

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 131/SRT/2021 (AY 2017-18)
(Hearing in Virtual Court)

Assistant Commissioner of Income Tax, Circle-2(1)(1), Surat.	Vs	The Surat District Co- Operative Bank Ltd. 1, Kanpith, Lalgate, Surat-395003 PAN : AAAAT 2985 Q
Appellant / Revenue		Respondent / assessee

Assessee by	Shri Akshay Modi, CA
Revenue by	Shri Vinod Kumar, Sr.DR
Date of hearing	04/07/2022
Date of pronouncement	04/07/2022

Order under section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC) dated 30/06/2021 for the Assessment year 2017-18. The assessee has raised following grounds of appeal:

- “1 On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in deleting the disallowance of Rs. 1,95,00,000/- made out of deduction claimed by the assessee u/s 36(1)(vii) of the Act.
- 2 The appellant craves leave to add, alter amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.
3. It is, therefore, prayed that the order of the Id. CIT(A) may be set aside and that of assessing officer may be restored to be above extent.”

2. The at the time of hearing, the ld. Authorised Representative (AR) of the Assessee has submitted that the effective sole ground of appeal raised by revenue against deleting the disallowance under section 36(1)(viia) in this appeal is covered by the decision of the Tribunal in assessee's own case for A.Y. 2010-11 in ITA No. 16/Ahd/2015 dated 17/05/2022. The facts of this year is identical to the facts for the A.Y. 2010-11. Further, there is no variation in the facts for the year under consideration, therefore, he prayed to dismiss the appeal of the revenue for A.Y. 2017-18.
3. On the other hand, the ld. Senior departmental representative (Sr-DR) vehemently supported the order of the A.O. and submits that the assessee is not eligible for deduction under section 36(1)(viia).
4. We have considered the rival submissions of both the parties and perused the material available on record. From perusal of record, we find that combination of this Bench in assessee's own case for the A.Y. 2010-11 in ITA No. 16/Ahd/2017 vide order dated 17/05/2022 has confirmed the order of Ld. CIT(A), thereby decided the appeal in favour of the assessee by passing the following order:

“15. We have considered the rival submission of the parties and have gone through the orders of lower authorities and above cited case laws carefully. Before adverting to the facts and the observation of lower authorities, we may reproduce the relevant provision of section 36(1)(viiia) 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 seven 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:

Explanation: - In this clause,

(vi) "co-operative bank", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank" shall have the meanings respectively assigned to them in the Explanation to sub-section (4) of section 80P ;'

16. We find that the assessee made a provision under section 36(1)(viiia) of Rs. 7.16 Crore, the assessing Officer disallowed the claim to the extent of Rs.3.66 crores out of total claim of assessee under section 36(1)(viiia) by taking view that the aforesaid amount under four heads are not provision for bad and doubtful debts for reserve the amount provided as per Gujarat Co-Operative Society, Act, is not the provision, rather it is a reserve created only if the society makes profit and provision for standard assets, the Assessing Officer held that standard assets cannot be treated to have provided against bad and doubtful debts under the standard assets a performing assets. Though it is mandatory in provision for standard assets as per RBI's norm but it cannot be categorized as doubtful debts for allowing deduction under section 36(1)(viiia)(a). For the provision of bad and doubtful debts against standard asset of Rs. 50 Lakhs, the assessing officer held that

this is a performing asset, which is governed by 2(1)(xv) of Non-banking financial companies prudential norms (Reserve Bank) directions 1998. It was held that though it is mandatory but cannot be categorised as 'bad debts' For security depreciation of Rs.1.50 crores the Assessing Officer held that this reserve for contingency and not a provision for bad and doubtful debts. For fourth provision of Rs.50 lakh, Assessing Officer held that investment depreciation fund is also provision to cover the value of stock-in-trade which is also contingent in nature. We find that Ld. CIT(A) after examining the statutory provision and held that assessee has a rural advance of Rs.159 Crore (rounded) against which the assessee has claimed only Rs.7.16 crores though they are entitled to claim @ 10% of the aggregate of average advance by rural branches of assessee-bank. Thus, the Ld. CIT(A) allowed all the claim under four various heads by holding that the assessee is clearly eligible for the deduction under section 36(1)(viia) as it fulfilled the two condition that any provisions for bad and doubtful debts made by Co-operative bank is allowable if it does not exceed 7 ½ of total income (computed before making deduction under this clause under chapter VIA) and an amount not exceeding 10% of aggregate average advances made by rural branch.

17. *We find that the assessing officer has not doubted the number of rural branches as defined under section 36(1) (viia) (d)(ia) or the total of the advances made by rural branches of assessee-bank and the computation made in the prescribed manner.*

18. *We further find that the assessee claimed that similar deduction was allowed in assessment years 2008-09, 2009-10 in assessment passed under section 143(3) and in assessment years 2015-16 & 2016-17 in accepted in assessment order under*

section 143(1). However again in assessment year 2017-18 it was allowed in assessment order passed under section 143(3). The Assessing Officer disallowed the deduction under section 36(1)(viii)(a) in assessment year 2012-13. However, on appeal before Ld. CIT(A) the assessee was granted relief and on further appeals of the Revenue is pending before Tribunal. These facts were not controverted by Revenue. Thus, the assessee is liable to be succeeded on the principles of consistency.

19. *The Hon'ble Supreme Court in Catholic Syrian Bank Vs CIT (supra) after discussing the scope of section 36(1)(vii) and (viii) held that both the provisions are separate and distinct, the relevant part of the decisions of extracted below for appreciation of the controversy in the case in hand;*

“17. The provisions of Section 36(1)(vii) would come into play in the grant of deductions, subject to the limitation contained in Section 36(2) of the Act. Any bad debt or part thereof, which is written off as irrecoverable in the accounts of the assessee for the previous year is the deduction which the assessee would be entitled to get, provided he satisfies the requirements of Section 36(2) of the Act. Allowing of deduction of bad debts is controlled by the provisions of Section 36(2). The argument advanced on behalf of the Revenue is that it would amount to allowing a double deduction if the provisions of Sections 36(1)(vii) and 36(1)(viii) are permitted to operate independently. There is no doubt that a statute is normally not construed to provide for a double benefit unless it is specifically so stipulated or is clear from the scheme of the Act. As far as the question of double benefit is concerned, the Legislature in its wisdom introduced Section 36(2)(v) by the Finance Act, 1985 with effect from 01.04.1985. Section 36(2)(v) concerns itself as a check for claim of any double deduction and has to be read in conjunction with Section 36(1)(viii) of the Act. It requires the assessee to debit the amount of such debt or part thereof in the previous year to the provision made for that purpose.

Effect of Circulars

18. Now, we shall proceed to examine the effect of the circulars which are in force and are issued by the Central Board of Direct Taxes (for short, 'the Board') in exercise of the power vested in it under Section 119 of the Act. Circulars can be issued by the Board 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. {Refer to UCO Bank, Calcutta v. CIT [1999] 4 SCC 599 .

19. In the present case, after introduction of Section 36(1)(viiia) by the Finance Act, 1979, [(1981) 131 ITR (St.) 88], with effect from 1st April, 1980, Circular No. 258 dated 14th June, 1979 was issued by the Board to clarify the application of the new provisions. The provisions were introduced in order to promote rural banking and assist the scheduled commercial banks in making adequate provision from their current profits to provide for risks in relation to their rural advances. The deductions were to be limited as specified in the Section. A 'rural branch' for the purpose of the Act had meant a branch of a scheduled bank, situated in a place with a population not exceeding 10,000, according to the last preceding census of which the relevant figures have been published. Under clause 13.3, the Circular found it relevant to mention that the provisions of new clause (viiia) of Section 36(1), relating to the deduction on account of provisions for bad and doubtful debts, is distinct and independent of the provisions of Section 36(1)(vii) relating to allowance of deduction of the bad debts. In other words, the scheduled commercial banks would continue to get the benefit of the write-off of the irrecoverable debts under Section 36(1)(vii) in addition to the benefit of deduction of the provision for bad and doubtful debts under Section 36(1)(viiia).

20. The Finance Act, 1985, which was given effect from 1st April, 1985, added the proviso to Section 36(1)(vii), amended Section 36(1)(viiia) and also introduced clause (v) to Section 36(2) of the Act. To complete the history of

amendments to these clauses, we may also notice that proviso to Section 36(1)(vii)(a) was introduced by Finance Act, 1999 with effect from 1st April, 2000 and explanation to Section 36(1)(vii) was introduced by Finance Act, 2001 with effect from 1st April, 2001.

21. A Circular No.421 dated 12th June, 1985 [(1985) 156 ITR (St.) 130] attempted to explain the amendments made to Section 36 and also explained the provisions of clause (vii) of Section 36(1). It reads as under :

"Deduction in respect of provisions made by banking companies for bad and doubtful debts.

17.1 Section 36(1)(vii) of the Income-tax Act provides for a deduction in the computation of taxable profits of the amount of any debt or part thereof which is established to have become a bad debt in the previous year. This allowance is subject to the fulfilment of the conditions specified in sub-section (2) of section 36.

17.2 Section 36(1)(vii) of the Income-tax Act provides for a deduction in respect of any provision for bad and doubtful debts made by a scheduled bank or a non-scheduled bank in relation to advances made by its rural branches, of any amount not exceeding 1½ per cent of the aggregate average advances made by such branches.

17.3 Having regard to the increasing social commitments of banks, section 36(1)(vii) has been amended to provide that 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 section 36(1)(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 the proposed new provision) or two per cent of the aggregate average advances made by rural branches of such banks, whichever is higher, shall be allowed as a deduction in computing the taxable profits.

17.4 Section 36(1)(vii) of the Act has also been amended to provide that in the case of a bank to which section 36(1)(vii) applies, the amount of bad and doubtful debts shall be debited to the provision for bad and doubtful debts account and that the deduction admissible under section 36(1)(vii) 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.

17.5 Section 36(2) has been amended by insertion of a new clause (v) to provide that where a debt or a part of a debt considered bad or doubtful relates to advances made by a bank to which section 36(1)(viiia) applies, no such deduction shall be allowed unless the bank has debited the amount of such debt or part of debt in that previous year to the provision for bad and doubtful debt account made under clause (viiia) of section 36(1)."

22. Still another circular being Circular No.464, dated 18th July, 1986 [(1986) 161 ITR(St.) 66] was issued with the intention to explain the amendments made by the Income Tax (Amendment) Act, 1986. Clause 5 of the Circular dealt with the modifications introduced in respect of the deductions on provisions for bad and doubtful debts made by the banks and it stated as follows :

"5. Modification in respect of deduction on provisions for bad and doubtful debts made by the banks :

5.1 Under the existing provisions of clause (viiia) of sub-section (1) of section 36 of the Income-tax Act inserted by the Finance Act, 1979, provision for bad and doubtful debts made by scheduled or a non-scheduled Indian bank is allowed as deduction within the prescribed limits. The limit prescribed is 10% of the total income or 2% of the aggregate average advances made by the rural branches of such banks, whichever is higher. It had been represented to the Government that the foreign banks were not entitled to any deduction under this provision and to that extent, they were being discriminated against. Further, it was felt that the existing ceiling in this regard, i.e., 10% of the total income or 2% of the aggregate average advances made by the rural branches of Indian banks, whichever is higher, should be modified. Accordingly, by the Amending Act, the deduction presently available under clause (viiia) of subsection (1) of section 36 of the Income-tax Act has been split into two separate provisions. One of these limits the deduction to an amount not exceeding 2% of the aggregate average advances made by the rural branches of the banks concerned. It may be clarified that foreign banks do not have rural branches and hence this amendment will not be relevant in the case of

the foreign banks. The other provisions secure that a further deduction shall be allowed in respect of the provision for bad and doubtful debts made by all banks, not just the banks incorporated in India, limited to 5% of the total income (computed before making any deduction under this clause and Chapter VI-A). This will imply that all scheduled or non-scheduled banks having rural branches would be allowed the deduction up to 2% of the aggregate average advances made by such branches and a further deduction up to 5% of their total income in respect of provision for bad and doubtful debts."

