

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)  
"A" BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER AND  
SHRI AMARJIT SINGH, HON'BLE JUDICIAL MEMBER**

**ITA NO. 623/MUM/2021 (A.Y: 2011-12)**

Abhyudaya Co-op Bank Limited Ground Floor, K.K. Tower Abhudaya Bank Lane Off. G.D. Ambedkar Marg Parel Village, Mumbai – 400012  <b>PAN: AAAAA0300L</b> <b>(Appellant)</b>	v.	Pr.CIT -1 3 <sup>rd</sup> Floor, Room No. 330 Aayakar Bhavan, M.K. Road Mumbai - 400020  <b>(Respondent)</b>
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<b>Assessee by</b>	:	<b>Shri Keshav Bhujale</b>
<b>Department by</b>	:	<b>Ms. Sailaja Rai</b>
<b>Date of Hearing</b>	:	<b>10.01.2022</b>
<b>Date of Pronouncement</b>	:	<b>23.03.2022</b>

**ORDER**

**PER S. RIFAUH RAHMAN (AM)**

**1.** This appeal is filed by the assessee against the order of the Learned Principal Commissioner of Income Tax (Appeals)–1, Mumbai [hereinafter in short "Ld. Pr.CIT"] dated 24.03.2021 for the A.Y.2011-12.

**2.** Brief facts of the case are, assessee is a scheduled cooperative bank engaged in the business of banking. In the year under consideration assessee filed return of income on 15.09.2011 declaring total income of

₹.41,79,64,710/-. The original assessment was completed u/s. 143(3) of Income-tax Act, 1961 (in short "Act") on 31.01.2014 determining the total income at ₹.41,79,64,710/- under normal provisions of the Act. Subsequently re-assessment was made u/s. 143(3) r.w.s. 147 of the Act on 26.12.2018 determining total income as per the original assessment order. Ld. Pr.CIT, Mumbai -1 perused the assessment records and observed that assessee had claimed deduction on account of provision of bad debts u/s. 36(1)(viiia) of the Act to the tune of ₹.17,43,85,411/- from A.Y.2007-08 to A.Y.2010-11. Assessee also claimed bad debts of ₹.1,65,53,139/- during those Assessment Years. According to him the balance for provision for doubtful debts (claimed u/s. 36(1)(viiia) as on 01.04.2010 should be ₹.15,78,32,092/-. He observed that during the year under consideration, assessee had written off total bad debts of ₹.56,49,26,145/- and claimed deduction of ₹.55,54,07,323/- u/s.36(1)(viiia) of the Act after setting off ₹.95,18,822/- against the provision of bad debts credited u/s. 36(1)(viiia) of the Act. He further observed that it is clear from the above observations that the assessee was having opening balance of ₹.15,78,32,092/- out of which only ₹.95,18,822/- has been set off. The assessee has not set off ₹.14,83,13,270/- of bad debts against the provision for bad debts. Therefore, he observed that assessee is not eligible to claim bad debts of

₹.14,83,13,270/- which was erroneously allowed by the Assessing Officer in the assessment passed u/s. 143 r.w.s. 147 of the Act. The assessee was issued show cause notice to furnish the details as to why the provisions of section 263 should not be invoked in this case. In response assessee filed written submissions dated 05.03.2021 and 10.03.2021. The assessee's submissions are summarized and briefly reproduced in the order which is reproduced below: -

*a) Before Applicability of provisions of section 36(1)(vii) of Income-tax Act to Co-Op Banks that is prior to 01/04/2006 bank had created provision for bad and doubtful debt reserve account by debiting to profit and loss account which was disallowed by the Assessing officer.*

*b) As per RBI guidelines bank has to create 100% provision (BDDR) on loss assets (Non performing assets -NPA) and as per percentage prescribed on doubtful assets and substandard assets.*

*c) During the A.Y 2011-12 bank had written off Rs.14,83,13,270/- as bad debts. The Bad Debts were written off by utilizing the provision created for the same. The Bad debts were written off against the BDDR provisions made before 01.04.2006 (as these advances were classified as NPA before 31.03.2006) i.e. before applicability of the section 36(1)(vii) to Co-op. Banks.*

*d) The assessment in the said case was completed under Sec.143(3) on 31.01.2014 when no addition was made on the issue of Bad debts. The case was again reopen under 143(3) r.w. 147 where in the said issue was raised on account of audit objection against which the contention of the assessee was accepted and the resultant order under Sec.147 was passed by the A.O.*

*e) Since the assessee has claimed deductions u/s.36(1)(via) for the Asst. Years 2007-08, 2008-09, 2009-10 and 2010-11 and the bad debts written off pertaining to advances classified as NPA's after 31.03.2006 have been first adjusted against these balances and the balance bad debts if any have been claimed since the A.Y.2012-13 onwards, it has not been prejudicial to the interests of the revenue.*

f) *The assessee has relied upon the decision in the case of City Co-op. Bank Ltd. v/s. ITO-1(3)(3) passed by ITAT, Mumbai supporting the contention of the assessee."*

**3.** After considering the submissions of the assessee Ld. Pr.CIT

rejected the submissions made with the following observations: -

*"8. I have perused the facts of the case and I do not find any force in the contentions made on behalf of the assessee which is satisfactorily relevant to the issue under consideration. The reasons for the same are as under:*

*1. In this regard it is stated that though the bad debts may have been classified as NPA before 01.04.2006 (i.e. applicability of section 36(1)(viiia) to co-operative banks) but the actual write off was claimed during A.Y.2011-12 {many years after availing the benefit of Provision for bad and doubtful debts reserve u/s.36(1)(viiia)}. There is no provision in the Act to say that the opening balance created u/s.36(1)(viiia) has to be adjusted only if the debts have been classified after the application of provisions of Section 36(1)(viiia). The proviso below section 36(1)(viiia) only stated that the opening balance has to be restricted to the amount by which such bad debts written off exceeds the credit balance in the provision for bad and doubtful debts account.*

*2. Alternatively, prior to 01.04.2006, co-operative banks were fully exempt from tax under the proviso of section 80P. Hence, there was no question of considering the bad debts during the computation of total income. Thus, the logic that debts classified as NPA prior to 01.04.2006 shall not be adjusted against the opening balance created u/s. 36(1)(vii a) defies logic. It is the year of write off of bad debt which is to be considered and not the year of classification of debts as bad.*

*3. As regards the issue of audit objection raised by you, it is stated herein that the same is not relevant to the proceedings initiated under sec.263. Further it has no bearing on the outcome of such proceedings which is processed without the influence of any extraneous factors.*

*4. The ITAT decision in the case of City Co-op. Bank Ltd. relied upon by your authorized representative was not accepted by the department and is contested before the Hon'ble High Court. However*

*the same was subsequently withdrawn on account of low tax effect as per the latest CBDT Instructions."*

4. Accordingly, he directed the Assessing Officer to add the amount of ₹.14,83,13,270/- claimed as bad debts u/s. 36(1)(vii) of the Act and he directed the Assessing Officer to give an opportunity of hearing to the assessee and then complete the re-assessment.

5. Aggrieved assessee is in appeal before us raising following grounds in its appeal: -

**"1. Notice u/s. 263 dated 02/03/2021 is illegal and invalid:**

1.1 *The learned Principal Commissioner of Income-tax erred in issuing the notice u/s. 263 of the Income-tax Act, 1961 dated 02/03/2021.*

1.2 *The learned Principal Commissioner of Income-tax failed to appreciate that the said notice u/s. 263 dated 02/03/2021 is illegal and invalid being without authority in law and without jurisdiction.*

1.3 *The learned Principal Commissioner of Income-tax failed to appreciate that the assessment order 26/12/2018 is neither erroneous nor prejudicial to the interest of the revenue.*

1.4 *The learned Principal Commissioner of Income-tax failed to appreciate that the claim for deduction of Rs. 14,83,13,270/- u/s.36(1)(vii) was allowed in the assessment order dated 31/01/2014 and not in the assessment order dated 26/12/2018 and accordingly the notice u/s. 263 is barred by limitation.*

1.5 *The Learned Principal Commissioner of Income-tax failed to appreciate that the claim for deduction of Rs. 14,83,13,270/- u/s.36(1)(vii) is allowable and the claim is also supported by the decision of the jurisdictional Mumbai Bench of the Income Tax Appellate Tribunal dated 12/09/2017 in the case of City Cooperative Bank Ltd., in ITA no. 2884/Mum/2015.*

1.6 *The learned Principal Commissioner of Income-tax failed to appreciate that the said decision of the jurisdictional Mumbai Bench of the Income Tax Appellate Tribunal dated 12/09/2017 in the case*

*of City Cooperative Bank Ltd., in ITA no. 2884/Mum/2015 has reached the finality and is binding on him.*

**2. Order u/s. 263 dated 24/03/2021 is illegal and invalid.**

*2.1 The Learned Principal Commissioner of Income-tax failed to appreciate that the notice u/s. 263 dated 02/03/2021 being illegal and invalid, the consequent order u/s. 263 dated 24/03/2021 is also illegal and invalid.*

*2.2 The learned Principal Commissioner of Income-tax failed to appreciate that the order u/s. 263 dated 24/03/2021 is illegal and invalid being without authority in law and without jurisdiction.*

*2.3 The learned Principal Commissioner of Income-tax failed to appreciate that the order u/s. 263 dated 24/03/2021 is illegal and invalid being barred by limitation.*

*2.4 The learned Principal Commissioner of Income-tax failed to appreciate that the claim for deduction of Rs. 14,83,13,270/- u/s.36(1)(vii) is allowable deduction and the claim is also supported by the decision of the jurisdictional Mumbai Bench of the Income Tax Appellate Tribunal dated 12/09/2017 in the case of City Cooperative Bank Ltd., in ITA no. 2884/Mum/2015.*

*2.5 The learned Principal Commissioner of Income-tax failed to appreciate that the said decision of the jurisdictional Mumbai Bench of the Income Tax Appellate Tribunal dated 12/09/2017 in the case of City Cooperative Bank Ltd., in ITA no. 2884/Mum/2015 has reached the finality and is binding on him.*

*3. The appellant craves leave to add, amend, alter and/or delete any of the grounds of appeal."*

**6.** At the time of hearing, Ld. AR submitted that this issue is already covered by the Coordinate Bench of the Tribunal in the case of City Cooperative Bank Ltd. v. ITO in ITA no. 2884/Mum/2015 dated 12.09.2017 and relied on the above case.

**7.** On the other hand, Ld. DR brought to our notice Para No. 8 of the Ld. Pr.CIT order and supported the finding and also submitted that

cooperative banks are fully exempted from tax under the provision of section 80P of the Act. Therefore, there is no question of considering the bad debts during the computation of total income. Further he submitted that decision of the ITAT in the case of City Cooperative Bank Ltd. v. ITO (supra) relied by the assessee was not accepted by the department and contested before Hon'ble High Court. Further, he submitted that the same was subsequently withdrawn due to the low tax effect as per the latest CBDT instruction. Further on merit he supported the findings of the Ld.Pr.CIT.

**8.** Considered the rival submissions and material placed on record, we observed that this issue is already covered in detail by the Coordinate Bench in the case of City Cooperative Bank Ltd. v. ITO (supra) and held as under: -

*"3. We have gone through the submissions made by both the parties. We noted from the chart available on page 15 of the paper book showing the statement of party-wise bad debts written off and the provision existed as on 31.03.2006 that the assessee has written off the bad debts in respect of 31 parties amounting to `94,45,827/- during the impugned assessment year while the provisions as on 31.03.2006 was to the extent of ₹.83,39,432.57. The assessee has made provision for assessment years 2007-08, 2008-09 and 2009-10 at ₹.7,96,787/-, ₹. 5,029/- and ₹.2,75,628/- respectively. It is a fact that up to A.Y. 2006-07 the income from banking business was fully allowed in the case of the assessee under section 80P of the Income Tax Act. Subsequently by Finance Act, 2006 by insertion of sub-section (4) in section 80P the assessee was not entitled for deduction under section 80P from A.Y. 2007-08. The deduction under section 36(1)(vii) is available in respect of bad debts written off subject to the fulfilment of the conditions specified under section*

*36(2). Section 36(1)(vii) provides for the treatment of provisions for bad and doubtful debts of an amount not exceeding 7.5% of the total income (computed before making any deduction under this clause and Chapter VIA) and an amount not exceeding 10% of the aggregate average advances made by the rural branches of such banks. The provisions of Section 36(1)(vii) and section 36(1)(viii) are distinct and independent. The provisions of Section 36(1)(viii) are applicable w.e.f. A.Y. 2007-08 to cooperative bank also. Therefore any provision allowed in A.Y. 2007-08 onwards in the case of a cooperative bank under clause (vii) will be hit by this amendment but a provision standing in the account of a cooperative bank prior to 01.04.2006 will not come in the ambit of section 36(1)(viii) and in our opinion if any bad debts written off for which a provision has been created prior to 01.04.2006 will be entitled for deduction under section 36(1)(viii) if the conditions stipulated under section 36(2) are satisfied. From the chart as appearing on page 15 it is apparent that the assessee had written off the bad debts amounting to ₹.92,45,827/- during the year. It is not related to the provisions in respect of which the assessee has claimed deduction in the earlier assessment year. We, therefore, set aside the order of the CIT(A) on this issue and delete the said addition. Thus, this ground stands allowed.*

**9.** Respectfully following the above said decision, we are inclined to allow the claim of the assessee. Moreover, the assessment was originally assessed u/s. 143(3) of the Act and subsequently reopened to examine the same issue. After verification, the Assessing Officer has accepted the contention of the assessee. Once again Ld. Pr.CIT raised the same issue and directs the Assessing Officer to verify the same once again after giving opportunity of being heard to the assessee. The Ld. Pr.CIT cannot impose his views on the issue which was verified twice and respective Assessing Officer's has taken their view. Considering the sequence of events in our view Ld. Pr.CIT has no jurisdiction to interfere with the completed proceedings otherwise, there is no end to the assessment proceedings.

Therefore, the revision order passed u/s.263 is accordingly, set aside.

Grounds raised by the assessee are allowed.

**10.** In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 23.03.2022.

Sd/-  
**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 23.03.2022  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**