

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी मंजूनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1921/Chny/2018
निर्धारण वर्ष /Assessment Year: 2014-15

The Asst. Commissioner of Income Tax,
Cuddalore Circle,
Cuddalore.

(अपीलार्थी/Appellant)

M/s. The Cuddalore District Central Co-operative Bank Ltd.,
Vs. No.1, Beach Road,
Cuddalore – 607 001.
[PAN: AAAAT 7716R]
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr. Suresh Periasamy, JCIT
प्रत्यर्थी की ओर से /Respondent by : Mr. K. Ravi, Advocate
सुनवाई की तारीख/Date of Hearing : 22.03.2021
घोषणा की तारीख /Date of Pronouncement : 09.04.2021

आदेश / ORDER

PER SHRI V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the learned Commissioner of Income Tax (Appeals), Puducherry in I.T.A No.200/CIT(A)-PDY/2016-17 dated 19.03.2018 relevant to the Assessment Year 2014-15.

2. The brief facts of the case are that the assessee is M/s. The cuddalore District Central Co-operative Bank Ltd. filed its return of income by admitting total income of Rs. 11,36,78,396/-. The return was processed u/s. 143(1) of the Income Tax Act, 1961 (for short 'the Act'). The case was selected for scrutiny through CASS and after following the due procedure assessment was completed u/s. 143(3) of the Act. In the assessment order, the AO has noted that from the balance sheet it is seen that the assessee has created Reserve for NPA to the extent of Rs. 17,52,92,029/- only. Hence, total deductions allowed u/s. 36(1)(viiia) of the Act has to be restricted only to the extent of Reserve created for NPA i.e., to the extent of Rs. 17,52,92,029/-. Accordingly, he has disallowed the excess claim made by the assessee of Rs. 3,21,07,404/- (20,73,99,433 - 17,52,92,029/-).

3. On appeal, the Ld. CIT(A) deleted the disallowance made by the assessee by observing as under:

5.3.2 As per section 36(1) (viiia)(a) of Income Tax Act 1961, the deduction ,r doubtful debts in the case of banks is to be" an amount not exceeding 7.5% of the Gross Total Income (computed before making any deduction under this clause and chapter VT-A) and an amount not exceeding 10% the Aggregate Average Advances made by the rural branches of such bank computed in the prescribed manner"

5.3.3 The aforesaid Reserve for NPA is a requirement under various statutory provisions like RBI guidelines, Cooperative Societies Act etc., and the bank has to prepare accounts according to the statutory requirements. These reserves are to be

adjusted in arriving at the Gross total Income for computation purpose to compute the provision for bad and doubtful debts as per the provisions of section 36(1) (vii)(a) of Income Tax Act 1961. Hence deduction claimed under section 36(1) (vii)(a) of the Income Tax Act 1961 which by itself has maximum limit for deduction, cannot be restricted to the reserves made by the banks which are statutory requirement under other laws except to the adjustments to be made to arrive at Gross Total Income for computation purpose.

5.3.4 In the light of the above explanation to the provisions of section section 36(1) (vii) (a) of Income Tax Act 1961, the A. O. is not correct in disallowing the claim as excess deduction of Rs.3,21,07,404/-

5.3.5 Therefore, the above addition is deleted.”

4. On being aggrieved, the Revenue raised the following grounds:

“1. The Order of the learned CIT(A) is contrary to law and the facts and circumstances of the case.

2. The learned CIT(A) erred in deleting the addition made towards excess claim of deduction u/s.36(l)(vii).

2.1 The learned CIT(A) failed to note that the statute mandates creation of a reserve in order to claim deduction u/s.36(1)(vii).

2.2 The learned CIT(A) ought to have appreciated the fact RBI norms for banking entities are not binding on Revenue as has been held by the Hon’ble Supreme Court in the case of Southern Technologies Ltd. (2010) 320 ITR 577(SC).

2.3 The learned CIT(A) erred in holding that the deduction u/s.36(1)(vii) need not be restricted to the reserves created.

2.4 The learned CIT(A) erred in not taking cognizance of the decision of the Hon’ble Punjab

& Haryana High Court in the case of State Bank of Patiala (2005) ITR 54 which is directly on the issue and where it has been held that the deduction cannot exceed the reserves created.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned

CIT(A) may be set aside and that of the Assessing Officer restored.”

