

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

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

Sr. No	Appeal Numbers	Assessment Years	Appellant	Respondent
1	ITA No.538/Chny/2022	2009-10	<b>The Virudhunagar District Central Co-operative Bank Ltd.</b> 104/1, Madurai Road, Post Box No.8, Virudhunagar – 626 001. <b>[PAN: AAAAV-0147-N]</b>	<b>PCIT</b> Madurai-1.
2	ITA No.539/Chny/2022	2010-11		
3	ITA No.540/Chny/2022	2011-12		
4.	ITA No.541/Chny/2022	2012-13		
5.	ITA No.542/Chny/2022	2014-15		
6.	ITA No.543/Chny/2022	2017-18		

अपीलार्थी की ओरसे/ <b>Appellant by</b>	:	Shri K. Manoj Menon (Advocate) & Shri K. Chindan (Advocate)-Ld. Ars
प्रत्यर्थी की ओरसे/ <b>Respondent by</b>	:	Shri R. Mohan Reddy (CIT) –Ld. DR
सुनवाई की तारीख/ <b>Date of Hearing</b>	:	18-04-2023
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	12-05-2023

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. By way of these appeals, the assessee assails the validity of revisional jurisdiction u/s. 263 as exercised by revisionary authority for different assessment years. The facts as well as issues leading to revision are stated to be common and it is admitted position that adjudication in any one year would equally apply to all the other years also. The grounds raised by the assessee for AY 2009-10 read as under:

(a) The order of the Principal Commissioner of Income-Tax (PCIT) dated 24.03.2022 has been received by the Assessee on 01.04.2022, beyond the time limit prescribed under the Income Tax Act, 1961 (Act).

(b) The Assessing Officer (AO) has passed the order after enquiry and verification of the records of the Assessee and following the direction issued by ITAT by its earlier order dated 04.07.2018. Therefore, revision under Section 263 is not applicable.

(c) The Order of the AO is not erroneous and not prejudicial to the interests of the revenue and is a plausible view taken by the AO, with reasons given for passing of the Order, therefore the exercise of powers under Section 263 of the Act by the PCIT and revision of the order of AO is erroneous and liable to be set aside.

(d) In the view of the bank, there is a likelihood of standard assets also becoming doubtful/bad debt in future and provisioning for which is also permitted by the Reserve Bank of India. AO has considered the direction of ITAT and allowed deduction after considering the relevant provisions under Section 36(1)(viiia). Therefore, the revision order passed by the PCIT under Section 263 of the Act, is completely erroneous.

(e) The deduction towards "Reserve for short provision waiver loan has been reversed and offered to Income Tax in next Assessment Year (2010-2011).

(f) The provision of bad and doubtful debts made by a Cooperative Bank is as per Section 36(1)(viiia) and such provision is for standard assets and Reserve for short provision waiver loan, which the Appellant is entitled for deduction.

(g) PCIT has ignored the Circular No. 258 dated 14.06. 1979 issued by the Central Board of Direct Taxes regarding deduction towards bad and doubtful debts, which indicates that the Scheduled banks are entitled to make provision for advances of their rural branches. Subsequently, Section 36(1)(viiia) was amended to extend to Cooperative Banks. Thereby, allowing Cooperative banks to make provision for bad and doubtful debts in respect of any advance made by them.

(h) Assessing Officer has given reasons for considering the deductions towards bad and doubtful debts and then allowed such deductions after due application of mind and within the limits prescribed by the Income Tax Act.

No arguments have been made for ground no. (a). For other grounds, Ld. AR submitted that debatable issues could not be subject matter of revision. The Ld. CIT-DR has supported the revision of the order.

2. The Registry has noted delay of 28 days in these appeals, the condonation of which has been sought by Ld. AR. Considering the fact that delay is only a small delay, the same is condoned and the appeals are admitted for adjudication on merits. Having heard rival submissions and after perusal of case records, our adjudication would be as under.

3.1 The order under revision has been passed by Ld. Assessing Officer (AO) u/s 143(3) r.w.s. 254 of the Act on 26.12.2019. This order has been passed pursuant to the directions of the Tribunal. The original assessment was framed u/s 143(3) but the case was reopened on the ground that the deduction claimed u/s 36(1)(viiia) was not in order. This assessment reached up to the level of Tribunal and a common order was passed in ITA Nos.287 to 291/Chny/2018 for AYs 2009-10 to 2012-13 and 2014-15. The adjudication was as under: -

4. We have considered the rival contentions and perused the orders of the authorities below. Section 36 (1) (viiia) of the Act is reproduced hereunder:-

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-

(i).....

(ii).....

(iii).....

(viiia) in respect of any provision for bad and doubtful debts made by-

(a) a scheduled bank not being a bank incorporated by or under the laws of a country outside India or a non-scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, an amount not exceeding seven and one-half per cent. of the total income (computed before making any deduction under this clause and Chapter VI-A) and an amount not exceeding ten per cent. of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner :

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 :

A reading of the above sub-section clearly indicate that allowance is for any provision for bad and doubtful debts. In our opinion, the use of the word "any" before the words "provision for bad and doubtful debts" indicate that nomenclature under which the provision is made may not be a critical factor in determining the allowance. Once a provision under whatever name is debited in the profit and loss account, then it is can be allowed, provided it is within the limits specified. No doubt assessee had preferred claims in its return which were in excess of what

was allowable u/s.36(1) (viiia) of the Act, since debits to the profit and loss account whether it was called provision for standard asset, reserve for DCB difference, NPA provision, waiver loans, sundry debtors over three years, bullet jewel loan, overdue interest reserves, sundry debtors over three years, even if they were all aggregated was lower than the amount assessee could have claimed u/s.36(1) (viiia) of the Act. However, none of the lower authorities had carefully gone through the nature of the each of the debits mentioned above before coming to a conclusion that these were actually not provision for bad and doubtful debts, but something else, like creation of a Reserve. Though peculiarities of nomenclature by itself will not render the assessee ineligible for claiming deduction available to it u/s.36(1) (viiia) of the Act, it is required for the assessee to show that these were indeed provisions for bad and doubtful debts. In the circumstances of the case, we are of the opinion that this issue requires a fresh look by the Id. Assessing Officer. We set aside the orders of the lower authorities and remit the question whether assessee could be given any deduction u/s.36(1) (viiia) of the Act back to the file of the Id. Assessing Officer for consideration afresh in accordance with law.

The bench opined that the use of the word “any” before the words “provision for bad and doubtful debts” would indicate that nomenclature under which the provision is made may not be a critical factor in determining the allowance. Once a provision, under whatever name, is debited in the profit and loss account, then it is can be allowed, provided it is within the limits specified. To reconsider the same, the matter was restored back to the file of Ld. AO to recompute impugned deduction.

3.2 Pursuant to the same, an assessment was framed by Ld. AO on 26.12.2019. The Ld. AO considered RBI guidelines in Master Circular- Prudential norms on income recognition which mandate classification of NPA assets into standard assets, sub-standard assets, doubtful assets and loss assets. Against all these assets, the assessee was to make provision at specified rates which are mentioned in para-6 of the assessment order. Against standard assets, the provision was required to the extent of 0.25% to 0.40%. The Ld. AO held that provision for standard asset was created as per RBI mandate and therefore, the same could be considered for deduction u/s 36(i)(viiia). The assessee

also created reserve for short provision waiver which was also accepted by Ld. AO while working out deduction u/s 36(1)(viiia). Considering both these items, Ld. AO re-computed impugned deduction u/s 36(1)(viiia).

3.3 However, this order was subjected to revision by revisionary authority on the ground that provision for standard asset was not against any debt which had become doubtful. Similarly, reserve for short provision for waiver of loans was created to account reimbursement of waiver of co-operative loan from Government of Tamil Nadu. The government was not to be treated as doubtful debtor and therefore, this reserve was not to be treated as reserve for doubtful debts. The Ld. AO failed to verify the same during assessment proceedings.

3.4 In response to show-cause notice, the assessee submitted that standard asset would be an asset from which recovery of principal and interest is regular and there is no doubt as to their recovery. However, there is requirement of provision since the standard asset may become sub-standard asset in future. To meet such a situation, the provision is made. Mere making of provision was enough to claim deduction u/s 36(1)(viiia). The attention was drawn to Circular No.258 dated 14.06.1979 which explained the rationale of introducing the provision of Sec. 36(1)(viiia). In the backdrop of said facts, the assessee justified allowance of provision for standard asset while making computation u/s 36(1)(viiia).

3.5 On the issue of Reserve for short provision for waiver of loans, it was stated that certain loans given to customers were waived-off by the government. The amount waived-off was to be received from the

government but there was a shortfall between the amount claimed and amount reimbursed by the government and therefore, a provision was made in the books. Since there was doubt in collection of the balance amount, such provision was made. The attention was also drawn to the fact that the said reserve was already withdrawn and offered to tax in AY 2010-11.

3.6 However, rejecting assessee' submissions, Ld. Pr.CIT held that the provision against standard asset was not against any debt which had become doubtful. Standard assets would always be a standard asset. Once the asset is treated as NPA only then income recognition stops. Therefore, standard asset would not qualify u/s 36(1)(viiia). This was the view taken by Chennai Tribunal in *Bharat Overseas Bank Ltd. vs. CIT* (ITA No.1191/Mds/2012) as against contrary decision of Amritsar Tribunal in *DCIT vs. Nawanshahar Central Cooperative Bank Ltd.* (2018 SCC Online ITAT 4037) as well as another decision of Amritsar Tribunal in *DCIT vs. The Hoshiarpur Central Co-operative Bank Ltd.* (2019 SCC Online ITAT 24588).

3.7 Regarding reserve for short provision for waiver of loan amounting to Rs.320.95 Lacs, it was held that the government could not be treated as doubtful debtor. The Ld. AO failed to examine this fact. Finally, the order was held to be erroneous and prejudicial to the interest of the revenue and Ld. AO was directed to pass another assessment order considering impugned issues in accordance with law after affording opportunity of hearing to the assessee. Aggrieved as aforesaid, the assessee is in further appeal before us.

### **Our findings and Adjudication**

4. We find that Ld. AO framed the assessment pursuant to the directions of the Tribunal wherein it was held that the use of the word "any" before the words "provision for bad and doubtful debts" would indicate that nomenclature under which the provision is made, may not be a critical factor in determining the allowance. Once a provision, under whatever name, is debited in the profit and loss account, then it is can be allowed, provided it is within the limits specified. However, none of the lower authorities had carefully gone into nature of the debits. It was for the assessee to show that these were indeed provisions for bad and doubtful debts. Accordingly, the matter was restored back to Ld. AO for fresh adjudication. Pursuant to the same, Ld. AO has accepted both the provisions as provisions made u/s 36(1)(viiia) and re-work the deduction.

5. The Ld. Pr. CIT has opined that provision against standard asset could not be considered as provision u/s 36(1)(viiia). Regarding reserve for short provision for waiver of loans, it was held that the government could not be held to be doubtful debtor and therefore, the provision so made could not be considered as provision u/s 36(1)(viiia). So far as the provision against standard asset is concerned, we find that the assessee is classifying the debt asset as per RBI mandate and making provisions against the same at specified rates. The assessee is required to make general provision against standard asset also since there would always be an inherent risk of even standard debts going bad in future. It could also be seen that Ld. Pr. CIT has referred to contrary decisions of Tribunal and accordingly, it could be said that the issue was a debatable one. The debatable issues, in our considered

opinion, could not be subjected to revision. When Ld. AO has adopted one of the possible views which is not contrary to any law, the revision of the same could not be held to be justified. Therefore, the impugned order, to that extent, stands quashed for all the years under consideration.

6. However, so far as reserve for short provision for waiver of loans is concerned, we concur that government could not be held to be doubtful debtor and therefore, the provision so made could not be considered as provision u/s 36(1)(viiia). Even as per assessee's submissions, this provision has been reversed in subsequent year and offered to tax. The Ld. AO has failed to consider this aspect and therefore, the revision of the order, to that extent, is upheld. Our observations, as above, shall not be construed as an expression on the merits of the case and the assessee is free to substantiate his claim, to that extent. The impugned order stand modified accordingly. The appeal stand partly allowed.

#### **Assessment Year 2010-11**

7. In this year, Ld. Pr. CIT has sought revision of the order to examine the issue of provision made by the assessee against standard asset for the purpose of computation u/s 36(1)(viiia). Since the facts as well as issue is pari-materia the same, the revision of the order could not be held to be justified. The impugned order dated 26.03.2022 stand quashed.

#### **Assessment Year 2011-12, 2012-13 & 2014-15**

8. In AY 2011-12, Ld. Pr. CIT has sought revision of the order on similar lines to examine the issue of provision made by the assessee against standard asset for the purpose of computation u/s 36(1)(viiia).

Since the fact as well as issue is pari-materia the same, the revision of the order, to that extent, could not be held to be justified.

Another reason for revision is the reserve for DCB difference amounting to Rs.8.88 Lacs as created by the assessee. The same was considered by Ld. AO as provision for the purpose of computation u/s 36(1)(viiia). This amount represents fraudulent transactions done by certain staff members. This is stated to be a recoverable amount and not bad debt of loans and advances disbursed to the customers. The Ld. Pr. CIT observed that the same do not qualify for deduction u/s 36(1)(viiia). From the stated facts itself, we prima face concur that the provision so made could not be considered as provision for bad debts u/s 36(1)(viiia). Therefore, the revision of the order, to that extent, is to be upheld. The Ld. AO is directed to carry out the directions given in impugned order and re-adjudicate. The assessee is free to agitate the issue. The appeal stand partly allowed.

9. The appeals for AY 2012-13 and AY 2014-15 are quite similar to appeal for AY 2011-12. Accordingly impugned orders are sustained to the extent of verification of reserve for DCB difference. Both these appeals stand partly allowed.

### **Assessment Year 2017-18**

10. In this year, an assessment has been framed by Ld. AO u/s 143(3) on 05.12.2019 accepting the returned income filed by the assessee. The Ld. Pr. CIT sought revision of the order on the ground that provision for standard assets as well as reserve for DCB differences could not be considered to work out the deduction u/s 36(1)(viiia). Aggrieved, the assessee is in further appeal before us.

11. We find that the impugned issues as stated in the revisionary order have not been examined by Ld. AO while framing the assessment. It is not a case wherein Ld. AO has adopted one of the possible views. Therefore, we uphold the revision of the order. The appeal stand dismissed.

**Conclusion**

12. The appeal for AY 2010-11 stand allowed whereas the appeal for AY 2017-18 stands dismissed. All the other appeals stand partly allowed.

Order pronounced on 12<sup>th</sup> May, 2023.

**Sd/-**  
**(MAHAVIR SINGH)**  
**उपअध्यक्ष / VICE PRESIDENT**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखक सदस्य / ACCOUNTANT MEMBER**

चेन्नई / Chennai; दिनांक / Dated : 12-05-2023  
EDN/-

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

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