

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

माननीय श्री वी. दुर्गारव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.1198/Chny/2017
(निर्धारण वर्ष / Assessment Year: 2009-10)

DCIT Circle -3(1), No. 44, Williams Road, Cantonment, Trichy – 620 001.	बनाम/ Vs.	The Pudukottai District Central Co-operative Bank Limited T.S. No. 834-836, East Main Street, Pudukottai – 622 001.
स्थायी लेखा सं./ जी आइ आर सं./ PAN/GIR No. AAATT-0623-Q		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri S. Sathianarayanan (Advocate)-Ld. AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri M. Rajan (CIT) – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	12-05-2022
घोषणा की तारीख / Date of Pronouncement	:	08-06-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2009-10 arises out of the order of learned Commissioner of Income Tax (Appeals)-2, Tiruchirappalli [CIT(A)] dated 02.03.2017 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 27.12.2011. The grounds taken by the Revenue read as under:

1. The learned CIT(A) erred to allow the deduction u/s 36(i)(vii) of the Act which is against law.

2.The learned CIT(A) erred to notice that the deduction u/s 36(i)(viiia) of the Act is to be allowed only when the provision for bad and doubtful debts should be created in books of accounts and the same should be reflected in financial statements.

3. The Learned CIT(A) erred to allow the deduction u/s 36(i)(viiia) of the Act to the extent of Rs.18,48,90,379/- while the provisions for bad and doubtful created and charged in P&L account was only Rs.98,838/-.

4. The Learned CIT(A) erred to notice that the deduction u/s 36(i)(viiia) of the Act should not exceed by the amount exceeding the credit balance of provision created for bad and doubtful debts

5. For the above grounds and other grounds that may be adduced at the time hearing, the order of the CIT(A) may be cancelled and the Department appeal may be allowed

As evident, the sole subject matter of revenue's appeal is deduction u/s 36(1)(viiia).

2. The Registry has noted a delay of 07 days in the appeal, the condonation of which has been sought by the Ld. CIT-DR on the strength of affidavit of learned assessing officer. It has been stated that delay occurred as the case file was not traceable and the delay was neither willful nor wanton. Considering the period of delay, we condone the delay and proceed for adjudication of the appeal on merits.

3. The Ld. CIT-DR, referring to various judicial decisions, assailed the relief granted by Ld. CIT(A) in the impugned order. The Ld. CIT-DR submitted that the deduction could be allowed only to the extent of provisions made in the books of accounts and not beyond that. The Ld. AR, on the other hand, vehemently supported the impugned order and submitted that the order would not require any interference on our part. Having heard rival submissions and after due consideration of material facts, our adjudication would be as under.

Assessment Proceedings

4. The assessee being a District Central Co-operative Bank was assessed for the year u/s 143(3). During assessment proceedings, it

transpired that the assessee made a provision for bad and doubtful debts (erroneously referred in the assessment order as provision for standard assets under the norms prescribed by Reserve Bank of India) for Rs.36.38 Lacs. However, it claimed deduction u/s. 36(1)(viiia) for Rs.1848.90 Lacs computed in the following manner: -

7.5% of Gross Total income	:	Rs. 69,43,504/-
10% of Aggregate Average Advances Made by of Rural Branch	:	Rs. 17,79,46,875

Total		Rs. 18,48,90,379

The provisions of Sec.36(1)(viiia) provides for deduction as under: -

in respect of any provision for bad and doubtful debts made by 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 cooperative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, an amount not exceeding seven and one-half per cent of the total income computed before making any deduction under this clause and Chapter VIA 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:

Accordingly, Ld. AO held an opinion that any provision for bad debts made by the assessee in the Profit and Loss account alone is eligible to be considered for deduction under this section. Since the assessee made provision only to the extent of Rs.36.38 Lacs, the deduction u/s. 36(1)(viiia) was to be restricted to that extent only. Accordingly, the excess deduction of Rs.1812.52 Lacs was added back to the income of the assessee.

Appellate proceedings

5. Upon further appeal, Ld. CIT(A) allowed the claim of the assessee as under: -

5.1. In the assessment order the Assessing Officer has stated that the appellant had not disputed the quantum of the deduction claimed u/s 36(1)(viiia) of the Act nor the appellant's claim for the deduction. He had disallowed the claim for deduction on the premise that the same had not been debited to the profit and loss account. Thus the

entire claim for deduction u/s 36(1)(vii) towards provision for bad and doubtful debts amounting to Rs.18,12,52,1787-.

5.2. The A.R. submitted that the only issue that is disputed is the disallowance of the claim for bad debts u/s 36(1)(vii) relating to the provision of bad debts on rural advances. The bank is catering predominantly to rural population only and all the conditions for allowance of the claim has been satisfied viz. the villages to which the bank caters does not have population in excess of 10,000 and it is not a primary agricultural credit society or a primary co-operative agricultural and rural development bank. Though the Assessing Officer had not disputed the quantum of deduction u/s 36(1)(vii), he had disallowed the claim stating that the provision had not been routed through the profit and loss account.

5.3. The A.R. for the appellant pleaded that the Act requires only the creation of provision for bad and doubtful debts in the books. This has been done and the same is carried as a balance sheet item, the appellant is eligible to claim. He also submitted a detailed working of the aggregate advances and also the list of branches. He also stated that he relies on the decision of the Hon'ble Apex Court in **Catholic Syrian Bank Ltd. Vs Commissioner of Income Tax, Thrissur (SC) (2012) 343 ITR 270.**

Deduction u/s. 36(1)(vii)(a)

7.5% of Gross total income	69,43,504.18	9,25,80,056
10% of Aggregate Advances of Rural branches	17,79,46,875.00	18,48,90,379.18

Aggregate Average Advances of Rural Branches

	Total Advances	Urban Branches	Rural Branches
			Amt. in lakhs
April	25,770.28	8,481.74	17,288.54
May	25,903.29	8,507.52	17,395.77
June	26,053.48	8,542.79	17,510.69
July	26,194.22	8,586.41	17,607.81
August	26,261.71	8,652.57	17,609.14
September	26,395.55	8,668.74	17,726.81
October	26,471.66	8,711.28	17,760.38
November	26,607.70	8,753.85	17,853.85
December	26,715.79	8,758.79	17,957.00
January	26,814.15	8,766.32	18,047.83
February	27,111.58	8,782.95	18,328.63
March	27,294.47	8,844.67	18,449.80
			2,13,536.25
		Amount in Rs.	21,35,36,25,000.00
		Aggregate average Advance	<u>1,77,94,68,750.00</u>

5.4. The veracity of the claim for deduction u/s 36(1)(vii) of the Act was verified in the light of the submissions made by the A.R. of the appellant vis-a-vis the facts submitted by him and the conclusion arrived at by the Assessing Officer. It is seen from the records that the appellant had claimed the deduction after creating a provision for the bad and doubtful debts which is not disputed by the Assessing Officer neither as to the quantum nor as to the eligibility criteria. The Assessing Officer is not in agreement to the deduction only because the same had not been debited to the profit and loss account of the appellant. From a plain reading of the

section the Act postulates a deduction can be claimed by creating a provision for the doubtful debts in the books of accounts. (Sec 36(2)).

5.5. Based on the above I am of the opinion that the appellant is eligible for the deduction and so the entire disallowance of Rs.18,12,52,178/- is deleted.

In concluding paragraph, it has been observed by Ld. CIT(A) that the assessee has claimed the deduction after creating a provision for the bad and doubtful debts which is not disputed by the Assessing Officer neither as to the quantum nor as to the eligibility criteria. The Assessing Officer is not in agreement to the deduction only because the same had not been debited to the profit and loss account of the assessee. However, the section merely postulates that the deduction could be claimed by creating a provision in the books of account. Accordingly, the impugned disallowance as made by Ld. AO was deleted. Aggrieved as aforesaid the revenue is in further appeal before us.

Our findings and Adjudication

6. Upon careful consideration of assessee's computation of income, it could be gathered that during this year, the assessee has made a provision for bad and doubtful debts for Rs.98,838/- in the Profit & Loss Account which has been added back in the computation of income. The Ld. AO has erred in noting that the provision was made by the assessee to the extent of Rs.36.38 Lacs. Be that as may be, we find that as against the provision so made, the assessee has claimed deduction u/s 36(1)(viiia) for Rs.1848.90 Lacs which is aggregate of 7.5% of its gross total income and 10% of aggregate average advances of rural branches. Thus, though the provision for the year has been created for Rs.98,838/-, the assessee has claimed deduction of higher amount. The same is on the reasoning that the assessee has maintained the reserve in earlier

years. The working of the same has been provided by the assessee as under: -

S.No.	Classification	Amount of Assets	% of Provision	Amount of Provision Required
1	Sub-Std. Assets	30,307,559.00	10%	3,030,756.00
2	Doubtful I Assets Secured	3,155,966.00	20%	631,193.00
3	Doubtful II Assets Secured	7,294,671.00	30%	2,188,401.00
4	Doubtful III Assets Secured	2,689,302.00	75%	2,016,977.00
5	Doubtful Assets Secured from 1/ 4/2008	4,560,565.00	100%	4,560,565.00
6	Doubtful I Assets unsecured	5,427,365.00	100%	5,427,365.00
7	Loss Assets	396,363,799.00	100%	396,363,799.00
	Total Provision Required	449,799,227.00		414,219,056.00
	NPA Amount	449,799,227.00		414,219,056.00
	Standard Assets	2,279,648,056.00	0.50%	11,398,240.00
	GRAND TOTAL	<u>2,729,447,283.00</u>		<u>425,617,296.00</u>

Reserve Already Maintained

I.	Bad and doubtful Debts	40,216,182.50
II.	Risk Fund as on 31.03.2008	10,934,860.00
III.	Risk Fund interest for 2008-09	10,235,333.00
	TOTAL	<u>414,120,218.00</u>

NPA Reserve to be Required	414,219,056.00
Reserve Created for the year 2008-09	98,838.00

STANDARD ASSETS

Contingent Reserve to be maintained as on 31.3.09 @ 0.50%	11,398,240.00
Contingent Reserve already maintained	77,600,399.00
Contingent Reserve to be Created for 2008-2009	36,382,010.00

NPA Provision

Risk Fund Code No.10160	11,958,393.00
BCR Reserve Code No.10170	40,260,663.00
TOTAL	<u>414,219,056.00</u>

Upon perusal of the above tabulation, it could be observed that actual provision created during the year is only Rs.98,838/- and the balance provision represent reserve created in earlier years. Accordingly, Ld. CIT(A) fell in error that the provisions was created by the assessee during the year in the books of accounts. Upon perusal of various binding judicial decisions, we find that this methodology is not a correct methodology and to claim deduction u/s 36(1)(vii), the assessee has to actually create such provisions in the books of accounts to claim this deduction. These decisions are enumerated in the succeeding paragraphs.

7. The Hon'ble High Court of Madras in **Cuddalore District Central Cooperative Bank Ltd. V/s DCIT (130 Taxmann.com 239; 14/06/2021)**, under similar circumstances and considering the decision of Hon'ble Supreme Court in **Catholic Syrian Bank Ltd. V/s CIT (18 Taxmann.com 282)**, held as under: -

19. In the present case, the respondent has stated clearly that the provision for bad and doubtful debts is under section 36 (1) (vii). Unless amount of bad and doubtful debts is debited to the provision for bad and doubtful debts account and the deduction admissible u/s.36 (1) (vii) is limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account. The language and intention of the legislature is clear and unambiguous and therefore the mistake in this case is apparent from record and thus issue of notice under section 154 is within the ambit of section 154 of the Income-tax Act, and it is a mistake apparent from record.

Finally, the writ petition filed by the assessee against rectification notice u/s 154 was dismissed.

8. There is a direct decision of Hon'ble High Court of Karnataka on the issue. The Hon'ble Court in **CIT V/s Syndicate Bank (120 Taxmann.com 258; 24.01.2020)**, considering the decision of Hon'ble

Supreme Court in **Catholic Syrian Bank Ltd. V/s CIT (18 Taxmann.com 282)**, decided the issue in revenue's favor as under:-

7. Explanatory notes on provisions contained in Circular No. 346 dated 30-1-1982 deals with object of deductions made in respect of payments to associations and doubtful debts under section 36 (1)(viiia) of the Act. The relevant extract reads as under:-

17.3 As non-scheduled commercial banks are also engaged in providing rural credit and promoting rural banking, the Finance Act has amended clause (viiia) of sub-section 36 of the IT Act to extend the provision relating to deduction in respect of provisions made by scheduled commercial banks for bad and doubtful debts relating to advances by rural branches to non-scheduled commercial banks as well. For this purpose, the expression "non-scheduled Bank" means a banking company as defined incl. (c) of S.5 of the Banking Regulation Act, 1949 but which is not a scheduled bank.

8. Thus, a conjoint reading of provision contained in section 36(1)(viiia) and explanatory note dated 30-6-1982 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 accounts.

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 once 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 & Sons Ltd.* [1999] 103 Taxman 342/237 ITR 24 (SC) and *Mahim Patram (P.) Ltd. v. Union of India* 2008 taxmann.com 1074 (SC)] [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(viiia) of the Act.

11. So far as decision in *Catholic Syrian Bank* is concerned, from perusal of para 16, it is evident that aforesaid decision is an authority for the proposition that section 36(1)(vii) and 36(1)(viiia) are independent provisions and from perusal of para 23 and 24 of the decision, it is axiomatic that Supreme Court has taken note of

statement of objections 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 aforesaid decision negated the contention that grant benefits under 36(1)(vii) and 36(1)(viii) 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 provisions is made under section 36(1)(viii) of the Act will be covered under 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)(viii) of the Act, permits deduction in respect of provision made by the bank in respect of bad and doubtful debts. Therefore, aforesaid decision is of no assistance in the fact situation of the cases to the assessee.

The Hon'ble Court thus held that the condition precedent for claiming deduction under section 36(1)(viii) 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 accounts. Further, 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(viii) of the Act.

9. The decision of Hon'ble Punjab & Haryana High Court in **State Bank of Patiala V/s CIT (272 ITR 54)** is also on the similar lines wherein Hon'ble Court has held as under: -

5. Section 36(1)(viii) 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 (viii) 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 (vii) of section 36(1) of the Act, which reads as under:

"**Provided** that in the case of an assessee to which clause (vii) 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 part thereof exceeds the credit balance in 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)(vii) 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(1)(vii) 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.

10. Similar is the decision of Chennai Tribunal in **M/s Nazareth Urban Co-operative Bank Ltd. V/s DCIT (ITA Nos.513 & 514/Chny/2018 dated 27.06.2019)** as well as the decision in **ACIT V/s Cuddalore District Central Co-operative Bank Ltd. (ITA No.1921/Chny/2018; 09.04.2021)**, the copies of which have been placed on record by Ld. CIT-DR.

11. Considering the above said settled legal position, the adjudication of Ld. CIT(A) could not be sustained in the eyes of law. By reversing the same, we allow the appeal of the revenue. The deduction u/s 36(1)(viiia) shall stand restricted to the extent of actual provision made during the year i.e., to the extent of Rs.98,838/-. The Ld. AO is directed to re-compute the income in terms of our above order.

12. The appeal stand allowed in terms of our above order.

Order pronounced on 08th June, 2022.

Sd/-
(V. DURGA RAO)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 08-06-2022
JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF