

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'D', NEW DELHI**

**Before Sh. Saktijit Dey, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 21/Del/2019 : Asstt. Year : 2003-04**

Standard Chartered Grindlays Ltd., 4, Todar Mal Lane, Bengali Market, New Delhi-110001	Vs	ACIT(Intl. Taxation), Circle-3, New Delhi
(APPELLANT)		(RESPONDENT)
<b>PAN No. AAHCS3880Q</b>		

**Assessee by : Ms. Shashi M. Kapila, Adv. &  
Sh. Pravesh Sharma, Adv.  
Revenue by : Ms. Sapna Bhatia, CIT DR**

<b>Date of Hearing: 29.06.2022</b>	<b>Date of Pronouncement: 01.08.2022</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of Id. CIT(A)-35, New Delhi, dated 31.10.2018.

2. Following grounds have been raised by the assessee:

*"1. The Ld. CIT(A) has erred in law and on facts by upholding the disallowance of business expenses incurred outside India, which are directly attributable to the Appellant's business operations in India aggregating to Rs. 5,14,40,312.*

*2. The Ld. CIT(A) has erred in law by upholding the disallowance of 1/5<sup>th</sup> expenses incurred on Early Retirement Scheme u/s.35DDA amounting to Rs.59,32,163.*

*3. The Ld. CIT(A) has erred in law and on facts by upholding the disallowance of bad debts written off in the accounts of Rs. 10,78,12,469.*

3. The assessee M/s Standard Chartered Grindlays Bank incorporated in Australia and engaged in banking business. It has opened up various offices all over the country in India that constitute PE of the non-resident bank. During the year, the Standard Chartered Grindlays Bank was merged with Standard Chartered Bank, UK w.e.f. 1st of September, 2002. During the assessment year, the assessee has shown business profit of Rs.58,32,59,075/-, short term capital gain of Rs.13,26,247/- and long term capital gains of Rs.232,21,57,920/-.

**Allowability of business expenditure incurred outside India which pertains only to the Indian Business:**

4. The Assessing Officer disallowed the expenses which were incurred only for the Indian business outside India on the grounds that these are general head office & administrative expenses which fall under section 44C of the Income Tax act, 1961 and hence are subject to the ceiling under section 44C. (page 4 of AO.). However, the fact of the matter is that the amount of Rs.5.14 Cr. or the costs directly attributable to the operations pertaining to India for the period 01.04.2002 to 31.08.2002. The expenses incurred by the assessee is on account of purchased Grindlays Bank from ANZ on 01.08.2000. As a consequence Grindlays Bank's software, hardware, and Information Technology systems, computer structures, policies all needed to be aligned to Standard Chartered Banking systems.

5. The Id. CIT(A) confirmed the addition merely on the grounds that the assessee has not brought any evidence in support of the claim that the expenses were incurred exclusively for the Indian business.

6. We have gone through the certificate provided by the assessee of KPMG which has been accepted by the AO for Head Office General Charges but ignored the costs directly pertaining to Indian business. The costs directly pertaining to Indian business are not subjected to the provisions of Section 44C of the Act and hence, appeal of the assessee on this ground is allowed.

**Early Retirement Scheme- (ERS):**

7. The assessee incurred expenses of Rs.2,96,60,815/- under Early Retirement Scheme (ERS) and had claimed Rs.59,32,163/- being 1/5th of such expenditure as deduction u/s.35DDA. The AO disallowed expenses on the ground that the assessee did not furnish evidence of persons who retired during the year and given compensation under separation scheme. The provisions of Section 35DDA and the observations of the Assessing Officer are as under:

*"In schedule- F of Financial Statements, the assessee has claimed that it has incurred on amount of Rs. 2,96,60,815/ - towards early and according in accordance with provision of section 35DDA, a deduction of Rs. 59,32,163 being 1/5th is allowable.*

*Vide questionnaire dated 06.02.2006, the assessee was asked to explain the allowability of expenses in case of foreign company and furnish supporting documentary evidence with regard to person who were retired under early separation scheme.*

*In reply the AR of the assessee submitted that Section 35DDA(1) provides" that where an assessee incurs any*

*expenditure by way of payment of any sum to an employee at the time of his voluntary retirement, one fifth of the amount so paid shall be deducted in computing the profits and gains of business for that previous year, and the balance shall be deducted in equal installments for each of the four immediately succeeding previous years.*

*The provision of section 35DDA (1) are very clear and unambiguous. As per the said provision, any assessee (which includes foreign company) is entitled to deduction under section 35DDA.*

*In spite of granting sufficient opportunities, the AR did not furnish the evidence in respect of person who retired during the year and given compensation under early separation scheme. In absence of evidence the sum claimed is not allowable. Therefore, the amount of Rs. 59,32,163/- 1/5th of Rs. 2,96,60,815/- claimed deduction u/s 35DDA is hereby disallowed."*

8. The Id. AR argued that in schedule- F of Financial Statements, the ERS expenses are fully disclosed. Further the actual expenses incurred has been duly verified by the auditors. The claim of the assessee for the said deduction has been made in accordance with section 35DDA of Rs. 59,32,163/- being 1/5th is allowable Rs. 2,96,60,815/-. It was argued that the Books of Accounts have been accepted as reliable by the Assessing Officer. There is no allegation of any incorrect claim or false statement. These claims have been examined and certified by external auditors who verify each and every document at the time of audit. Hence these expenses having been authenticated by auditors, and the Books of accounts having been accepted, there is no factual basis for

disallowing the legitimate claim of expenses. It was further argued that the ERS cost has been duly mentioned in the note 19C(8) under exceptional items in Schedule to financial statement for the five months period ending 31.08.2002. Further, it was argued that owing to the reorganization of the business between the banks and the payments were made to the employees of erstwhile Grindlays Bank which have been spread all over India, the details could not be collated.

9. The reliance of the Id. Counsel on the certificate given by the external auditors that they examine each and every document at the time of audit, hence these expenses having been authenticated by the auditors and the books of accounts having been accepted, no disallowance is called for cannot be accepted. The audit report cannot be taken as a sacrosanct document to be relied upon for the business purposes like banking operations/loans and for statutory obligations like taxation. All the financials scams and tax evasion cases had their genesis in the window dressing of the balance sheets and the other related financial statements. When an item of the financial statements which is to be examined and verified by the tax authorities for allowing any deduction, it is incumbent upon the assessee to provide the basic backup details based on which the auditors have certified that such expenses is true to their knowledge. In the absence of any supporting evidences, the claim of the assessee cannot be allowed by the tax authorities. In case, the bank takes a position that owing to the scattering of retired employees all over India and inability to provide such details for their own benefit points to the efficient functioning of the bank itself. When the bank itself cannot be organized their own affairs, it will be very difficult to gain the

public trust to part and park their hard earned amounts with the bank.

10. Since, no details have been submitted so far and as the Id. Counsel has argued that the details are being collated, the matter is being referred to the file of the Assessing Officer to examine the issue afresh after the assessee submits the list of eligible employees of the retirement scheme and to take a decision in accordance with the Income Tax Act.

**Allowability of Bad debts:**

11. The AO disallowed the assessee's claim for bad debts written off in books on the grounds that these should be set-off against provision made under section 36(1)(viia). The assessee stated that there was nothing left in provision account under section 36(1)(viia) as no provision was made during this year. Neither was any provision made in AY 2002-03 as a Loss return was filed, so assessee could not claim 5% of adjusted income by way of provision under section 36(1)(viia).

12. The provisions of Section 36(1)(vii) are as under:

*"Section 36(1) (vii): subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year:*

*Provided that in the case of an assessee to which clause (viia) 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.*

*Provided further that where the amount of such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof becomes irrecoverable or of an earlier previous year on*

*the basis of income computation and disclosure standards notified under sub-section (2) of section 145 without recording the same in the accounts, then, such debt or part thereof shall be allowed in the previous year in which such debt or part thereof becomes irrecoverable and it shall be deemed that such debt or part thereof has been written off as irrecoverable in the accounts for the purposes of this clause.*

*[Explanation 1].—For the purposes of this clause, any bad debt or part thereof written off as irrecoverable in the accounts of the assessee shall not include any provision for bad and doubtful debts made in the accounts of the assessee;*

*[Explanation 2.—For the removal of doubts, it is hereby clarified that for the purposes of the proviso to clause (vii) of this sub-section and clause (v) of sub-section (2), the account referred to therein shall be only one account in respect of provision for bad and doubtful debts under clause (viia) and such account shall relate to all types of advances, including advances made by rural branches;]*

The provisions of Section 36(1)(viia) are as under:

*"36(1)(viia) : [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 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:*

*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:*

*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 per cent", the words "ten per cent" 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 of business or profession."*

*Explanation.—For the purposes of this sub-clause, "relevant assessment years" means the five consecutive assessment years commencing on or after the 1st day of April, 2000 and ending before the 1st day of April, 2005;"*

13. The key provisions are as under:

- ✓ The bad debts has to be written off as irrecoverable.

- ✓ \*\*In the case of the assessee (i.e. bank) the amounts shall be limited to the amount by which such date are part thereof exceeds of credit balance in the provision for bad debts.
- ✓ As per the provisions of Section 36(1)(viia), the amount allowable is 5% of the amount of the profits determined.

14. The facts relevant to applicability of the above provisions to the assessee are as under:

- The assessee claimed bad debts of Rs.12,67,00,000/-.
- The amount of profit determined was Rs.215,62,49,368/-.
- The 5% of profit was Rs.10,78,12,465/-.
- The credit balance available u/s 36(1)(viia) was Rs.10,78,12,465/-.

15. The specific provisions would have precedence over the generic provisions

16. Hence, we hold that,

\*\*As per the provisions of the Act, the deduction allowable is Rs.1,88,87,531/-.

**Section 234B and Section 234D:**

17. The AO is directed to re-compute the interest as per the provisions of the Act.

18. In the result, the appeal of the assessee is allowed.  
Order Pronounced in the Open Court on 01/08/2022.

Sd/-

**(Saktijit Dey)**  
**Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 01/08/2022**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**