23. Reference usefully can also be made to the Statement of Objects and Reasons for the Finance Act, 1986, wherein, inter alia, it was stated that the amendments were intended to provide a deduction on the provisions for bad debts made by all banks upto 5 per cent of their total income and an additional 2 per cent of the aggregate average advances made by the rural branches of the banks. These percentages stood altered by subsequent amendments in 1993 and 2001.

24. Clear legislative intent of the relevant provisions and unambiguous language of the circulars with reference to the amendments to Section 36 of the Act demonstrate that the deduction on account of provisions for bad and doubtful debts under Section 36(1)(viiia) is distinct and independent of the provisions of Section 36(1)(vii) relating to allowance of the bad debts. The legislative intent was to encourage rural advances and the making of provisions for bad debts in relation to such rural branches. Another material aspect of the functioning of such banks is that their rural branches were practically treated as a distinct business, though ultimately these advances would form part of the books of accounts of the principal or head office branch. Thus, this Court would be more inclined to give an interpretation to these provisions which would serve the legislative object and intent, rather than to subvert the same. The Circulars in question show a trend of encouraging rural business and for providing greater deductions. The purpose of granting such deductions would stand frustrated if these deductions are implicitly neutralized against other independent deductions specifically provided under the provisions of the Act. To put it simply, the deductions permissible under Section 36(1)(vii) should not be negated by reading into this

provision, limitations of Section 36(1)(viia) on the reasoning that it will form a check against double deduction. To our mind, such approach would be erroneous and not applicable on the facts of the case in hand.

Interpretation and Construction of Relevant Sections

25. The language of Section 36(1)(vii) of the Act is unambiguous and does not admit of two interpretations. It applies to all banks, commercial or rural, scheduled or unscheduled. It gives a benefit to the assessee to claim a deduction on any bad debt or part thereof, which is written off as irrecoverable in the accounts of the assessee for the previous year. This benefit is subject only to Section 36(2) of the Act. It is obligatory upon the assessee to prove to the assessing officer that the case satisfies the ingredients of Section 36(1)(vii) on the one hand and that it satisfies the requirements stated in Section 36(2) of the Act on the other. The proviso to Section 36(1)(vii) does not, in absolute terms, control the application of this provision as it comes into operation only when the case of the assessee is one which falls squarely under Section 36(1)(viia) of the Act. We may also notice that the explanation to Section 36(1)(vii), introduced by the Finance Act, 2001, has to be examined in conjunction with the principal section. The explanation specifically excluded any provision for bad and doubtful debts made in the account of the assessee from the ambit and scope of ‘any bad debt, or part thereof, written off as irrecoverable in the accounts of the assessee '. Thus, the concept of making a provision for bad and doubtful debts will fall outside the scope of Section 36(1)(vii) simplicitor. The proviso, as already noticed, will have to be read with the provisions of Section 36(1)(viia) of the Act. Once the bad debt is actually written off as irrecoverable and the requirements of Section 36(2) satisfied, then, it will not be permissible to deny such deduction on the apprehension of double deduction under the provisions of Section 36(1)(viia) and proviso to Section 36(1)(vii). This does not appear to be the intention of the framers of law. The scheduled and non-scheduled commercial banks would continue to get the full benefit of write off of the irrecoverable debts under Section 36(1)(vii) in addition to the benefit of deduction of bad and doubtful debts under Section 36(1)(viia). Mere provision for bad and doubtful debts may not be allowable, but in the case of a rural

advance, the same, in terms of Section 36(1)(viiia)(a), may be allowable without insisting on an actual write off.

26. The Special Bench of the ITAT had rejected the contention of the Revenue that proviso to Section 36(1)(vii) applies to all banks and with reference to the circulars issued by the Board, held that a bank would be entitled to both deductions, one under clause (vii) of Section 36(1) of the Act on the basis of actual write off and the other on the basis of clause (viiia) of Section 36(1) of the Act on the mere making of provision for bad debts. This, according to the Revenue, would lead to double deduction and the proviso to Section 36(1)(vii) was introduced with the intention to prevent this mischief. The contention of the Revenue, in our opinion, was rightly rejected by the Special Bench of the ITAT and it correctly held that the Board itself had recognized the position that a bank would be entitled to both the deductions. Further, it concluded that the proviso had been introduced to protect the Revenue, but it would be meaningless to invoke the same where there was no threat of double deduction.

27. As per this proviso to clause (vii), 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 under clause (viiia). The proviso by and large protects the interests of the Revenue. In case of rural advances which are covered by clause (viiia), there would be no such double deduction. The proviso, in its terms, limits its application to the case of a bank to which clause (viiia) applies. Indisputably, clause (viiia)(a) applies only to rural advances.”

20. We find that co-ordinate Bench of ITAT Amritsar Bench in DCIT vs. Punjab Gramin Bank (ITA No.731/Asr/2017) while considering the provision for bad and doubtful debts under section 36(1)(viiia) on standard assets passed the following order;

“11. We shall now advert to the deletion by the CIT(A) of the disallowance of Rs. 3,53,47,000/- made by the A.O on account of the provision for bad and doubtful debts under Sec. 36(1)(viiia) of the IT Act. We find that the A.O had disallowed an amount of Rs. 3,53,47,000/- on account of provision for bad and

doubtful debts made by the assessee against standard assets on the ground that the said provision was made against assets which were of good quality and was in the nature of contingent liability. It has been the claim of the assessee that the provision for bad and doubtful debts had been made in accordance with the instructions and circulars of the RBI on the said issue. We find that the issue as regards the allowability of deduction of provision for bad and doubtful debts made against standard assets had been decided by the Tribunal in the assessee's own case for A.Y. 2008-09 i.e. Dy. CIT, Circle-IV, Jalandhar Vs. M/s Punjab Gramin Bank, Kapurthala in ITA No. 134(Asr)/2015; dated 22.06.2016, which thereafter had been followed in its cases for A.Y. 2011-12 and A.Y. 2012-13. The Tribunal while disposing off the appeal of the assessee for A.Y. 2008-09 had observed as under :-

"8 We have heard the rival parties and have gone through the material on record. We find that the assessee had created a provision of Rs.50,00,000/- which included a sum of Rs.13,25,000/- as provisions for bad and doubtful debts and the balance amount of Rs.36,75,000/- was provision against standard assets and the entire amount was claimed as deduction under section 36(1)(viiia) of the Act. The Assessing Officer was of the opinion that the provisions made by the assessee against standard assets was a contingent liability and which was not allowable as business expenditure. The Id. CIT(A), however, allowed relief to the assessee by holding that the claim of the assessee fall into the main provisions of section 36(1)(viiia). To resolve the dispute it is important to visit the provisions of section 36(1)(viiia) of the Act and which for the sake of convenience are reproduced below.

"36(1)(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 outside India] or a primary co-operative agricultural and rural development bank, an amount not exceeding seven and one-half percent of the total income (computed before making any deduction under this clause and Chapter VI-A) and an amount not exceeding ten percent 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 percent of the amount of such assets shown in the books of account of the bank on the last day of the previous year:

Provided further that for the relevant assessment years commencing on or after the 1st day of April,2003 and ending before the 1st day of April, 2005, the provisions of the first proviso shall have effect as if for the words “five percent”, the words “ten percent” had been substituted:

Provided also that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed a further deduction in excess of the limits specified in the foregoing provisions, for an amount not exceeding the income derived from redemption of securities in accordance with a scheme framed by the Central Government:

Provided also that no deduction shall be allowed under the third proviso unless such income has been disclosed in the return of income under the head “Profits and gains business or profession.”

From the above provisions it can be seen that deduction u/s 36(1)(viii) of the Act is allowed in respect of provisions for bad and doubtful debts. This section does not differentiate between provision on bad assets and provision on standard assets. This deduction exclusively allows deduction in respect of provision for bad and doubtful debts to the extent mentioned in the various clauses of sub-section(1) of section 36 of the Act. The deduction under section 36(1)(viii) of the Act is allowed only in respect of certain specific categories of assessee mentioned in the clause like banks, financial institutions, etc. who are in business of lending money. It is not allowed even to non-banking financial institutions since they are not included in this clause. It is seen that though section 36(1)(vii) states that deduction for provision is allowable in respect of provision for bad and doubtful debts, the computation of such deduction is made with reference to total income of the specified Banks based upon quantum of average advances. The deduction of the provisions is neither limited to the quantum of bad debts in the books nor is computed with reference to the quantum of standard assets. The deduction in this clause refers to allowable provisions of anticipated default on the loans and advances made in respect of total assets including standard assets and the claim of the assessee does not fall into the proviso to section 36(1)(viii) as the proviso deals with further deduction for provisions on bad and doubtful debts. The claim of the assessee is covered in the main provisions of section 36(1)(viii) of the Act. The learned CIT(A) has passed a very exhaustive and speaking order and we do not find any infirmity in the same.

We have perused the aforesaid order of the Tribunal and finding ourselves to be in agreement with the view therein taken, respectfully follow the same. We thus are of the considered view that as the provision for bad and doubtful debts against standard assets is covered in the main provisions of Sec. 36(1)(viii) of the IT Act,

therefore, uphold the order of the CIT(A) who we find had rightly deleted the addition of Rs. 3,53,47,000/- made by the A.O on the said count. The Grounds of Appeal No. 4 to 6 raised by the revenue are dismissed."

21. *We find that the coordinate bench of Amritsar Tribunal in DCIT Vs Nawanshahr Central Co-operative Bank Ltd (supra) while considering the grounds related with the provision against standered asset under section under section 36(1)(viiia) passed the following order;*

"Now coming to ground no. 2 regarding provisions against the standard assets, we find that the same is also covered in favour of assessee by the order of the Hon'ble Tribunal in the case of Punjab Gramin Cooperative Bank. For the sake of completeness, the findings of the Hon'ble Tribunal are reproduced below:

"12. We have heard the rival parties and have gone through the material placed on record. We find that the issue of provision for doubtful debts on standard assets is covered in favour of assessee by the order of the Tribunal dated 22.06.2016 for Assessment Year: 2008-09, wherein the appeal of the revenue was dismissed which was filed by Revenue on similar grounds. The relevant findings of the Tribunal as contained in para 8 onwards are reproduced below.

8. "We have heard the rival parties and have gone through the material on record. We find that the assessee had created a provision of Rs. 50,00,000/- which included a sum of Rs. 13,25,000/- as provisions for bad and doubtful debts and the balance amount of Rs. 36,75,000/- was provision against standard assets and the entire amount was claimed as deduction under [section 36\(1\)\(viiia\)](#) of the Act. The Assessing Officer was of the opinion that the provisions made by the assessee against standard assets was a contingent liability and which was not allowable as business expenditure. The Ld. CIT(A), however, allowed relief to the assessee by holding that the claim of the assessee fall into the main provisions of [section 36\(1\)\(viiia\)](#). To resolve the dispute it is important to visit the provisions of [section 36\(1\)\(viiia\)](#) of the Act and which for the sake of convenience are reproduced below.

"36(1)(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

outside India] or a primary co-operative agricultural and rural development bank, an amount not exceeding seven and one-half percent of the total income (computed before making any deduction under this clause and Chapter VI-A) and an amount not exceeding ten percent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner.

Provided that a schedule 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 Assessment Year: 2013-14 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 percent of the amount of such assets shown in the books of account of the bank on the last day of the previous year.

Provided further that for the relevant assessment years commencing on or after the 1st day of April, 2003 and ending before the 1st day of April, 2005, the provisions of the first proviso shall have effect as if for the words "five percent", the words "ten percent" had been substituted.

Provided also that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed a further deduction in excess of the limits specified in the foregoing provisions, for an amount not exceeding the income derived from redemption of securities in accordance with a scheme framed by the Central Government.

Provided also that no deduction shall be allowed under the third proviso unless such income has been disclosed in the return of income under the head "Profits and gains business or profession."

From the above provisions it can be seen that deduction u/s 36(1) (viiia) of the Act is allowed in respect of provisions for bad and doubtful debts. This section does not differentiate between provision on bad assets and provision on standard assets. This deduction exclusively allows deduction in respect of provision for bad and doubtful debts to the extent mentioned in the various clauses of sub-section (1) of section 36 of the Act. The deduction under section 36(1)(viiia) of the Act is allowed only in respect of certain specific categories of assessee mentioned in the clause like banks, financial institutions, etc. who are in business of lending money. It is not allowed even to non-banking financial institutions since they are not included in this clause. It is seen that though section 36(1) (vii) states that deduction for provision is allowable in respect of provision for bad and doubtful debts, the computation of such deduction is made with reference to total income of the specified Banks based upon quantum of average advances. The deduction of the provisions is neither limited to the quantum of bad debts in the books nor is computed with reference to the quantum of standard assets. The deduction in this clause refers to allowable provisions

of anticipated default on the loans and advances made in respect of total assets including standard assets and the claim of the assessee does not fall into the proviso to section 36(1) (viiia) as the proviso deals with further deduction for provisions on bad and doubtful debts. The claim of the assessee is covered in the main provisions of section 36(1)(viiia) of the Act. The Ld. CIT(A) has passed a Assessment Year: 2013-14 very exhaustive and speaking order and we do not find any infirmity in the same.

Therefore following the above Tribunal order, we do not see any infirmity in the order of Ld. CIT(A).

13. In view of the above fact and circumstances the grounds of appeal raised by Revenue in ITA No. 580 & 569 are dismissed.

In view of the above precedents the ground no. 2 is also dismissed.”

22. *We find that Chennai Tribunal in Tamilnadu State Apex Co-operative Bank Vs ACIT (supra) while considering the provision for non-performing asset under section 36(1)(viiia) held that where the assessee-bank had claimed deduction for 'Provision for Non-Performing Assets' under section 36(1)(viiia), in view of fact that taxonomy of provision had been done by assessee to keep it in line with RBI and NABARD guidelines, but in pith and substance provision had been created for 'Bad and Doubtful Debts', deduction was claimed in accordance with section 36(1)(viiia) and assessee was entitled to benefit of same.*

23. *Further Bangalore Tribunal in DCIT Vs IGN Vysya Bank (supra) also held that in order to allow assessee's claim under section 36(1)(viiia), what has to be seen by Assessing Officer is as to whether provision for bad and doubtful debts is created irrespective of whether it is in respect of rural or non-rural advances by debiting profit and loss account and, to extent provision for bad and doubtful debts is so created, assessee is entitled to deduction subject to upper limit of deduction laid down in said section. In Nanded District Central Co-operative bank Vs DCIT (2015) 57 taxmann.com 422 (Pune Trib) also held that deduction under section 36(1)(viiia) is to be*

restricted to the actual amount of provision for bad and doubtful debts made in the books of account.

24. *We also find that Ahmedabad Tribunal in DCIT Vs Sarvodaya Shakari Bank Ltd (supra) also held that that the provisions for bad and doubtful debts should be allowed u/s. 36(1)(viii), to the extent of provision made and available in the books of account, whether made in the current previous year. Thus, in view of the aforesaid factual discussion, we affirm the order of Ld. CIT(A) by adding our aforesaid observation.*

25. *So far as decision relied by Ld. CIT-DR in Jhabua Dhar Kshetriya Gramin Bank (supra), is concerned, we find that ratio of decision is not applicable on the facts of case in hand. In the said the Tribunal relied on its earlier decision in Narmada Gramin Bank Vs ACIT (supra) wherein the issue of provision under section 36(1)(viii) was restore to the file of assessing officer for recomputation of claim of deduction to the extent of amount written back in the books of account. Thus, the facts of that case are in variance.*

26. *In the result, ground No.1& 3 raised by the Revenue is dismissed.*

5. Considering the decision of Tribunal in assessee's own case for A.Y. 2010-11 and the fact the Ld. CIT(A) while granting relief to the assessee followed the order of his predecessor dated 06/10/2014 in Appeal No. CAS-1/119/2013-14 (A.Y.-2010-11). It is retreated the order of Ld. CIT(A) has already been affirmed by this bench in ITA No. 16/Ahd/2016 dated 17.05.2022. Thus, following the principal of consistency, we do not find merit in the grounds of appeal raised by the revenue.

6. In the result, this appeal of the revenue is dismissed.

Order pronounced on 04/07/2022 at the time of hearing of
this appeal.

Sd/-
(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 04/07/2022

**Ranjan*

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

By order

Assistant Registrar, ITAT, Surat