya Bank 323 ITR 166 (SC) referred)

10. *In the instant case, we endorse the decision of Ld.CIT(A) which held that the assessee has admitted in its submissions as well as before AO regarding the entitlement of deduction u/s 36(1)(viiia) of Rs. 114.76 crores. There is no dispute as to the correctness of the calculation of the entitlement of deduction u/s 36(1)(viiia) of the Act. It is a settled law that only against ascertained liability deduction can be allowed except for specific provisions in Act where deduction is allowed on provisions also. The Act has specifically provided in sec. 36(1)(viiia) for deduction for provision made for advances made by the rural branches of the bank.*

11. *The method of calculating deduction has been defined in the Act. The bank is entitled for deduction for 10% of the aggregate average advances made by the rural branches plus 7.5% of the total income computed before this deduction and amount deductible under sec 80C to 80 U. It is mandatory for all the banks to follow the income recognition norms and assets classification norms as prescribed by Reserve Bank of India. The assessee has also made provision for NPA'S by following the income recognition norms of Reserve Bank of India. The Hon. Supreme Court in the case of Catholic Syrian Bank Ltd laid down that the legislative intent was to encourage the Rural advance and making of provisions for bad debts in relation to such rural advances and for providing greater deductions. But the deduction is allowable only on being legally entitled and on making actual provisions for such deduction in the books of Account.*

12. *From the facts of the case and in law, after the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank Vs CIT Thrissur 206 Taxman 182(SC) there is no ambiguity left in the interpretation of provision of sec 36 (1)(viiia). The appellant is a Regional Rural Bank sponsored by Punjab National Bank. The assessee has made advances from its rural branches which are not questioned. The provisions of sec 36(1)(viiia) are clearly interpreted by Supreme Court in the case of Catholic Syrian Bank. The assessee has claimed deduction of Rs. 16.07 Crores against it's entitlement of Rs 114.76 Crores in the books it has made provision for Bad Debts of rural branches for Rs 3,70,00,000/- over and above the provision made for NPA's as per RBI norms. This fact has been stated in the audited balance sheet of the bank in Schedule 17: Principle Accounting Policies & Notes on Account, where point 1(IV)(iii) which is reproduced as under:*

"(iii) Bank has made provision of Rs.3,70,00,000/- (Previous year- Nil) against total monthly average advance of Rural Branches of the Bank for the Bad and doubtful debts, over and above the provision for bad & doubtful debts required to be made in accordance with the Prudential norms suggested by RBI. The bank has reduced Rs. 210.36 lacs (previous year Rs 363.05 lacs) for write off of the rural advances not recoverable and are bad and doubtful debts from the provision made in earlier years and net provision for rural branches advances is Rs 2844.03 lacs (Rs 3054.39 lacs - Rs. 210.36 lacs).. included in other provisions in Schedule -5 '.

The ITAT Bangalore in the case of DEPUTY COMMISSIONER OF INCOME TAX vs. ING VYSYA BANK LTD - (2014) 62 SOT 0026 (Banglore) and ITAT Chennai in the case of TAMILNADU STATE APEX COOPERATIVE BANK LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2014) 62 SOT 0113 (Chennai) (URO) has held that the actual provision made in the books by the Assessee on account of PBDD (irrespective of whether it is rural or non-rural) has to be seen.

13. In the present case, the assessee has admittedly made provision for nonperforming assets (NPA) in respect of its urban branches. The assessee has debited Rs.2.52 Crores (approximately) (i.e., 7.5% of the gross total income) in P&L A/c creating provision for non-performing assets in accordance with the provisions of section 36(1)(vii) of the Act. The Revenue has disputed the deduction claimed for the reason, that the assessee has not created provision for bad and doubtful debts. In case of Banking Companies, the accounts are made in accordance with the RBI guidelines and the Banking Regulation Act, 1949. Although, the assessee has named the provision as 'Provision for NPA', but in pith and substance the provision has been created for 'Bad and Doubtful Debts'. The taxonomy of the provision has been done by the assessee to keep it in line with the RBI and NABARD guidelines.

14. We are satisfied that the assessee has made provision and claimed deduction in accordance with the provisions of section 36(1)(vii). The assessee is entitled to the benefit of same.

15. Similarly the Hon'ble ITAT Chennai in the case of VELLORE DIST. CENTRAL CO-OPERATIVE BANK LTD. Vs. COMMISSIONER OF INCOME TAX - (2013) 145 IDT 0129 (Chennai) has held that the question which arises for

determination before us is whether the assessee has created any reserve/ provision for bad and doubtful debts? The AR has contended that the assessee has created provisions for bad and doubtful debts under the nomenclature 'Reserve for NPA'. The terminology 'Reserve for NPA' has been used by the assessee in accordance with the RBI directions. As is evident from the assessment order, the assessee has indeed created 'Reserve for NPA'. For claiming benefit under the provisions of Section 36(1)(vii)(a) the conditions to be satisfied is: that provision for bad and doubtful debts should have been made by the bank eligible to claim such deduction. Co-operative Banks do not strictly follow the provisions of Banking Regulation Act for the purpose of maintaining their Books of Accounts. In our considered opinion, the assessee has created provision for bad and doubtful debts may be under different nomenclature. This will not dis-entitle the assessee for claiming deduction under the provisions of Section 36(1)(vii)(a). The purpose for creation of reserve for NPA is same i.e., creating provision towards bad and doubtful debts.

Thus, in view of the facts of the case and judicial pronouncements in the above state cases the assessee will be entitled to deduction u/s 36(1)(vii) to the extent of provision made for bad and doubtful debts of Rs 16,06,72,355/-. The A.O is therefore directed to allow the full deduction of Rs 16,06,72,355/- as claimed by the assessee in the computation of income and not to restrict it on Rs 1,33,93,000/."

7. In the result, the appeal of the revenue is dismissed.

Order Pronounced in the Open Court on 24/02/2020.

Sd/-

(Kuldip Singh)
Judicial Member

Dated: 24/02/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR