

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

**माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा 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.739/Chny/2020  
(निर्धारण वर्ष / **Assessment Year: 2009-10**)

<b>Cuddalore District Central Co-operative Bank Ltd.</b> (Formerly known as The South Arcot Central Co-operative Bank Ltd.) No.1, Beach Road, Cuddalore – 607 001.	<b>बनाम</b> / Vs.	<b>ACIT</b> Cuddalore Circle, Cuddalore.
स्थायी लेखा सं./जीआइ आर सं./ <b>PAN/GIR No. AAAAT-0209-P</b>		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओरसे/ <b>Appellant by</b>	:	Shri K. Ravi (Advocate) - Ld. AR
प्रत्यर्थी की ओरसे/ <b>Respondent by</b>	:	Shri S. Chandrasekaran (JCIT) – Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	19-09-2022
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	04-11-2022

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2009-10 arises out of the order of learned Commissioner of Income Tax (Appeals), Puducherry [CIT(A)] dated 27-02-2020 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) r/w s. 263 of the Act on 15-12-2017. The grounds taken by the assessee read as under:

1. The Order of the Learned CIT(A) is contrary to the law, facts and circumstances of the case.

2. The CIT(A) erred in dismissing the appeal by holding that there is no scope for him to sit on the judgement of the PCIT in his order u/s.263 followed by the assessing officer in his order u/s. 143(3) r.w.s. 263.
3. The CIT(A) erred in ignoring the fundamental principle that a higher authority cannot direct a lower authority to frame an assessment order in a particular manner unless such a power is specifically granted by the statute itself. The PCIT has not exercised the power of enhancement or modification of the assessment. The PCIT has exercised the power of cancelling the assessment and directing a fresh assessment. The directions in the order of the PCIT are only indicative of the areas to be looked into by the assessing officer. The PCIT does not have any power to issue a closed direction while cancelling the assessment and directing a fresh assessment.
4. There can be no estoppel against law. If the assessment order u/s. 143(3) r.w.s.263 dated 15/12/2017 suffers from the vice of incorrect interpretation of Section 36(1)(viia), the Tribunal has the power to direct the lower authorities to apply the correct interpretation of a provision of law.
5. The interpretation of Section 36(l)(viia) adopted by the assessing officer, i.e., the deduction u/s.36(l)(viia) cannot exceed the provision made in the books of account is incorrect. There is no such explicit restriction in Section 36(1)(viia).
6. The assessing officer erred in treating OTS-Interest Waiver as bad debt and consequently erred in denying the claim of Rs.90,85,603/- by invoking 1<sup>st</sup> proviso to Section 36(1)(vii).
7. For these and such other grounds that may be permitted to be raised during the hearing of the appeal.

2. The registry has noted delay of 114 days in the appeal, the condonation of which has been sought by Ld. AR. Considering the fact that the impugned order was passed on 27.02.2020 and the period as available before assessee to prefer appeal fall within lockdown situation arising out of Covid-19 Pandemic, we condone the delay and admit the appeal for adjudication on merits.

3. The Ld. AR advanced arguments and submitted that first appellate authority has not considered the issue on merits and merely upheld the directions given in the revisional order. The Ld. Sr DR, on the other hand, submitted that the issue is covered against the assessee by the order of this Tribunal in **ITA No.1921/Chny/2018 for AY 2014-15 order dated 09.04.2021**. The copy of the same has been

placed on record. Having heard rival submissions, the appeal is disposed-off as under.

### **Assessment Proceedings**

4.1 The assessee is a District Central Co-operative Bank. The assessee was assessed u/s 143(3) r.w.s. 147 on 06.03.2015. This order was subjected to revision by revisional authority u/s 263 and consequently, an assessment was framed u/s 143(3) r.w.s. 263 on 15.12.2017. The revision was done with a view to withdraw excess deduction allowed to the assessee u/s 36(1)(viiia) and to examine the assessee's claim on issue of OTS-interest waiver with reference to the records of the assessee.

4.2 The Ld. AO noted that the assessee claimed provision for bad and doubtful debts and claimed deduction u/s 36(1)(viiia) for Rs.888.48 Lacs. The same was computed as sum of 7.5% of total income and deduction not exceeding 10% of rural advances. The Ld. AO noted that the provisions of Sec. 36(1)(viiia) provides for deduction of provision for bad and doubtful debts to specified Banks 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:

Considering the provisions, 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. This was supported by CBDT Instruction No. 17/2008 which provide that the deduction for provision for bad and doubtful debts should be restricted to the amount of such provision actually created in the books of the assessee in

the relevant year or the amount calculated as per provisions of Sec.36(1)(viiia), whichever is less. The Ld. AO noted that the assessee created actual provision for Rs.1.04 Lacs only. The Ld. AO, in terms of various judicial decisions, held that the assessee would be eligible to claim the deduction to the extent of actual provisions made and accordingly, disallowed excess deduction of Rs.887.43 Lacs to the assessee.

4.3 Regarding OTS-interest waiver, it was noted that the assessee claimed interest waiver on one time settlement to the extent of Rs.90.85 Lacs. It was submitted that the state government had waived loans of certain class of framers. Later on to reduce the burden of borrowing of non-farm section, the government waived certain portion of interest subject to certain conditions. Accordingly, such waiver was written-off by debiting the Profit & Loss Account. Further, such interest was included in interest receivable for financial year 2008-09. The loss could neither be recovered from borrower nor from state government. Therefore, the same was written off.

4.4 The Ld. AO termed the same as bad-debts claim. As per RBI circular, any interest not realized was to be credited to overdue interest reserve account. The assessee had created overdue interest reserve account and such interest waiver was to be debited in that account only. Accordingly, this claim was also disallowed.

### **Appellate Proceedings**

5. The Ld. CIT(A), in para 6.2 of impugned order, held that specific directions were given by revisional authority to withdraw the claim made u/s 36(1)(viiia) and therefore, such directions could not be subject matter of appeal before CIT(A). The CIT(A) cannot sit over the

judgment over the correctness of specific direction given in order u/s 263. Therefore, the ground was dismissed. Regarding ground that all the provisions made in the books should be considered as provision for bad debts, the same was also rejected. Further, the amount to be allowed was already decided by Ld. Pr. CIT in his order u/s 263 and therefore, there was no scope to differ with those directions. Aggrieved, the assessee is in further appeal before us.

### **Our findings and Adjudication**

6. We are of the considered opinion that the order passed by Ld. AO was an appealable order before Ld. CIT(A). Accordingly, as first appellate authority, independent findings should have been rendered by Ld. CIT(A) by way of speaking order considering all the aspects. However, Ld. CIT(A) has chosen to follow the directions given in Sec.263 which is not the correct approach.

7. Be that as the case may be, remitting the matter back to the file of Ld. CIT(A) would not serve much useful purpose considering the fact the issue of deduction u/s 36(1)(viiia) has already been decided by Tribunal in assessee's own case for AY 2014-15 in **ITA No.1921/Chny/2018 order dated 09.04.2021** as under: -

8. In this case, the assessee has made a provision for NPA for Rs.17,52,92,029/-. He has actually claimed in the return of income at Rs. 20,73,99,433/-. The case of the AO is that the assessee is only eligible to the extent of provision made for NPA not for entire claim claimed by the assessee. On appeal, the Ld. CIT(A) allowed the entire amount claimed by the assessee. The similar issue has been considered by the Hon'ble Punjab & Haryana High Court (supra) and has held that making of provision for bad and doubtful debt equivalent to an amount claimed as a deduction in account books is necessary for claiming deduction u/s. 36(1)(viiia) of the Act. For the sake of convenience, the relevant portion of the judgment is extracted as under:

“5. Section 36(1)(vzza) 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 (vii) 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 (vu) of section 36(1) of the Act which reads as under:

“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 prt thereof exceeds the credit balance m 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)(viia) 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(l)(viia) 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.”

9. The decision of the Co-ordinate Bench of this Tribunal in the case of M/s. Nazareth Urban Co-operative Bank Ltd. (supra) has considered the decision of the Hon'ble Punjab & Haryana High Court (supra) and held as under:

“6. We heard the rival submissions and gone through relevant material. It s clear from the decision of the Hon'ble High Court of Punjab & Haryana, supra, that making of provision equal to the amount claimed as deduction, in the account books is necessary for claiming deduction u/s.36(1)(viia). Since the assessee has not made any provision in the books of accounts, as admitted by the assessee before the AO by its letters dated 21.12.2016, in the respective assessment years, the assessee is not entitled for the impugned deductions for the respective assessment years. Further, the

relevant portion of the order of the co-ordinate Bench of this Tribunal in the case of M/s.The Salem Dt. Central Co.Op Bank Ltd., Salem vs. The DCIT, Salem in ITA No.1168/Chny/Mds/2016 for the AY 2008-09 dated 07.06.2017, is extracted as under:

7.1 We heard the rival submissions and perused the material placed before us. The assessee has debited a sum of Rs.7,72,84,858/- under the head NPA during the previous year relevant to the AY 2008-09 and claimed the deduction u/s.36(i)(vii)(a) for an amount of Rs.19,49,25,398/-. The Ld.Counsel argued that the assessee has already created the provision for NPA in the earlier years which remained unadjusted. Therefore, there is no need to create any fresh provision during the previous year relevant to the AY 2008-09.

8.0 In Income Tax, each year is an independent and the income has to be computed as per the system of accounting regularly followed by the assessee. Therefore, the deduction can be made by the assessee only on the basis of the expenditure debited to the Profit & Loss A/c from the previous year relevant to the AY under consideration. No expenditure which is not debited to the Profit & Loss A/c in the year under consideration is permissible for deduction. In the instant case, the assessee has not debited the expenditure relating to the provisions for bad and doubtful debts. Therefore, the deduction u/s.36(1)(viiia) is permissible to the extent of the amount debited to the Profit & Loss A/c or as per the permissible limits specified u/s.36(1)(viiia) whichever is less. The contention of the assessee that the reserves already created in the earlier years is available in the books of accounts which remained unadjusted is not an acceptable proposition and not as per the Income Tax Act. This view is clarified by the CBDT in Circular No.17/2008 which was relied upon by the Ld.CIT(A) in Para No.4.2 which is re-produced hereunder: 4.2. The Assessing Officer has restricted the claim of the assessee Bank to the amount of provision made for the relevant assessment year. This restriction should be considered in light of the provisions of Section 36(1)(viiia) of the IT Act read with the CBDT instruction No.17/2008 dated 26.11.2006. In this Instruction it is clearly stated as follows:

QUOTE: .....

(b) The deduction for provision for bad and doubtful debts should be restricted to the amount of such provision actually, created in the books of the assessee in the relevant year or the amount calculated as per provisions of section 36(1)(viiia), whichever is less. ....

UNQUOTE.

9.0 The Circular is very clear that the deduction is permissible only to the extent of provisions actually created in the books of accounts for the relevant Assessment Year. This view is supported by the decision of the Hon'ble Punjab & Haryana High Court cited supra. Therefore, we do not find any infirmity in the order of the Ld.CIT(A) and the same is allowed. Ground Nos.6 – 12 of the assessee are dismissed. 7. Since the co-ordinate Bench of this Tribunal has applied the decision of the Hon'ble Punjab & Haryana High Court, cited supra, and dismissed the appeal in the above case, following the same, the appeals filed by the assessee are also dismissed.”

10. In the case of M/s. The Salem Dt. Central Co.op. Bank Ltd. (supra) has considered the Circular No.17/2018 issued by the Department held as under:

“9.0 The Circular is very clear that the deduction is permissible only to the extent of provisions actually created in the books of accounts for the relevant Assessment Year. This view is supported by the decision of the Hon'ble Punjab & Haryana High Court cited supra. Therefore, we do not find any infirmity in the order of the Ld.CIT(A) and the same is allowed. Ground Nos.6 – 12 of the assessee are dismissed.”

11. In so far as the case law relied on by the Id. counsel for the assessee in the case of DCIT vs. Prathma Bank (supra) is concerned, by following the assessee's own case, the Revenue appeal was dismissed. We find that the Hon'ble Punjab & Haryana High Court (supra) has laid down a clear ratio that to claim deduction making of provision for bad and doubtful debt equivalent to an amount claimed as a deduction in account books is necessary for claiming deduction u/s. 36(1)(viiia) of the Act. Respectfully following the principles of precedent, we reverse the order passed by the Ld. CIT(A). Apart from that the two other Co-ordinate Benches of the Tribunal has followed the Hon'ble Punjab & Haryana High Court (supra) and rejected the argument made by the assessee. In view of the above, we find that the Ld. CIT(A) not correct in allowing the grounds of appeal raised by the assessee to the extent of the amount claimed in the return of income without making a provisions for NPA. Accordingly, the appeal filed by the Revenue is allowed.

Respectfully following the same, we confirm the disallowance made by Ld. AO u/s 36(1)(viiia). The corresponding ground stand dismissed.

8. The issue of OTS-interest waiver has apparently been not contested by the assessee before Ld. CIT(A) and therefore, no findings have been rendered in the impugned order in that respect. Since, the assessee has contested this issue before us, we admit the issue and restore this issue back to the file of Ld. CIT(A) for adjudication by way of speaking order. The grounds thus raised stand allowed for statistical purposes.

9. The appeal stand partly allowed for statistical purposes.

Order pronounced on 04<sup>th</sup> November, 2022.

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई / Chennai; दिनांक / Dated : 04-11-2022

EDN/-

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखक सदस्य / ACCOUNTANT MEMBER

**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF