

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

SP Nos. 18 to 20/Bang/2023 & ITA Nos. 227 to 229/Bang/2023 Assessment years : 2011-12 to 2013-14

M/s.Canara Bank, Erstwhile Syndicate Bank), FM Wing, Head Office, 112, J C Road, Bangalore – 560 002. PAN: AAACC 6106G	Vs.	The Deputy Commissioner of Income Tax, Circle 2(1)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ananthan S. & Smt. Lalitha R., Advocates
Respondent by	:	Ms. Neera Malhotra, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	05.04.2023
Date of Pronouncement	:	28.04.2023

ORDER

Per Bench

These three appeals are by the assessee against the separate orders dated 21.3.2023, 23.3.2023 & 24.03.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC] for the assessment years 2011-12 to 2013-14. Certain common issues are involved in

these appeals and therefore they are heard together and disposed of by this consolidated order for the sake of convenience and brevity.

2. The assessee is a public sector bank carrying on the business of banking. The original assessment order was passed in the name of M/s. Syndicate Bank, which merged with M/s. Canara Bank w.e.f. 1.4.2020 vide Govt. of India Notification No.GSR 155(E) dated 4.3.2020.

3. The legal issue common in all these appeals with regard to reopening of assessment u/s. 147 of the Income-tax Act, 1961 [the Act] was not pressed at the time of hearing of the appeals, hence the same is dismissed as not pressed for all the assessment years under consideration.

4. The brief facts of the case are that the assessee, a public sector bank, filed its return of Rs.558,39,58,312 for AY 2011-12 originally on 29.9.2011 under the regular provisions of the Act and Rs.986,79,76,772 under the MAT provisions.. The return was processed u/s. 143(1) on 5.7.2012 granting refund of Rs.368,88,85,120. Subsequently assessee filed a revised return on 27.11.2012 admitting income of Rs.230,26,47,624 under regular computation after set off of brought forward losses of Rs.289,41,70,061 and current year loss under other sources of Rs.1,14,94,402. MAT income declared is Rs.406,47,28,293. The case was under scrutiny and assessment u/s. 143(3) was made on 22.2.2013

determining total income at Rs.1349,88,63,070 under regular provisions and at Rs.1848,74,25,223 under u/s. 115JB.

5. During the course of scrutiny proceedings for AY 2016-17, it was noted that the assessee bank had been regularly claiming depreciation on consolidated value of land & building including vacant land also at the rate applicable for building. Notice u/s. 148 was issued on 29.3.2018 on the ground that assessee was claiming excess depreciation. The assessee furnished return of income electronically on 21.8.2018 wherein the claim of depreciation was reduced to the extent of Rs.50,25,197. Assessment was completed u/s. 143(3) r.w.s. 147 of the Act on 31.12.2018 determining total income at Rs.1502,69,05,350 under regular provisions and at Rs.1848,74,25,220 under MAT provisions after making certain disallowances.

6. The first common issue that arises for consideration in AYs 2011-12 & 2012-13 is the disallowance u/s. 36(1)(vii) of the Act. The grounds raised in AY 2011-12 are as follows:-

- “3. The learned CIT(A) erred in upholding the disallowance of Rs. 462,79,56,763/-u/s 36(1)(vii).
- 3.1. The disallowance made by the learned Assessing Officer and upheld by the learned CIT(A) is based on change of opinion and as such, not tenable in law.
- 3.2. The learned CIT(A) erred in holding that the Appellant bank had not written off bad debts.
- 3.3. The learned CIT(A) failed to appreciate the fact that this issue which was decided in favour of the Appellant has been accepted by the Department.

- 3.4. The learned CIT(A) failed to appreciate the fact that the Appellant bank had written off bad debts by debiting to Provision account and reducing the same from the Gross Loans & Advances.
- 3.5. The learned CIT(A) failed to appreciate the fact that non rural debts written off are not covered by the proviso to section 36(1)(vii).
- 3.6. The learned CIT(A) erred in holding that the Explanation 2 to section 36(1)(vii) is applicable retrospectively.
- 3.7. The learned CIT(A) erred in not following the binding decisions of High Courts & Tribunals.”

7. For AY 2011-12, the AO noted that assessee has claimed deduction of bad debts u/s. 36(1)(vii) without actually writing off the debts are irrecoverable in the individual loan accounts of the debtors concerned. The AO found that majority of the write-off is Prudential Write Off (PWO) at the Head Office level with a view to create provisions for Non-Performing Assets (NPAs) in the books of accounts as per RBI Guidelines. In the PWO the fact of write-off of bad debt has not been allowed to be communicated to the branch level, where the individual loan accounts are outstanding. According to the AO, this implies that debts have not been actually written off in the individual loan accounts. Further, the amounts have been debited to the P&L account under the head 'Provisions & Contingencies' and the claim of bad debt written off has been made in the computation of income only. The amounts have been charged to profit for creating provisions and not for actual write off of bad debts. The write off of bad debts is by way of executive decision, much after the finalization of books of accounts and holding of AGM which indicates that the

claim of bad debt is only an afterthought for reducing the tax liability of the assessee.

8. The AO further noted that the assessee did not charge the amount of bad debts written off to the provision for bad and doubtful debts account, even though there was a sufficient credit balance available in the provisions created for the very purpose. The AO relied on the first proviso to section 36(1)(vii) which expressly states that the claim of bad debt written off shall be admissible, only to the extent the same exceeds the credit balance in provisions for bad and doubtful debts. Further Explanation 2 below section 36(1)(vii) makes it amply clear that there shall be only one account of provision for bad and doubtful debts, against which all claims of bad debts actually written off during the year shall be first set off, without any distinction between rural advances and other advances. Thus, only the excess amount of bad debts written off, remaining after such set off, is admissible as deduction u/s. 36(1)(vii).

9. On appeal before the CIT(Appeals), the assessee submitted that it had written off total amount of Rs.462,79,563 as bad debts during the year comprising a sum of Rs.48,85,56,of rural branches and a sum of Rs.413,94,00,446 of non-rural branches. The following break-up was furnished:-

	Debts written off at Rural Branches	Debts written off at Non-Rural Branches	Total Debts written off
Through Profit and Loss account	13,93,72,503	38,75,50,490	52,69,22,993

Through Profit and Loss account	34,91,83,814	375,18,49,956	410,10,33,770
Total	48,85,56,317	413,94,00,446	462,79,56,763

10. The assessee submitted that the bad debts of entire sum of 48,85,56,317 written off by Rural Branches has been charged to provisions account and there was no excess amount left, therefore no deduction as claimed towards bad debts written off by Rural Branches. Deduction u/s. 36(1)(vii) of Rs.413,94,00,446 is claimed being bad debts written off by Non-Rural Branches which need not be charged to the Provisions account. It was submitted that the system followed for write off of bad debts was that the appellant bank identifies individual bad debts that are to be written off. The bad debts are written off by the branches and also at the HO level. The write off carried out at the branch level is the actual write off in which case the customer account is written off and closed forever. However, the write off at the Head Office is Technical/Prudential Write Off in which case the customer account still appears in the branch books. In both cases, the actual amount written off is reduced from the loans and advances of the bank. The assessee relied on the following decisions:-

Vijaya Bank v. CIT (2010) 323 ITR 166 (SC)
UCO Bank v. CIT, 240 ITR 355 (SC)
Southern Technologies v. CIT, 352 ITR 577(SC)
Canara Bank v. DCIT (2022) (1) TMI 124 (Bangalore Trib) in assessee's own case.

11. It was submitted that the bad debt written off should be first adjusted against the credit balance in the provisions account and only the excess can be claimed as deduction as held in the following cases:-

Catholic Syrian Bank v. CIT (2012) 343 ITR 270 (SC)
Vatika Township P. Ltd. (2014) 367 ITR 466 (SC)
State Bank of Hyderabad (2015) 8 TMI 836 (Hyd. Trib)
IDBI Bank Ltd. (2017) 9 TMI 1289 (Mum. Trib_
Oriental Bank of Commerce (2017) 11 TMI 1589 (Del Trib.)

12. It was submitted that the assessee had claimed only a sum of Rs.413,94,00, 446 as deduction u/s. 36(1)(vii) whereas the AO has disallowed an amount of rs.462,79,56,763, the excess of Rs.48,85,56,317 is the bad debts written off relating to rural branches which is debited to the provisions account and not claimed as deduction. Therefore the disallowance to the extent of Rs.48,85,56,317 is required to be deleted.

13. It was further submitted that any subsequent recovery made in the loan accounts which are written off either at the HO or the branch level are credited to P&L account and shown as income and offered to tax u/s. 41(1) of the Act in the year of recovery. Any recovery made in a loan account which is not written off is credited to that loan account only and not to P&L account. However, recovery made in an account which is written off is credited to P&L account. Thus, the very fact that recovery is credited to the P&L account shows that the loan has been written off.

14. The CIT(Appeals) noted that the AO has disallowed the deduction on the ground that (i) the assessee has not actually written off the bad debts in the individual loan accounts, & (ii) the assessee did not charge the amount of bad debts written off to the provision for bad

and doubtful debts account, though there was sufficient credit balance available in the provisions created for the very purpose. The CIT(A) noted the amendment made by the Finance Act, 2013 to section 36(1) explained in CBDT Circular No.3 dated 24.1.2014. He observed that Explanation 2 is that proviso to clause (vii) of section 36(1) and clause (v) of section 36(2) refer to only one account of provision for bad and doubtful debts relating to all types of advances, including advances made by rural branch. Thus amount of deduction in respect of bad debts actually written off shall be subject to the amount by which such debts exceed the provisions made for bad and doubtful debts without any distinction between rural and other advances. In other words, the banks cannot claim double deduction, once on provisioning basis and again on actual write off basis for the same amount separately and independently. He held that provisions of section 36(1)(viiia) are applicable to the assessee bank and deduction has to be considered in terms of proviso to section 36(1)(vii) r.w.s. 36(2) of the Act and accordingly the same needs to 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 created u/s. 36(1)(viiia). He therefore upheld the order of the AO in denying the claim of deduction in respect of bad debts u/s. 36(1)(vii) of the Act.

15. Aggrieved by the order of the CIT(A), the assessee is in appeal before the Tribunal.

16. The Id.AR reiterated the submissions made before the lower authorities and submitted that an identical issue has been decided in favour of the assessee by the coordinate bench of the Tribunal in ITA No.1884/Bang/2018 dated 27.12.2021 for AY 2013-14 and ITA No.1885/Bang/2018 dated 28.9.2018 for AY 2014-15 in assessee's own case.

17. The Id. DR relied on the order of lower authorities and he submitted that the Hon'ble SC has accepted the SLP of the revenue on similar issue in the case of Commissioner of Income Tax, LTU vs Vijaya Bank, reported in (2021) 130 taxmann.com 149 dated AUGUST 9, 2021 in SLP LEAVE (C) NO.7351 OF 2021, against the judgement of the Hon'ble jurisdictional High Court, therefore, the issue should be decided in favour of the revenue.

18. We have heard the rival submissions and perused the materials on record. We notice that the from the judgments quoted by the assessee (supra) in its own case, the issue has been decided in favour of the assessee as under:-

“12.3 We have heard rival submissions and perused the material on record. We notice that the CIT(A) had expressed the view that provision allowed u/s 36(1)(viiia) of the Act would apply to non-rural advances also. An identical issue has been examined by the Hyderabad Bench of the ITAT in the case of State Bank of Hyderabad v. DCIT in ITA No.450/Hyd/2015, ITA No.498 and 499/Hyd/2015 (order dated 14.08.2015) wherein the Tribunal had not accepted the above said view expressed by the CIT(A). The Bangalore Bench of the Tribunal in assessee's own case for

assessment year 2013-2014 by following the Hyderabad Bench order of the Tribunal in the case of State Bank of Hyderabad (supra), had set aside the view expressed by the CIT(A) that proviso to section 36(1)(vii) which requires adjustment of bad debts against the provisions allowed u/s 36(1)(viia) would apply to non-rural advances also. The relevant finding of the Bangalore Bench of the Tribunal in assessee's own case for assessment year 2013- 2014 reads as follows:-

“6.4 We heard the parties on this issue and perused the record. We notice that the Ld CIT(A) has expressed the view that the provision allowed u/s 36(1)(viia) of the Act would cover bad debts pertaining to non-rural advances also. An identical issue has been examined by Hyderabad bench of ITAT in the case of State Bank of Hyderabad vs. DCIT (ITA No.450/Hyd/2015, ITA No.498 and 499/Hyd/2015 dated August 14, 2015), wherein the Tribunal has not accepted the above said view expressed by Ld CIT(A). The relevant observations made by the Tribunal are extracted below:-

“19. We have considered the rival submissions and perused the materials on record as well as the orders of revenue authorities. As could be seen from the finding of AO as well as ld. CIT(A), only reason for which claim of deduction for Rs. 209,07,50,831 representing actual write off of bad debts relating to non-rural advances u/s 36(1)(vii) was denied is, assessee having already availed deduction u/s 36(1)(viia), it is not eligible to claim deduction u/s 36(1)(vii) as it will amount to double deduction. In our view, both AO as well as ld. CIT(A) have committed fundamental error by mixing up provisions of sections 36(1)(vii) and 36(1)(viia). While 36(1)(vii) speaks of actual write off of bad debts in the books of account, section 36(1)(viia) even allows provision made towards bad and doubtful debts in respect of rural advances to the extent of provision made in the books of account subject to the ceiling fixed under clause (viia) of section 36(1). Proviso to section 36(1)(vii) operates only in a case where deduction is also claimed under section 36(1)(viia). In other words, proviso to section 36(1)(vii) applies to write off of bad debts relating to rural advances to the extent it exceeds the provision made u/s 36(1)(viia). If we examine the facts of the present case in the context of aforesaid statutory provision, it will

be evident that assessee, though, has written off in the books of account an amount of Rs. 210.74 crore, but, in the computation of total income, the actual deduction claimed u/s 36(1)(vii) is Rs. 209.08 crore representing bad debts written off relating to non-rural/urban advances. The balance amount of bad debts relating to rural advances was not claimed as deduction by assessee in terms with the proviso to section 36(1)(vii) as it has not exceeded the provision for bad and doubtful debts relating to rural advances created u/s 36(1)(viia). Both AO and Id. CIT(A) have misconstrued the statutory provisions while observing that proviso to section 36(1)(vii) would also apply in case of bad debts relating to non-rural advances. The Hon'ble Supreme Court in case of Catholic Syrian Bank Vs. CIT (supra) while analyzing provisions of section 36(1)(vii) and 36(1)(viia) have observed that section 36(1)(viia) applies only to rural advances. The observations made by Hon'ble Apex Court in this regard in paras 26 & 27 of the judgment is extracted hereunder for convenience.

"26. The Special Bench of the Tribunal had rejected the contention of the Revenue that proviso to s. 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 cl. (vii) of s. 36(1) of the Act on the basis of actual write off and the other on the basis of cl. (viia) of s. 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 s. 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 Tribunal 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 cl. (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 cl. (viia). The proviso by and large protects the interests of the Revenue. In case of rural advances which are covered by cl. (viia), there would be no such double

deduction. The proviso, in its terms, limits its application to the case of a bank to which cl. (viiia) applies. Indisputably, cl. (viiia)(a) applies only to rural advances."

Concurring with the aforesaid majority view, Hon'ble CJI, S.H. Kapadia, as the then he was, held as under:

"2. Under Section 36(1)(vii) of the ITA 1961, the tax payer carrying on business is entitled to a deduction, in the computation or taxable profits, of the amount of any debt which is established to have become a bad debt during the previous year, subject to certain conditions. However, a mere provision for bad and doubtful debt(s) is not allowed as a deduction in the computation of taxable profits. In order to promote rural banking and in order to assist the scheduled commercial banks in making adequate provisions from their current profits to provide for risks in relation to their rural advances, the Finance Act, inserted clause (viiia) in subsection (1) of Section 36 to provide for a deduction, in the computation of taxable profits of all scheduled commercial banks, in respect of provisions made by them for bad and doubtful debts relating to advances made by their rural branches. The deduction is limited to a specified percentage of the aggregate average advances made by the rural branches computed in the manner prescribed by the IT Rules, 1962. Thus, the provisions of clause (viiia) of Section 36(1) relating to the deduction on account of the provision for bad and doubtful debt(s) is distinct and independent of the provisions of Section 36(1)(vii) relating to allowance of the bad debt(s). In other words, the scheduled commercial banks continue to get the full benefit of the write off of the irrecoverable debt(s) under Section 36(1)(vii) in addition to the benefit of deduction for the provision made for bad and doubtful debt(s) under section 36(1)(viiia). A reading of the Circulars issued by CBDT indicates that normally a deduction for bad debt(s) can be allowed only if the debt is written off in the books as bad debt(s). No deduction is allowable in respect of a mere provision for bad and doubtful debt(s). But in the case of rural advances, a deduction would be allowed even in respect of a mere provision without insisting on an actual write off. However, this may result in double allowance in the sense that in respect of same rural advance the bank may get allowance on the basis of clause (viiia) and also on the basis of actual write

off under clause (vii). This situation is taken care of by the proviso to clause (vii) which limits the allowance on the basis of the actual write off to the excess, if any, of the write off over the amount standing to the credit of the account created under clause (viiia). However, the Revenue disputes the position that the proviso to clause (vii) refers only to rural advances. It says that there are no such words in the proviso which indicates that the proviso apply only to rural advances. We find no merit in the objection raised by the Revenue. Firstly, CBDT itself has recognized the position that a bank would be entitled to both the deduction, one under clause (vii) on the basis of actual write off and another, on the basis of clause (viiia) in respect of a mere provision. Further, to prevent double deduction, the proviso to clause (vii) was inserted which says that in respect of bad debt(s) arising out of rural advances, the deduction on account of actual write off would be limited to the excess of the amount written off over the amount of the provision allowed under clause (viiia). Thus, the proviso to clause (vii) stood introduced in order to protect the Revenue. It would be meaningless to invoke the said 1 proviso where there is no threat of double deduction. In case of rural advances, which are covered by the provisions of clause (viiia), there would be no such double deduction. The proviso limits its application to the case of a bank to which clause (viiia) applies. Clause (viiia) applies only to rural advances. This has been explained by the Circulars issued by CBDT. Thus, the proviso indicates that it is limited in its application to bad debt(s) arising out of rural advances of a bank. It follows that if the amount of bad debt(s) actually written off in the accounts of the bank represents only debt(s) arising out of urban advances, the allowance thereof in the assessment is not affected, controlled or limited in any way by the proviso to clause (vii)."

Thus, considered in light of principle laid down as referred to above, when the proviso to section 36(1)(vii) applies to bad debts written off relating to rural advances, the same cannot be applied for disallowing deduction claimed on account of write off of bad and doubtful debts relating to nonrural/urban advances. As far as application of explanation to section 36(1)(vii) is concerned, we agree with the Id. AR that its operation will be prospective and will not apply to the impugned AY. For this proposition, we rely upon the decision of the ITAT Mumbai in case of Bank of India

Vs. Addl. CIT (supra). Even otherwise also, careful reading of explanation to section 36(1)(vii) would indicate that nowhere it suggests that the proviso to section 36(1)(vii) would apply in respect of bad debt written off relating to non-rural advances. In the aforesaid view of the matter, we hold that assessee would be eligible to avail deduction of an amount of Rs. 209.94 crore representing actual write off in the books of account of bad debts relating to nonrural/urban advances in terms with section 36(1)(vii), as proviso to the said section would not apply to non-rural advances. Accordingly, we delete the addition made by AO and confirmed by ld. CIT(A).”

6.5 Following the above said decision, we hold that the view expressed by Ld CIT(A) is not legally correct. Accordingly, we set aside the order passed by Ld CIT(A) with regard to his alternative decision, i.e., the view that the proviso to sec. 36(1)(vii) which requires adjustment of bad debts against provision allowed u/s 36(1)(viiia) would apply to non-rural advances also. Accordingly, we direct the AO to delete the disallowance of Rs.1258.47 crores.”

12.4 In view of the above co-ordinate Bench order of the Tribunal in assessee’s own case for assessment year 2013- 2014 (supra), we hold that the view expressed by the CIT(A) is not correct. Therefore, the alternative decision taken by the CIT(A) (i.e. the proviso to section 36(1)(vii) which requires adjustment of bad debts against provision allowed u/s 36(1)(viiia) would apply to non-rural advances also) is hereby set aside. Hence, we direct the A.O. to delete the disallowance made by the CIT(A). It is ordered accordingly.”

19. Similar issue has also been decided by the coordinate Bench of the Tribunal in the case of Bank of Baroda v. Addl. CIT, LTU, in ITA No.321/Bang/2019 dated 25.4.2023 in favour of the assessee. The ld. DR has submitted that the Hon’ble Apex court has admitted the SLP filed by the revenue but the status of the same could not be furnished by the ld. DR, accordingly, we are bound by the order of the Jurisdictional High Court till the date of passing of the final order by

the Hon'ble Supreme Court. Accordingly respectfully following the above decisions, we direct the AO to delete the addition made u/s. 36(1)(vii). This ground for AYs 2011-12 and 2012-13 is allowed.

20. The next common issue is disallowance of deduction u/s. 36(1)(viia) of the Act for the AYs 2011-12 to 2013-14. The grounds raised by the assessee for AY 2011-12 is as under:-

- “4. The learned CIT(A) erred in upholding the disallowance of Rs. 427,38,10,826/-out of the amount claimed as deduction u/s.36(1)(viia).
- 4.1. The disallowance made by the learned Assessing Officer and upheld by the learned CIT(A) is based on change of opinion and as such, not tenable in law.
- 4.2. The learned CIT(A) failed to appreciate the fact that the addition made u/s 36(1)(viia) is hit by the third proviso to section 147 of the Income Tax Act, 1961.
- 4.3. The learned CIT(A) erred in considering only the incremental advance for the purpose of arriving at the deduction u/s 36(1)(viia).
- 4.4. The learned CIT(A) failed to appreciate the fact that for the purpose of arriving at the Aggregate Average Advances as per Rule 6ABA, the outstanding balance at the end of each month needs to be considered and not the incremental advances.
- 4.5. The learned CIT(A) failed to follow the binding decisions of the jurisdictional High Court and Tribunal.
- 4.6. The learned CIT(A) failed to appreciate the fact that the deduction u/s 36(1)(viia) has to be allowed on the basis of the calculation as provided in the section and not with reference to the amount of provision made in the books of account.

4.7. The disallowance made by the learned Assessing Officer and upheld by the learned CIT(A) is based on surmises and conjunctures.”

21. During the assessment proceedings for AY 2011-12, the AO noted that the assessee bank has claimed a sum of Rs.901,62,96,929 as deduction in respect of provision made for bad and doubtful debts u/s. 36(1)(viiia) of the Act. 10% of the Aggregate Average Advances [AAA] of the rural branches was computed at Rs.810,96,43,882. The AO noticed certain discrepancies in the computation of AAA and issued questionnaire u/s. 142(1) in respect of the same as under:-

Details of AAA of rural branches in accordance with provisions of rule 6ABA – branch wise.

Basis of classification of rural branches along with details of population as per latest census.

Complete details of rural ranches (postal address and classification by RBI).

Specific details of rural branches so classified, falling within the ambit of urban agglomeration, though earlier considered as rural.

Justification of rural branches as on relevant period based on census 2011 data in view of decision of Hon'ble High Court of Kerala in the case of Lord Krishna Bank. Justify/ revise the claim of rural branches as on the date of claiming deduction and identification of such ranches with evidence and aggregate advances made by the respective branches.

Details for the AY 2011-12 with reference to the findings for AY 2016-17 and details submitted therein.

Advances made during the year alone are eligible for deduction and not the cumulative advances outstanding.

Details of AAA incremental figures in respect of each of the rural branch claimed for the FY 2010-11 as compared to the last year.

22. The assessee submitted its reply dated 1.12.2018. It was submitted that the deduction u/s. 36(1)(viiia) was as follows:-

(Rs. in Crores)

Particulars	In Original return	Return in response to notice u/s. 148
10% of Average Rural Advances	810.96	810.96
Less: 24 Branches classified as Non-Rural as per OGE to CIT(A)'s order dated 8.5.2017.		(23.70)
7.5% of Gross Total Income	107.86	114.36
Total	918.82	901.62

23. It was submitted that classification of rural branches is made based on the data furnished by the RBI based on the census data where population is less than 10,000. Accordingly 812 branches were classified as rural and details of population of 526 branches out of 812 were furnished in Annexure D, which also include details of AAA of rural branches as per rule 6ABA with branchwise address. In the order giving effect to CIT(A)'s order dated 28.4.2017, 24 branches were classified as non-rural and those advances have been reduced while claiming the deduction in the return in response to notice u/s. 148. Regarding rural branches falling within the ambit of urban agglomeration, the assessee submitted that according to the definition of rural branch defined under the Act, any branch situated in place not having a population of more than 10,000 as per last preceding census has to be considered as rural branch. It was further stated that the

AO's reliance on the Hon'ble Kerala High Court judgment in the case of Lord Krishna Bank was not applicable to the facts of assessee's case since in that case the term 'place' was contended to be the ward of a local authority like panchayat or municipality which was rejected by the High Court and it was held that a revenue village has to be considered and not a ward. The assessee has considered village / panchayat/town and therefore that decision was not applicable to the assessee's case. As per rule 6ABA, it was submitted that assessee has computed the AAA by considering the outstanding advances of each rural branch at the end of the last day of each month separately and divided the resultant figure by number of months comprised therein. There was no stipulation in the rule that only the fresh advances during the month should be considered. Reliance was placed on the following decisions:-

Canara Bank, 60 ITR (Trib) 1 (ITAT Bang.)
Nizambad Dist. Cooperative Central Bank Ltd. 2014 (12) TMI
562 – ITAT Hyderabad
DCIT v. Madurai Dist. Central Co-op. Bank Ltd. [2014] 51
taxmann.com 194 (Chennai Trib.)
DCIT v. Union Bank Ltd. in ITA No.1485/Mds/07 dated
30.10.2009
PCIT v. Uttarbanga Kshetriya Gramin Bank 2018 (5) TMI 903 –
Calcutta High Court.

24. The AO, however, rejected the submissions of the assessee and disallowed the deduction u/s. 36(1)(vii) by observing as under:-

“The assessee has claimed the deduction u/s. 36(1)(vii) by not actually writing off in the loan a/cs of the debtors.

Without accepting the claim of the assessee that written off, even to claim any deduction u/s. 36(1)(vii) the assessee should have debited the claim of bad debts of Rs.929,03,91,277/- to the provision for bad and doubtful debts account made u/s. 36(1)(viia) and only excess if any should have been claimed u/s. 36(1)(vii) as envisaged u/s. 36(1)(2) of the Income Tax Act, 1961. The assessee has submitted the Computation of eligible deduction U/s 36(1)(viia) in Anx.2A enclosed to computation of business income, the opening balance of available brought forward provision is at Rs.2666,68,65,271/- and for the current year the claim is allowed to the extent of Rs.48,85,56,317/-. The claim of assessee u/s. 36(1)(vii) for the current year after write off pertaining to rural branches is at Rs.413,94,00,446/-. Since the available provision exceeds the claim, the entire claim of deduction u/s. 36(1)(viia) is hereby disallowed (901,62,96,579 – 474,24,85,753).

Total disallowance : Rs.427,38,10,826.”

25. On appeal before the CIT(Appeals), the assessee submitted that it has computed the aggregate average advances by considering the outstanding loans of each rural branch at the end of the last day of each month separately and divided the resultant figure by number of months comprised therein. This method of working is as per Rule 6ABA and the method adopted by the AO is not in accordance with law. The assessee relied on the following decisions:-

Uttarabhangra Kshetriya Gramin Bank (2018) 408 ITR 393 (Cal)

Canara Bank (2017) 60 ITR (Trib) 1 (Bangalore Trib)

Nizambad Dist. Cooperative Central Bank Ltd. 2014 (12) TMI 562 (Hyderabad Trib.)

DCIT v. Madurai District Central Co-operative Bank Ltd. (2014) 51 taxmann.com 194 (Chennai Trib)

DCIT v. City Union Bank Ltd. in ITA No.1485/Mds/07 order dated 30.10.2009.

26. The assessee also submitted that section 36(1)(viiia) is a beneficial provision allowing deduction to banks having rural branches with a view to promote rural banking and it is settled position of law that beneficial provisions should be interpreted liberally so that the intended benefits can be passed on to the eligible assessee.

27. The CIT(Appeals) observed that the moot point for adjudication is whether for computing the aggregate average advances made by rural branches, as per Rule 6ABA, only the fresh advances made during the month, or the outstanding loans at the end of each month, should be considered. The CIT(A) held as follows:-

“11.3 On a plain reading of the rule 6ABA, it is noted that the computation prescribed therein envisages a three step process. The first two steps provide the method of computing average advance made by a particular rural branch. First, the advances made by each rural branch, as outstanding at month end, have to be aggregated. Second, average of this aggregated sum has to be taken over the period of months for which the advances have been outstanding. This average figure shall be the amount of average advance made by that particular rural branch. In the third step, the average advances of all rural branches (computed separately for each rural branch) have to be aggregates and that total figure shall be the aggregate average advances made by the rural branches. I find that a plain reading would suggest that for the first step, the fresh advances made by each rural branch only have to considered. The outstanding amounts against such fresh advances have to aggregated month wise, and then the average of the aggregated sum has to be taken for the period of months for which the advance was outstanding. The process of averaging out would take care of the fluctuating balance in a particular account due to repayments and further advances. This construction of the

rule is aligned with the legislative intent namely to encourage rural banking. If outstanding loans at the end of each month for a rural branch were to be considered (as the appellant has claimed), this would lead to an anomaly in a situation where a particular rural branch does not make any fresh advance during the entire year, but does have outstanding loans brought forward from earlier years. In such an event, the rural branch in example would continue to report the same amount of aggregate advances year after year, without having made any fresh advances all these years. I find that this construction of the rule would clearly defeat the very purpose of enactment of clause (viiia), namely to encourage rural banking, as this would enable the banks to claim deduction of provisions made for bad and doubtful debts, without making any efforts to increase their exposure to rural loans. The primary idea of permitting deduction for a provision, which is normally not admissible, in case of certain banks is to create a fiscal incentive for generating rural credit, which of course is more prone to risk and default. Therefore, I am inclined to concur with the view of the AO that only the fresh advances made during the month by the rural branches should be considered for computing the aggregate average advances as per Rule 6ABA.

11.4 In this context, it is also noted that the jurisdictional High Court in the appellants own case reported as DCIT Vs Syndicate Bank (2022) (145 taxmann.com 336) (Karnataka) has allowed the review petition filed by Revenue on the issue and held that deduction towards bad and doubtful debts under section 36(1)(viiia) computed at rate of 7.5 per cent of total income should be computed after setting off of brought forward losses.

11.5 In view of the facts and circumstances of the case, and position of law as applicable on such facts, I find that the action of AO in restricting the claim of deduction in respect of provision made for bad and doubtful debts under section 36(1)(viiia), by considering only the fresh advances made by the rural branches for computing the aggregate average advances is in accordance with the method prescribed under Rule 6ABA, hence sustained. In this regard, the jurisdictional Assessing Officer (JAO) is also directed to consider the effect of jurisdictional High Court ruling in the appellants own case, as mentioned above, and re-compute, if found necessary, the admissible quantum of deduction in

respect of the provisions made by the appellant bank towards bad and doubtful debts under section 36(1)(viiia) in that light. The JAO shall provide a reasonable opportunity to the appellant to adduce the supporting evidence in support of its claim. These grounds of appeal are therefore partly allowed.”

28. Aggrieved, the assessee is in appeal before the Tribunal.

29. The Id. AR reiterated the submissions made before the lower authorities and relied on the decision of the Karnataka High Court in the case of Canara Bank in ITA No.207 & 208 of 2019, order dated 27.12.2021 for AY 2013-14 and orders of the Tribunal in the case of Canara Bank in ITA No.1900/Bang/2018 dated 28.9.2018 for AY 2013-14 and in the case of Karnataka Bank in ITA No.1907/Bang/2018 dated 26.5.2022 for AY 2014-15.

30. The Id. DR relied on the order of CIT(Appeals).

31. We have heard the rival submissions and perused the materials on record. We notice that the Hon'ble Karnataka High Court in the case of CIT, LTU v. Canara Bank [2023] 147 taxmann.com 171 (Karnataka) has considered similar issue and held as under:-

“6. Insofar as question No. 4 is concerned, adverting to section 36(1)(viiia) of the Income-tax Act, 1961, Shri Aravind submitted that the word used in the statute is aggregate average advances "made" by the rural branches. To quote an example, he submitted that for A.Y. is 2013-14 (F.Y. 2012-13) if the bad debt as on 31-3-2012 is considered to be as Rs. 1 Crore by virtue of making provisions subsequently, the assessee will be entitled for double benefit because provisions in respect of 10% of the bad debt of provisions of Rs. 1 Crore towards bad debt was already made as on 31-3-2012. Therefore, if the same amount is carried forward for the next F.Y., the assessee will be entitled for the

double benefit because it would be making a provision for Rs. 1 Crore in addition to the 10% to the bad debt made in the relevant F.Y.

7. Shri Suryanarayana, adverting to the Para 7 of the impugned order, submitted that in identical circumstances, in assessee's own case, the assessee had made provision in similar manner as made in A.Y. 2013-14. A co-ordinate bench of the Tribunal had accepted the provision made by the assessee benefit in *CanaraBank v. Jt. CIT* [2018] 99 taxmann.com 357/[2017] 60 ITR (Trib.) 1 (Bengaluru - Trib.). He further submitted that the said order has been followed by the Tribunal in *Vijaya Bank v. Jt. CIT* [IT Appeal Nos. 915 & 845 (Bang.) of 2017, dated 5-1-2018] and the said method of making provision has been approved by the Calcutta High Court in *Uttarbanga Kshetriya Gramin Bank* case.

8. We have carefully considered the rival contentions and perused the records.

9. In Para 7.2 of the impugned order, the Tribunal has recorded thus,

"7.2 Before us, the learned Authorised Representative for the assessee reiterated the submission that the language of Rule 6ABA is very clear and does not mandate that only incremental advances has to be considered and nothing can be read into it as has been done by the authorities below. It was submitted that this issue has been considered and decided in favour of the assessee by the co-ordinate bench of this Tribunal in the case of *Canara Bank v. JCIT* (2017) 60 ITR (Trib) 1 [ITAT (Bang)]"

10. It is further held that the said decision has been followed in *Vijaya Bank* case. The manner in which the computation has been made has been given in the case of *Vijaya Bank* Case. Order passed by the Tribunal in *Canara Bank's* case followed in *Vijaya Bank* case has attained finality and the Revenue has not challenged the said order. Further, the High Court of Calcutta, while considering an identical situation as recorded thus, "Mr. Khaitan, learned senior Advocate appeared on behalf of the assessee and submitted that the computation to be made as prescribed by rule 6ABA is for the purpose of fixing the limit of

the deduction available under section 36(1)(viiia). Clauses (a) and (b) in rule 6ABA cannot be given the restricted interpretation. The amounts of advances as outstanding at the last day of each month would be a fluctuating figure depending on the outstanding as increased or reduced respectively by advances made and repayments received. The assessee might provided for bad and doubtful debts but the deduction would only be allowed at the percentage of aggregate average advance, computation of which is prescribed by rule 6ABA.

We find from the amended direction made by the Tribunal that such direction is in terms of rule 6ABA. The ITO has made the computation of aggregate monthly advances taking loans and advances made during only the previous year relevant to assessment year 2009-10 as confirmed by CIT(A). The Tribunal amended such direction, in our view, correctly applying the rule."

11. In view of the above, these appeals with regard to question No. 4 must fail and it is also answered in favour of the assessee and against the Revenue."

32. Respectfully following the above judgment of Hon'ble Karnataka High Court, we decide this issue in favour of the assessee. Accordingly this ground of the assessee for the AYs 2011-12 to 2013-14 is allowed.

33. The next common issue is with regard to applicability of the provisions of section 115JB of Act for the AYs 2011-12 to 2013-14. The grounds raised by the assessee for AY 2011-12 is as under:-

"5. The learned CIT(A) erred in upholding the order of learned Assessing Officer with regard to applicability of the provisions of Section 115JB of Income Tax Act, 1961 to the Appellant Bank.

5.1. The learned CIT(A) failed to appreciate that provisions of Section 115JB of the Income Tax Act, 1961 are not

applicable to the appellant and as such, is not liable to pay tax under the said provisions.

- 5.2. The learned CIT(A) failed to appreciate the fact that the issue of applicability of provisions of Section 115JB is hit by the third proviso to section 147 of the Income Tax Act, 1961.
- 5.3. The learned CIT(A) failed to appreciate the fact that this issue has already been decided by the learned CIT(A) and the Departmental appeal is pending before ITAT.
- z5.4. Without prejudice to the above, the learned CIT(A) erred in adding various items to arrive at the book-profit which are beyond the scope of the section.”

34. For the AY 2011-12, AO held that the provisions of section 115JB are applicable to the assessee bank, and hence it is liable for payment of Minimum Alternate Tax (MAT) on its book profits under those provisions. He noted that the provisions of Section 115JB were amended vide Finance Act 2012 to inter-alia provide that in the case of companies, which are not required to prepare their profit and loss account in accordance with schedule VI of the Companies Act, 1956 (e.g. banking, insurance, electricity companies), the profit and loss account prepared in accordance with their Regulatory Acts shall be taken as basis for computation of book profit, for the purpose of MAT liability. Further, Explanation 3 was inserted below section 115JB to clarify that every such company, for assessment year beginning on or before 01.04.2012, shall have an option to prepare its profit and loss account in accordance with schedule VI of the Companies Act, 1956, or in accordance with its Regulatory Act. In this regard, AO has analysed the Explanatory Memorandum to the Finance Bill, 2012 and

held that the aforesaid Explanation only clarified the position of existing law, and therefore applied retrospectively, on the appellant bank. AO has also relied on section 11 of Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 which provides that every corresponding new bank shall be deemed to be an Indian company for the purposes of Income-tax Act 1961, and held that the provisions of section 115JB, as such, are applicable to all corresponding new banks.

35. Before the CIT(Appeals), the assessee filed written submissions and contended that the provisions of section 115JB are not applicable to banking companies and relied on the following case laws:-

1. ING Vysya Bank Ltd. (2020) (422 ITR 116) (Karnataka)
2. Union Bank of India (2019) (13 ITR —OL 655) (Bombay)
3. Syndicate Bank (ITA No 99 & 100/PAN/2017 dated 23.01.2020)

36. The assessee also submitted that various additions made by the AO while computing book profit under section 115JB are not covered by the Explanation 2 to section 115JB and therefore these additions are not tenable in law.

37. The CIT(Appeals) observed that section 115JB was inserted in the Act by the Finance Act 2000 with effect from 1st April 2001. Section 115JB provides for a Minimum Alternate Tax (MAT) on all companies, having Book Profits under the Companies Act, prepared in accordance with Part II and Part II of the Schedule VI to the Companies Act. Under the provisions of this section, a company is

required to pay at least certain percentage of its book profit as Corporate Tax. In case the tax liability of a company under regular provisions is more than this amount, the provisions of MAT will not apply and the company shall pay corporate tax as per the regular scheme. The provisions of Section 115JB have been amended substantially by way of Finance Act 2012. The scope and effect of these amendments have been explained by way of CBDT Circular No. 3 of 2012 dated 12.06.2012.

38. The CIT(A) further noted that Explanation 3 to section 115JB, which was inserted vide Finance Act 2012, clarifies inter alia that a banking company, for the Assessment Year 2012-13 and earlier assessment years, shall have an option to prepare its profit and loss account either in accordance with the provisions of Schedule VI to the Companies Act, 1956 or in accordance with the provisions of its governing Act. The said explanation is clearly clarificatory in nature as it explains the position of law to be applied for earlier years in case of banking companies etc. for the purposes of MAT. Furthermore, it is also noted that the appellant is a nationalized bank which is governed by the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Section 11 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, provides that for the purposes of the Income-tax Act, 1961, every corresponding new bank shall be deemed to be Indian company and a company in which public is substantially interested. On a conjoint reading of these provisions, it is evident that the appellant bank is an Indian company, and therefore

liable to pay MAT on its book profits for the year under consideration as per section 115JB. In this regard, it is also noted that the appellant bank, in the original as well as revised return of income, has itself paid taxes on book profits as computed under the provisions of section 115JB.

39. The CIT(A) relied on the decision in the case of Bank of India Vs ACIT (2020) (122 taxmann.com 247 (Mumbai - Trib.), wherein the ITAT, Mumbai has upheld that a bank would be treated as a company for purposes of Income-tax Act, and thus provisions of section 115JB would clearly apply to the assessee bank. He further noted that there is a divergence of opinion on this issue among Courts and various benches of the Tribunal. In view thereof, Hon'ble Supreme Court has admitted the SLP preferred by Revenue and issued notice in various cases, as noted below. The position of law has not yet attained finality on this issue:-

- Pr. CIT Vs Central Bank of India (2022) (142 taxmann.com 184) (SC)
- CIT v. Karnataka Bank Ltd. (2022) 288 Taxman 725
- CIT, LTU v. Vijaya Bank (2021) 22 Taxman 296
- CIT, LTU v. Canara Bank (2022) 287 Taxman 462

40. The CIT(Appeals) also rejected the alternative plea of the assessee that additions to book profits made by the AO are not covered in Explanation 2 to section 115JB on the ground that the assessee has not substantiated this ground. He accordingly sustained the order of the AO. Aggrieved, the assessee is in appeal before the Tribunal.

41. The Id. AR reiterated the submissions made before the lower authorities and relied on the following decisions:-

Syndicate Bank – ITA Nos.97 & 98 of 2020 dated 7.2.2023 for AY 2011-12 & 2012-13

Syndicate Bank – ITA Nos.99 & 99/Pan/2017 dated 23.1.2020 for AY 2011-12 & 2012-13

Canara Bank (e-Syndicate Bank) – ITA No.1886/Bang/2018 dated 23.2.2022 for AY 2014-15.

42. The Id. DR relied on the order of CIT(Appeals).

43. We have heard the rival submissions and perused the materials on record. We notice that the coordinate Bench of the Tribunal in the case of Canara Bank (Syndicate Bank) in ITA No.1885/Bang/2018 by order dated 23.1.2020 for AY 2014-15 considered this issue and held as under:-

“13.5 We have heard rival submissions and perused the material on record. The Tribunal in assessee’s own case for assessment year 2013-2014 (supra) had restored the issue to the files of the CIT(A). The CIT(A) was directed to examine whether the assessee being a banking company would be liable for book profits u/s 115JB of the Act. The relevant finding of the Tribunal in assessee’s own case, reads as follows:-

“7.4 We heard the parties on this issue and perused the record. We notice that the Ld CIT(A) has expressed the view that the assessee would fall under clause (a) of sec.115JB(2). However the case of the assessee is that clause (b) of sec.115JB(2) is made applicable to banking companies, since banking company is included in sec. 211 of the Companies Act. However, it is the contention of the assessee that it is not a ‘banking company’, i.e., it is a “corresponding new bank”.

7.5 We notice that the provisions of sec.51 of the Act specifically states that only certain provisions of BR Act are applicable to “Corresponding new bank”. We noticed earlier that the Ld CIT(A) has proceeded to decide this issue by observing that all provisions of BR Act are applicable to the Company. We notice that the Ld CIT(A) did not consider the effect of provisions of sec.51 of the BR Act upon the assessee. Hence the decision taken by him under the impression that all the provisions of BR Act are applicable to the assessee is faulted one. In our view the Ld CIT(A) should considered the effect of provisions of sec. 51 of BR Act and accordingly he should have appreciated the contentions of the assessee on the definition of “banking company”, provisions of sec.211(2) of the Companies Act etc. Since these aspects go to the root of the issue, in our view, this issue needs to be examined at the end of Ld CIT(A) afresh. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to his file for examining it afresh.”

13.6 In view of the co-ordinate Bench order of the Tribunal in assessee’s own case for assessment year 2013- 2014, we restore this issue to the files of the CIT(A). The CIT(A) shall follow the directions contained in the Tribunal order for assessment year 2013-2014 and shall afford a reasonable opportunity of hearing to the assessee before a decision is taken on the issue. It is ordered accordingly.”

44. Respectfully following the above decision of the Tribunal, we restore this issue to the file of the CIT(A) with similar directions. This ground of the assessee for the AYs 2011-12 to 2013-14 is allowed for statistical purposes. Accordingly the alternate ground regarding adding various items to arrive at the book profit raised by the assessee for AY 2011-12 to 2013-14 is also restored to CIT(Appeals) for fresh decision in accordance with law.

45. In the result, the appeals are partly allowed for statistical purposes. The common order passed in these appeals shall be placed in the respective appeals.

SP Nos. 18 to 20/Bang/2023

46. In view of the appeals having been disposed of, the Stay Petitions have become infructuous and dismissed as such.

Pronounced in the open court on this 28th day of April, 2023.

Sd/-

(GEORGE GEORGE K.)
JUDICIAL MEMBER

Sd/-

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 28th April, 2023.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.