5. The Id. DR has submitted before us that the assessee has only created a provision for NPA at Rs. 17,52,92,029/- and he has claimed in the return of income u/s. 36(1)(viiia) of the Act for Rs. 20,73,99,433/- and submitted that the assessee is only eligible for the provision made for NPA for Rs. 17,52,92,029/-. For the above contention, he has relied on the decision of the Hon'ble Punjab & Haryana High Court in the case of *State Bank of Patiala vs. CIT [2005] 143 TAXMAN 196 (Punj. & Har)* and also the decision of the Co-ordinate Bench of the Tribunal in the case of *M/s. Nazareth Urban Co-Operative Bank Ltd., vs. DCIT in ITA Nos. 513 & 514/Chny/2018 for AYs 2013-14 & 2014-15 dated 24.06.2019* and also relied on the decision of the another Co-ordinate Bench of the Tribunal in the case of *M/s. The Salem Dt. Central Co-Op. Bank Ltd. vs. DCIT in ITA No.1168/Mds/2016 dated 07.06.2017*. Further, the Id. DR also relied on CBDT Instruction No.17/2008 and submitted that the assessee is only eligible to claim deductions u/s. 36(1)(viiia) of the Act to the extent provision made for NPA and strongly supported the order passed by the AO.

6. On the other hand, the Id. counsel for the assessee has submitted that as per s. 36(1)(viiia) of the Act, no reference is made to

books of accounts and the assessee need not make any provision for NPA and the assessee is eligible for deduction as per statute subjected to statutory limitations provided by the Act. He has also relied on the decision of the Hon'ble ITAT, Delhi Benches in the case of *DCIT vs. Prathma Bank in ITA No.2924/Del/2015 for AY 2011-12 dated 22/10/2019* and he has also submitted that where two views are possible for the view which is in favour of the assessee has to be considered. He further submitted that s. 36(1)(vii) of the Act provides reference to the accounts of the assessee. Section 36(1)(viia) of the Act no reference has made to the accounts of the assessee. Therefore, even if the assessee has not made any provision for NPA according to the limitations provided by the statute, the assessee is eligible to claim deduction u/s. 36(1)(viia) of the Act.

7. We have heard both the sides, perused the materials available on record and gone through the orders of the authorities below.

8. In this case, the assessee has made a provision for NPA for Rs.17,52,92,029/-. He has actually claimed in the return of income at Rs. 20,73,99,433/-. The case of the AO is that the assessee is only eligible to the extent of provision made for NPA not for entire claim claimed by the assessee. On appeal, the Ld. CIT(A) allowed the entire

amount claimed by the assessee. The similar issue has been considered by the Hon'ble Punjab & Haryana High Court (supra) and has held that making of provision for bad and doubtful debt equivalent to an amount claimed as a deduction in account books is necessary for claiming deduction u/s. 36(1)(viiia) of the Act. For the sake of convenience, the relevant portion of the judgment is extracted as under:

"5. Section 36(1)(vzza) of the Act as applicable to the assessment year 1985 86 reads as under:

"in respect of any provision for bad and doubtful debts made by a scheduled bank [not being a bank approved by the Central Government for the purposes of clause (vii) or a bank incorporated by or under the laws of a country outside India] or a non scheduled bank an amount not exceeding ten per cent of the total income (computed before making any deduction under this clause and Chapter VI A) or an amount not exceeding two per cent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner whichever is higher"

6. A bare perusal of the above shows that the deduction allowable under the above provisions is in respect of the provision made Therefore making of a provision for bad and doubtful debt equal to the amount mentioned in this section is a must for claiming such deduction The Tribunal has rightly pointed out that this issue stands further clarified from the proviso to clause (vu) of section 36(1) of the Act which reads as under:

"Provided that in the case of an assessee to which clause (viiia) applies the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or prt thereof exceeds the credit balance m the provision for bad and doubtful debts account made under that clause"

7. This also clearly shows that making of provision equal to the amount claimed as deduction in the account books is necessary for claiming deduction under section 36(1)(viiia) of the Act. The Tribunal has distinguished various authorities relied upon by the assessee wherein deductions had been allowed under various provisions which also required creation of reserve after the assessee had created such reserve in the account books before

the completion of the assessment. It has been correctly pointed out that in all those cases, reserves/provisions had been made in the books of account of the same assessment year and not of the subsequent assessment year.

8. In the present case, the assessee has not made any provision in the books of account for the assessment year under consideration i.e 1985 86 by making supplementary entries and by revising its balance sheet. The provision has been made in the books of account of the subsequent year.

9. We are, therefore, satisfied that the Tribunal was right in holding that since the assessee had made a provision of Rs. 1,19,36,000 for bad and doubtful debts, its claim for deduction under section 36(l)(viiia) of the Act had to be restricted to that amount only. Since the language of the statute is clear and is not capable of any other interpretation, we are satisfied that no substantial question of law arises in this appeal for consideration by this court.

10. The appeal is, accordingly, dismissed. No costs."

9. The decision of the Co-ordinate Bench of this Tribunal in the case of M/s. Nazareth Urban Co-operative Bank Ltd. (supra) has considered the decision of the Hon'ble Punjab & Haryana High Court (supra) and held as under:

"6. We heard the rival submissions and gone through relevant material. It is clear from the decision of the Hon'ble High Court of Punjab & Haryana, supra, that making of provision equal to the amount claimed as deduction, in the account books is necessary for claiming deduction u/s.36(1)(viiia). Since the assessee has not made any provision in the books of accounts, as admitted by the assessee before the AO by its letters dated 21.12.2016, in the respective assessment years, the assessee is not entitled for the impugned deductions for the respective assessment years. Further, the relevant portion of the order of the co-ordinate Bench of this Tribunal in the case of M/s. The Salem Dt. Central Co.Op Bank Ltd., Salem vs. The DCIT, Salem in ITA No.1168/Chny/Mds/2016 for the AY 2008-09 dated 07.06.2017, is extracted as under:

7.1 We heard the rival submissions and perused the material placed before us. The assessee has debited a sum of Rs.7,72,84,858/- under the head NPA during the previous year relevant to the AY 2008-09 and claimed the deduction u/s.36(i)(vii)(a) for an amount of Rs.19,49,25,398/-. The Ld.Counsel argued that the assessee has already created the provision for NPA in the earlier years which

remained unadjusted. Therefore, there is no need to create any fresh provision during the previous year relevant to the AY 2008-09.

8.0 In Income Tax, each year is an independent and the income has to be computed as per the system of accounting regularly followed by the assessee. Therefore, the deduction can be made by the assessee only on the basis of the expenditure debited to the Profit & Loss A/c from the previous year relevant to the AY under consideration. No expenditure which is not debited to the Profit & Loss A/c in the year under consideration is permissible for deduction. In the instant case, the assessee has not debited the expenditure relating to the provisions for bad and doubtful debts. Therefore, the deduction u/s.36(1)(viiia) is permissible to the extent of the amount debited to the Profit & Loss A/c or as per the permissible limits specified u/s.36(1)(viiia) whichever is less. The contention of the assessee that the reserves already created in the earlier years is available in the books of accounts which remained unadjusted is not an acceptable proposition and not as per the Income Tax Act. This view is clarified by the CBDT in Circular No.17/2008 which was relied upon by the Ld.CIT(A) in Para No.4.2 which is re-produced hereunder:

4.2. The Assessing Officer has restricted the claim of the assessee Bank to the amount of provision made for the relevant assessment year. This restriction should be considered in light of the provisions of Section 36(1)(viiia) of the IT Act read with the CBDT instruction No.17/2008 dated 26.11.2006. In this Instruction it is clearly stated as follows:

QUOTE:

(b) The deduction for provision for bad and doubtful debts should be restricted to the amount of such provision actually, created in the books of the assessee in the relevant year or the amount calculated as per provisions of section 36(1)(viiia), whichever is less.
..... UNQUOTE.

9.0 The Circular is very clear that the deduction is permissible only to the extent of provisions actually created in the books of accounts for the relevant Assessment Year. This view is supported by the decision of the Hon'ble Punjab & Haryana High Court cited supra. Therefore, we do not find any infirmity in the order of the Ld.CIT(A) and the same is allowed. Ground Nos.6 – 12 of the assessee are dismissed. 7. Since the co-ordinate Bench of this Tribunal has applied the decision of the Hon'ble Punjab & Haryana High Court, cited supra, and dismissed the appeal in the above case, following the same, the appeals filed by the assessee are also dismissed."

10. In the case of M/s. The Salem Dt. Central Co.op. Bank Ltd.

(supra) has considered the Circular No.17/2018 issued by the

Department held as under:

“9.0 The Circular is very clear that the deduction is permissible only to the extent of provisions actually created in the books of accounts for the relevant Assessment Year. This view is supported by the decision of the Hon’ble Punjab & Haryana High Court cited supra. Therefore, we do not find any infirmity in the order of the Ld.CIT(A) and the same is allowed. Ground Nos.6 – 12 of the assessee are dismissed.”

11. In so far as the case law relied on by the Id. counsel for the assessee in the case of *DCIT vs. Prathma Bank* (supra) is concerned, by following the assessee’s own case, the Revenue appeal was dismissed. We find that the Hon'ble Punjab & Haryana High Court (supra) has laid down a clear ratio that to claim deduction making of provision for bad and doubtful debt equivalent to an amount claimed as a deduction in account books is necessary for claiming deduction u/s. 36(1)(vii) of the Act. Respectfully following the principles of precedent, we reverse the order passed by the Ld. CIT(A). Apart from that the two other Co-ordinate Benches of the Tribunal has followed the Hon'ble Punjab & Haryana High Court (supra) and rejected the argument made by the assessee. In view of the above, we find that the Ld. CIT(A) not correct in allowing the grounds of appeal raised by the assessee to the extent of the amount claimed in the return of income without making a provisions for NPA. Accordingly, the appeal filed by the Revenue is allowed.

12. In the result, the appeal of the Revenue is allowed.

Order pronounced on 09th April, 2021 in Chennai.

Sd/-

(श्री जी मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai, दिनांक/Dated: 09th April, 2021.
EDN, Sr. P.S

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF