

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 625/Asr/2019  
Assessment Year: 2016-17**

The Hoshiarpur Central Cooperative Bank Ltd. Railway Road, Hoshiarpur. [PAN:AAAAT0384K] <b>(Appellant)</b>	<b>Vs.</b>	DCIT, Circle Hoshiarpur.  <b>(Respondent)</b>
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<b>Appellant by</b>	<b>Sh. Praveen Jindal, CA.</b>
<b>Respondent by</b>	<b>Sh. Manpreet Singh, Sr. DR.</b>

<b>Date of Hearing</b>	<b>21.06.2022</b>
<b>Date of Pronouncement</b>	<b>25.08.2022</b>

**ORDER**

**Per: Anikesh Banerjee, JM:**

The instant appeal was filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-1, Jalandhar [in brevity the CIT(A)] bearing appeal No. CIT(A)-1/Jal/10222/18-19, date of order 30.07.2019, the order passed u/s 250(6) of the Income Tax Act, 1961, [in brevity the Act] for A.Y. 2016-17. The impugned order was originated by the order of Id. Dy. CIT, Circle Hoshiarpur order passed on 29.12.2018, passed u/s 143(3) of the Act.

2. The assessee has raised the following grounds: -

*“1. That appreciating the facts and circumstances of the case and the documentary evidence filed in assessment and also in appeal, the ld. CIT(A) ought to have unconditionally deleted the addition of Rs.1,03,14,374/-, wrongly made by the ld. AO u/s 40a(ia).*

*2. That the addition of Rs.64,29,240/-, as made by Id.AO, by disallowance out of the provisions for bad & doubtful debts made at Rs.80 lacs, has been wrongly upheld by ld.CIT(A), without appreciating that the said provision was not made against standard loans, but against the aggregate advances made by rural branches of the Bank.*

*3. That the order under appeal, to the extent disputed herein, is wholly against the law and facts of the case and hence not sustainable.”*

3. Brief facts of the case are that the assessee is a Distt. Cooperative Bank engaged in the business of banking. The ld. Counsel first informed that ground no. 1 is not pressing. Only we are adjudicating the ground no. 2 for addition of Rs.64,29,240/- related to provision for bad and doubtful debt. The assessee has made provision of Rs.80 lac against the standard loan (contingent liability). The AO restricted the allowance u/s 36(1)(vii)(a) of the Act to 7.5% (Income +

Provision) and disallowed excess provision of Rs.64,29,240/-. The ld. AO had referred the order of Hon'ble ITAT Amritsar Bench in assessee's own case for A.Y. 2007-08 bearing ITA No. **47/Asr/2011**. The assessee filed an appeal before the ld. CIT(A) against the order of ld. AO. The addition of Rs.64,29,240/- was upheld by the ld. CIT(A). Aggrieved assessee filed an appeal before us.

4. The ld. Counsel for the assessee filed a paper book which is containing page nos. 1 to 77 which is kept in the record. The ld. Counsel argued that assessee made the provision for rural advanced amount of Rs.80 lac for provision for bad and doubtful debt. The AO calculated as per the provision as per Act @ 7.5% which is worked out amount to Rs.15,70,760/-. The balance amount Rs.64,29,240/- (80,00,000/- - Rs.15,70,760/-) was added back with the total income of the assessee. The ld. Counsel further prayed that the addition amount of Rs.64,29,240/- should be deleted and provision of Rs.80 lac related to the advance in rural bench should be allowed.

5. The ld. DR argued vehemently and mentioned that the addition was made on basis of the order of coordinate bench of ITAT Amritsar Bench, ITA No. **47/Asr/2011** date of order 16.07.2018. He relied on the order of the ld. CIT(A) which is extracted as below:

*“7. Ground of appeal No. 3 is that The Ld. AO has erred in disallowing Rs. 6429240/-by wrongly treating it as provision against standard assets instead of provision against advances made by rural branches without appreciating the legal position without appraising the evidences and material on record facts and circumstances of the case in the right perspective and in a fair and judicious manner.*

The Id. DR prayed for setting aside the issue before the lower authority for further verification.

6. We have considered the rival contention and perused the material on record including the order of the authorities below and case laws cited before us. The assessee has made provision amount of Rs. 80 lac related to the advance on the rural branch on the other hand it is called as loan/ contingent liability. The Id. AO had calculated the provision in a following manner which is extracted as below:

*“The disallowance is accordingly worked out as under: -*

*Income as per return 1,29,43,520/-*

*Add provision 80,00,000/-*

*2.09.43.520/-*

*Provision permissible u/s 36(i)(vii)(a) 15,70,760/- (7.5 % of above)*

*Excess provision (80,00,000/- 15,70,760/-) = 64,29,240/-*

*This contingent liability of Rs.64,29,240/-is therefore disallowed u/s 36(i)(vii)(a) as clearly verdicted by the Hon’ble bench of ITAT, Amritsar in their order dated 16/07/2018 for the assessment year 2007-08. Penalty proceedings u/s 271(1)(c) of the Act are being initiated separately for furnishing inaccurate particulars of income.*

***(Addition made Rs.64,29,240/-)”***

6.1. We have observed that there was two effective issues in this appeal. The first issue concern itself with allowability of deduction u/s 36(1)(viia) of the Act. Under the second limb wherein the deduction claimed @ 10% of aggregate average advanced made by the rural branch assessee, is too disallowed. The assessee has claimed deduction to the tune of Rs.80 lac u/s 36(1)(viia) of the Act while filing return of income with the revenue. The said amount is reflected by the assessee as deduction in the audited P & L account of the assessee. The Id. AO has allowed deduction of Rs.15,70,760/- computed @ 7.5% at the total income. First limb of section 36(1)(viia), while the AO did not allow deduction to the tune of Rs. 80 lac which stood allowed by the AO. The Id. CIT(A) upheld disallowance of the deduction to tune of Rs.64,29,240/-. While confirming the disallowance as made by the AO, the Id. CIT(A) observed that the assessee is not eligible in deduction of the second limb of section 36(1)(viia) of the Act which concerns itself with deduction computed @ 10% of aggregate average advance made rural branches of the assessee. To keeping in view, amended provision to section 36(1)(vii) as amended by 01.04.2007. The Id. CIT(A) only relied on the order of the ITAT Amritsar Bench, (supra). The assessee is holding the banking licence issued by RBI the calculation of the aggregate average advance made by the rural branches is in a dispute. None of the revenue authorities did not discussed and make analysis of section 36(1)(viia) (a) in the light of section 36(1) is reproduced here as under:-

*“36(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28-*

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*(vii) [ 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 assessm means the five consecutive assessment years commencing on or after the*

*April, 2000 and ending before the 1st day of April, 2005;]*

- (b) *a bank, being a bank incorporated by or under the laws of a country outside India, an amount not exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VIA);]*
- [(c) *a public financial institution or a State financial corporation or a State industrial investment corporation, an amount not exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VI-A) :]*

**[Provided** *that a public financial institution or a State financial corporation or a State industrial investment corporation referred to in this sub-clause shall, at its option, be allowed in any of the two consecutive assessment years commencing on or after the 1st day of April, 2003 and ending before the 1st day of April, 2005, 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, of an amount not exceeding ten per cent of the amount of such assets shown in the books of account of such institution or corporation, as the case may be, on the last day of the previous year.]*

*Explanation. —For the purposes of this clause, —*

*[(i) "non-scheduled bank" means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949), which is not a scheduled bank;]*

*[(ia) "rural branch" means a branch of a scheduled bank [or a non-scheduled bank] situated in a place which has a population of not more than ten thousand to the last preceding census of which the relevant figures have been before the first day of the previous year;*

*[(ii) "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934) [\*\*\*];]*

- [(iii) "public financial institution" shall have the meaning assigned to it in section 2(45) of the Companies Act, 1956 (1 of 1956); (iv) "State financial corporation" means a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporations Act, 1951 (63 of 1951);]
- (v) "State industrial investment corporation" means a Government company within the meaning of section 617 of the Companies Act, 1956 (1 of 1956), engaged in the business of providing long-term finance for industrial projects and [eligible for deduction under clause (viii) of this sub-section];]
- [(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;]"

It will also be appropriate at this stage to reproduce Explanation to sub-section (4) of section 80P as it stood at relevant time, which is reproduced hereunder:

"(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation. For the purposes of this sub-section,-

- (a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);
- (b) "primary co-operative agricultural and rural development bank" means a bank having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities;

6.2. It will also be appropriate for this stage to reproduce Rule 6ABA of Income Tax

Rules, 1962 which is reproduced hereunder:-

"[Computation of aggregate average advances for the purposes of clause (viiia) of sub-section (1) of section 36.

6ABA. For the purposes of clause (viii) of sub-section (1) of section 36, the aggregate average advances made by the rural branches of a scheduled bank shall be computed in the following manner, namely :

- (a) the amounts of advances made by each rural branch as outstanding at the end of the last day of each month comprised in the previous year shall be aggregated separately;
- (b) the sum so arrived at in the case of each such branch shall be divided by the number of months for which the outstanding advances have been taken into account for the purposes of clause (a);
- (c) the aggregate of the sums so arrived at in respect of each of the rural branches shall be the aggregate average advances made by the rural branches of the scheduled bank. *Explanation.* In this rule, "rural branch" and "scheduled bank" shall have the meanings assigned to them in the *Explanation* to clause (viii) of sub-section (1) of section 36.]"

6.3. It also relevant to reproduced clause C of section 5 of banking regulation of Act 1949 which is reproduced as under:

It is equally relevant to reproduce clause(c) of section 5 of the Banking Regulation Act, 1949, which is reproduced hereunder:

"5. Interpretation. - [In this Act], unless there is anything repugnant in the subject or context-

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(c) "banking company" means any company which transacts the business of banking [in India].

*Explanation.* —Any company which is engaged in the manufacture of goods or carries on any trade, and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause;"

6.4. On this stage it is relevant to refer to clause of Finance Bill 2007 which is reproduced as under:-

"Sub-clause (a) of clause (viiia) of sub-section (1) of the said section provides for deduction of an amount not exceeding seven and one-half per cent. of the total income (computed before making any deduction under the said clause and Chapter VIA) and an amount not exceeding ten per cent of the aggregate average advances made by the rural branches of a scheduled bank as specified or a non-scheduled bank in the computation of income of such banks.

The proposed amendment seeks to extend the same deductions which are available to a scheduled bank and non-scheduled bank to a co-operative bank not being a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

This amendment will take effect retrospectively from 1st April 2007 and will, accordingly, apply in relation to the assessment year 2007-2008 and subsequent years."

6.5. The perusal of Notes to Clauses and Memorandum to Finance Act, 2007, clearly stipulate that the benefit of deduction u/s 36(1)(viiia) which was available to a Scheduled and a Non-scheduled bank is sought to be extended to Co-operative Banks other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank , with effect from 1-4-2007, as the deduction erstwhile available to such eligible co-operative banks u/s 80P stood withdrawn by Finance Act, 2006 w.e.f. 1-4-2007. Thus, there was an amendment by Finance Act, 2007 to section 36(1)(viiia), applicable w.e.f. 1-4-2007, wherein the Co-operative Banks other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, were brought under

the provisions of section 36(1)(viia) for claiming deductions in respect of provisions made for bad and doubtful debts . Prior to this amendment, Co-operative Banks were entitled to claim deduction of Profits and Gains of business attributable to business of banking, while computing total income chargeable to tax by virtue of provisions of section 80P. Thus, by virtue of insertion of section 80P(4), by Finance Act, 2006 effective from 1-4-2007, Co-operative Banks other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank were not entitled to claim deduction of profits and gains of business attributable to business of banking, while computing total income chargeable to tax under the provisions of section 80P by virtue of insertion of section 80P(4), but Co-operative Banks other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank were brought within the ambit of section 36(1)(viia) by Finance Act, 2007 w.e.f. 1-4-2007 , for claiming deductions in respect of provisions made for bad and doubtful debts. Bare perusal of provisions of section 36(1)(viia) will reveal that Co-operative Banks other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank shall be eligible and entitled for claiming deduction u/s 36(1)(viia)(a) so far as first limb is concerned to the tune of seven and half percentile of total income. So far as second limb of section 36(1)(viia) (a) is concerned, the deduction allowed is 10% of aggregate average

advances made by the Rural Branches of such bank computed in the prescribed manner, as is stipulated in section 36(1)(viiia)(a) of the 1961 Act. While including 'Co-operative Bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank' in section 36(1)(viiia)(a) effective from 1-4-2007, law makers have brought eligible Co-operative Banks to be entitled for deduction under first limb, and while referring to 'such bank' in the second limb, in our considered view by literal reading and interpretation, eligible Co-operative Banks shall also be entitled to claim deduction under second limb. As the use of the term 'such bank' in the second limb of section 36(1)(viiia)(a), will relate back to the banks as specified in the first limb which, inter-alia, will include eligible Co-operative Banks. In Explanation to section 36(1)(viiia), it is provided that rural branches means a branch of a scheduled bank or a non-scheduled bank situated in a place which has a population of not more than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year. The inclusion of Co-operative Bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank were brought within the ambit of section 36(1)(viiia) by way of inserting in sub-clause (a) to clause (viiia) to sub-section (1) to section 36 by Finance Act, 2007 w.e.f. 1-4-2007, but there was no corresponding amendment in Explanation to section 36(1)(viiia), and Co-operative Banks are not included here

for ascertaining the manner to identify Rural Branches of Co-operative Bank. Further, section 36(1)(viiia)(a) stipulates that the deduction under second limb towards aggregate average advances made by Rural Branches of such bank shall be computed in prescribed manner. The Revenue has heavily relied on the decision of ITAT, Amritsar Bench in assessee's own case. The explanation for accepting the limb of section 36(1)(viiia)(a) is differing with the coordinate bench. Thus, the matter is remitted back to the file of the AO for fresh adjudication, as is directed by us in this order. Needless to say, that the AO shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The evidences/explanations submitted by assessee in its defence shall be admitted by AO, and adjudicated by AO on merits in accordance with law. We order accordingly.

7. In the result, ground no. 1 of the assessee has not pressed, ground no-3 is general in nature, ground no.2 is allowed for statistical purposes.

**Order pronounced in the open court on 25.08.2022**

**Sd/-**

**(Dr. M. L. Meena)**  
**Accountant Member**

**Sd/-**

**(ANIKESH BANERJEE)**  
**Judicial Member**

**AKV**

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