

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "A", BANGALORE**

**Before Shri George George K, JM & Shri B.R.Baskaran, AM**

ITA No.1542/Bang/2018 : Asst.Year 2013-2014

M/s.Railway Co-op Bank Limited Sheshadri Iyer Road Mysore – 570 001. <b>PAN : AAAAT0822A.</b>	v.	The Assistant Commissioner of Income-tax, Circle 1(1) Mysore.
(Appellant)		(Respondent)

Appellant by : Sri.Ravishankar, Advocate  
Respondent by : Sri.Sankar Ganesh K., JCIT-DR

<b>Date of Hearing : 10.11.2021</b>	<b>Date of Pronouncement : 11.11.2021</b>
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**ORDER**

**Per George George K, JM:**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 30.11.2017. The relevant assessment year is 2013-2014.

2. The grounds raised read as follows:

“1. The order of the learned Commissioner of Income Tax (Appeals) in so far as it is against the appellant are opposed to law, equity and weight of evidence, natural justice, facts and circumstances of the case.

2. The appellant denies itself liable to be assessed to total income of Rs. 2,72,47,250/- as against the returned income of Rs. 2,52,07,820/- on the facts and circumstances of the case.

3. The learned CIT(A) was not justified in not appreciating that the order of assessment has been passed in the status which is erroneous and the order is bad in law, and ought to have been set aside as bad in law on the facts and circumstances of the case.

4. The learned CIT(A) was not justified in relying heavily on the CBDT instruction, which is binding on assessing officer of the department, whereas the CIT(A) ought to have appreciated the authorities relied upon by the appellant, in deciding the case, on the facts and circumstances of the case.

5. *The learned CIT(A) erred in holding that the appellant was not entitled to make a claim of write off under section 36(1)(vii) of the act, on the facts and circumstances of the case.*

6. *The learned CIT(A) was not justified in not appreciating that the provisions of section 36(1)(viii) do not preclude the appellant from making a write off of bad debts under section 36(1)(vii) of the act, on the facts and circumstances of the case.*

7. *The learned CIT(A) was not justified in law in not appreciating that the appellant was justified in writing off bad debts without making a provision for bad debts on the facts and circumstances of the case.*

8. *Without prejudice, the authorities below ought to have granted deduction U/s 36(1)(vii) of the act, on the facts and circumstances of the case.*

9. *The appellant denies the liability to pay interest under section 234B and 234C of the Act in view of the fact that there is no liability to additional tax as determined by the assessing officer. Without prejudice, the rate, period and on what quantum the interest has been levied are not in accordance with the law and are not discernible from the order and hence deserves to be cancelled on the facts and circumstances of the case.*

10. *The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.*

11. *For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.”*

2.1 The assessee has also raised an additional ground, which reads as follows:-

*“Without prejudice to our earlier submissions we wish to bring to your kind attention that the assessee has created a provision for bad and doubtful debts to the extent of Rs.2,91,337/- as appropriation of profits. This should be considered as provision made and accordingly deduction allowed.*

*We have enclosed herewith the financial statements to enable you to allow the above deduction.”*

3. Brief facts of the case are as follows:

The assessee is a co-operative bank. For the assessment year 2013-2014, the return of income was filed on 04.02.2016 declaring total income of Rs.2,52,07,820. The return of income was selected for scrutiny by issuance of notice u/s 143(2) of the I.T.Act. The assessment was completed vide order dated 04.02.2016 u/s 144 of the I.T.Act. In the assessment completed, the Assessing Officer disallowed the claim of the assessee made towards bad and doubtful debts amounting to Rs.20,39,432 for the reason that the assessee made the claim without making provisions for bad and doubtful debts as required u/s 36(1)(viiia) of the I.T.Act. The relevant observation of the Assessing Officer in making the disallowance of Rs.20,39,432 reads as follow:-

*“3.2 The deduction u/s 36(1)(viiia) of the Act is allowed in respect of “any provision for bad and doubtful debts made by the assessee”. Hence the condition for allowing any deduction is “creation of any provision for bad and doubtful debts” which can only be created in the books of accounts maintained by the assessee.*

*3.3 CBDT has clarified the issue in its Circular No.17 dated 26.11.2008 that the deduction u/s 36(1)(viiia) of the Act for provision for bad and doubtful debts has to be restricted to amount of such provision actually created in the books of account in the relevant year or the amount calculated as per section 36(1)(viiia) of the Act whichever is lower.*

*3.4 The relevant section 36(1)(viiia) of the Act reads as under:-*

(viiia) in respect of any provision for bad and doubtful debts made by-

(a) a scheduled bank not being a bank incorporated by or under the laws of a country outside India or a non-scheduled bank or a co-

operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, an amount not exceeding eight and one-half per cent. of the total income (computed before making any deduction under this clause and Chapter VI-A) and an amount not exceeding ten per cent. of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner :

Provided that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed in any of the relevant assessment years, deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf, for an amount not exceeding five per cent. of the amount of such assets shown in the books of account of the bank on the last day of the previous year :

*3.5 A bare reading of the section 36(1)(viii) clearly brings out that the deduction specified therein is in "respect of any provision for bad and doubtful debts made by ...." An eligible assessee. Hence deduction allowable under section 36(1)(viii) of the Act is in respect of provision "made" by the assessee. This argument is also been upheld by the Hon'ble Punjab and Haryana High Court in the case of State Bank of Patiala v. CIT (2005) 272 ITR 54 (P&H).*

*3.6 Since the assessee has claimed the sum of Rs.20,39,432/- without making provision as stated in section 36(1)(viii) of the Act same is not allowable as deduction."*

4. Aggrieved, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed the view taken by the Assessing Officer. The relevant finding of the CIT(A) reads as follows:-

*"3.....In particular, deduction under the provisions referred to below should be allowed only after a thorough examination of the claim on facts and on law as per the provisions of the I.T.Act, 1961 (i) under section 36(1)(vii) of the Act, deduction on account of bad debts which are written off as irrecoverable in the accounts of the assessee is admissible. However, this should be allowed only if the assessee had debited the amount of such debts to the provision for bad and doubtful debt account under section 36(1)(viii) of the Act, as required by section 36(2)(v) of the Act. (ii) While considering the claim for bad debts under section 36(1)(vii), the assessing officer should allow only such amount of bad debts written off as exceeds the credit balance available in the provision for bad and doubtful debt account created under section 36(2)(viii) of the Act. The credit balance for this purpose will*

*be the opening credit balance i.e., the balance brought forward as on 1<sup>st</sup> April of the relevant accounting year.” Accordingly, it is held that the issue contested vide the 3<sup>rd</sup> and the 4<sup>th</sup> grounds of appeal is covered against the appellant by the clarification issued by the Hon.CBDT vide their Instruction No.17/2008, dt.26/11/2008 in F.No.228/3/2008-ITA-II and therefore, after due consideration, the 3<sup>rd</sup> and the 4<sup>th</sup> grounds of appeal are dismissed.....”*

5. Aggrieved, the assessee has filed this appeal before the Tribunal. The learned AR reiterated the submissions and relied on the grounds and the additional ground raised.

6. The learned Departmental Representative, on the other hand, submitted that the issue in question is squarely covered against the assessee by the judgment of the Hon’ble jurisdictional High Court in the case of *CIT & Others v. Syndicate Bank reported in (2020) 422 ITR 460 (Kar.)*.

7. We have heard rival submissions and perused the material on record. The Hon’ble jurisdictional High Court in the case of *CIT & Others v. Syndicate Bank (supra)* had held that condition precedent for claiming deduction u/s 36(1)(viia) of the I.T.Act is that a provision for bad and doubtful debt should be made in the accounts of the assessee. The Hon’ble High Court was considering the following substantial question of law:-

*“(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in allowing deduction claimed towards bad and doubtful debts without making provision and without considering that section 36(1)(vii) and 36(1)(viia) are separate and independent, apart from that the assessee's claim under section 36(1)(vii) of the Income-tax Act is limited to the amount which exceeds the credit balance of the provisions made under section 36(1)(viia) of the Income-tax Act ?*

*(2) Whether on the facts and in the circumstances of the case the Tribunal's order can be considered as perverse in nature since the*

*Tribunal has allowed the assessee's appeal by over-looking the provisions of the Income-tax Act ?"*

7.1 In deciding the above substantial question of law, the Hon'ble High Court held as follows:-

*"8. Thus, a conjoint reading of the provision contained in section 36(1)(viiia) and explanatory note dated June 30, 1982 it is evident that deduction provided in section 36(1)(viiia) shall be allowed in respect of the matters dealt therein in computing the income. The condition precedent for claiming deduction under section 36(1)(viiia) of the Act is that a provision for bad and doubtful debt should be made in the accounts of the assessee. The aforesaid section mentions the maximum amount for which such a provision should be made. If a provision is made in excess of the limits prescribed under the section, the assessee would not be entitled to deduction of the excess amount. Once a provision is made and the amount of deduction is within the limit prescribed under the Act, the assessee would be entitled to deduction of the amount for which provision is made in the books of account.*

*9. The language employed in section 36(1)(viiia) of the Act is clear and unambiguous. It is well established rule of interpretation stated by Lord Cairns that "if the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. It is equally well settled legal proposition that "in a taxing Act one has to look merely as what is said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used". (see : CIT v. Kasturi and Sons Ltd. [1999] [237 ITR 24](#) (SC) ; AIR 1999 SC 1275 and Mahim Patram (P.) Ltd. v. Union of India [2007] 3 SCC 668 [See : Principles of Statutory Interpretation, Justice G. P. Singh, 14th edition, page 879]. Therefore, the question of going into intention or object behind the provision, viz., section 36(1)(viiia) of the Act does not arise.*

*10. The submission that even in the absence of any provision, the assessee is entitled to deduction cannot be accepted. The assessee is entitled to deduction to the extent provision made in the accounts subject to limit mentioned in section 36(1)(viiia) of the Act.*

*11. So far as the decision in Catholic Syrian Bank is concerned, from a perusal of para 16, it is evident that the aforesaid decision is an authority for the proposition that section 36(1)(vii) and 36(1)(viiia) are independent provisions and from perusal of paras 23 and 24 of the decision, it is axiomatic that the Supreme Court has taken note of the statement of objects and reasons for the Finance Act, 1986 and has held that amendments were intended to encourage rural advances and making of provision for bad debts in relation to such rural branches. The Supreme Court in the aforesaid decision negated the contention that grant of benefits under section 36(1)(vii) and 36(1)(viiia) of the Act, amounts to double deduction and in para 41 has concluded that*

*bad debts, written off in debts other than those for which provision is made under section 36(1)(vii) of the Act will be covered under the main part or section 36(1)(vii) of the Act. Thus, the aforesaid decision is also an authority for the proposition that section 36(1)(vii) of the Act, permits deduction in respect of provision made by the bank in respect of bad and doubtful debts. Therefore, the aforesaid decision is of no assistance in the fact situation of the cases to the assessee.*

*12. In view of the preceding analysis substantial questions of law in I. T. A. No. 256 of 2011 are answered in favour of the Revenue and substantial question of law Nos.1 and 2 in ITA No.258 of 2011 are answered in favour of the Revenue.....”*

7.2 However, in the additional ground, the assessee has submitted that it had created provision for bad and doubtful debts of Rs.2,91,337 as appropriation of profits. This should be considered as provision made and accordingly deduction allowed. To examine the plea of the assessee in the additional ground, the issue is restored to the AO. The AO shall follow the dictum laid down by the Hon'ble jurisdictional High Court in the case of *CIT & Others v Syndicate Bank (supra)*. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 11<sup>th</sup> day of November, 2021.

**Sd/-**  
**(B.R.Baskaran)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 11<sup>th</sup> November, 2021.

Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A) Mysuru.
4. The Pr.CIT, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore