

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**  
**AND**  
**SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 3878/MUM/2019**  
**Assessment Year: 2013-14**

M/s The Maharashtra State Co op.  
Bank Ltd.,  
9, Sir Vithaldas Thackersey Memorial  
Bldg. Maharashtra Chamber of  
Commerce Lane, Fort, Mumbai-400001.  
**PAN No. AAAAT 4066 A**  
**Appellant**

**Vs.**

ITO-1(3)(3),  
Aayakar Bhavan,  
M.K. Road,  
Mumbai-400020.  
**Respondent**

**ITA No. 3916/MUM/2019**  
**Assessment Year: 2013-14**

Dy. CIT-1(3)(2),  
Room No. 540, 5<sup>th</sup> floor,  
Aayakar Bhavan, M.K. Road,  
Mumbai-400020.

**Appellant**

**Vs.**

M/s The Maharashtra State Co op.  
Bank Ltd.,  
9, Sir Vithaldas Thackersey  
Memorial Bldg. Maharashtra  
Chamber of Commerce Lane, Fort,  
Mumbai-400001.  
**PAN No. AAAAT 4066 A**  
**Respondent**

**Assessee by** : Mr. Sushil Lakhani  
**Revenue by** : Mrs. Riddhi Mishra, CIT-DR

Date of Hearing : 15/06/2023  
Date of pronouncement : 21/08/2023

**ORDER**

**PER OM PRAKASH KANT, AM**

These cross appeals by the assessee and the Revenue are directed against order dated 01.03.2019 passed by the Ld. Commissioner of Income-tax (Appeals)-3, Mumbai [in short 'the Ld.



CIT(A)] for assessment year 2013-14 in the matter of assessment u/s 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 14.03.2016. The sole ground raised by the assessee is reproduced as under:

*Ground No 1:*

*The Learned Commissioner (Appeals) has erred in law & on facts in confirming the addition of Rs. 14,22,26,284/- , being rental on properties seized under SARFAESI Act, 2002 by the Appellant Bank, to the income of assessee bank.*

2. The grounds raised by the Revenue are reproduced as under:

*1) On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing deduction of Rs. 13,11,50,048/- to the assessee under section 36(1)(vii) of the Act in A.Y 2013-14.*

*2) On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing appeal of the assessee under section 36(1)(vii) of the Act, without calling for the remand report from the assessing officer, on the fresh details / computation filed by the appellant, which were not presented before the Assessing Officer during the assessment proceedings.*

*3) On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing appeal of the assessee under section 36(1) (vil) of the Act, without discussing the reason for allowing the appeal of the assessee on this ground.*

*4) On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in interpretation of the CBDT circular No. 17/2008 dated 26.11.2008 and allowing appeal of the assessee under section 36(1)(vii) of the Act.*

*5) On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in interpretation of the CBDT circular No. 17/2008 dated 26.11.2008 and allowing the amount of Rs. 13,11,50,048/- under section 36(1)(vii) of the Act,*



*(including opening credit balance of the provision of the bad debts created u/s 36(1)(viiia) of the act, although, the opening balance amount has already been allowed to the assessee u/s 36(1) (via) of the Act, in earlier assessment years.*

3. Briefly stated, facts of the case are that the assessee is a state level Apex Co-op. Bank engaged in the business of banking and registered with Reserve Bank of India (RBI) having branches all over Maharashtra. For the year under consideration, the assessee filed return of income on 29.09.2013 declaring total income at Rs.95,47,97,680/-. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Act were issued and complied with. In the assessment completed u/s 143(3) of the Act on 14.03.2016, the Assessing Officer, **firstly**, made disallowance of Rs.9,87,88,041/- out of claim of the assessee for bad debt written off. **Secondly**, the Assessing Officer made addition for difference of Rs.14,22,26,284/- in the amount of receipts recorded in Form No. 26AS of Income-tax forms and corresponding receipts in the books of account of the assessee . On further appeal, the Ld. CIT(A) deleted the disallowance of bad debt written off whereas upheld the addition of difference in amount recorded in Form No. 26AS and the corresponding income declared in the profit and loss account. Aggrieved by the order of the Ld. CIT(A), both the parties are before the ITAT raising the respective grounds.

4. Before us, the assessee has filed a Paper Book containing pages 1 to 91.



5. The ground of appeal of the assessee relates to addition of Rs.14,22,26,284/- which arose due to difference in the income reported in income-tax return corresponding to the receipts shown in Form No. 26AS i.e. a form prescribed by the Income-tax departmental for providing details of tax deducted on the receipts of the assessee. The brief facts qua the issue in dispute are that as per the Form 26AS of income-tax form receipts of Rs.24,50,45,356/- were shown, whereas the assessee in its return of income has shown corresponding income to the extent of Rs.10,28,19,072/-. Regarding the difference of Rs.14,22,28,284/-, the assessee explained that it was engaged in extending loans and advances during the normal course of its business and out of loans extended some of borrowers defaulted in repayment of the loans and the assessee took possession of the secured assets in terms of the provisions of the securitization and reconstruction of financial assets and enforcement of Security Interest Act, 2002, referred to as SARFAESI Act, 2002. The assessee submitted that it has seized assets of six borrowers under the said SARFAESI Act and the assessee received amount against lease agreements of assets i.e. properties of those defaulters, which has represented as recovery of outstanding principal amount and interest from the borrowers and accordingly those receipts are adjusted by the assessee towards amounts outstanding and interest thereon due from those borrowers. The tax deducted by the tenants of proeptries has also been claimed by the assessee for credit against the tax payment of



assessee. According to the assessee, the rent paid by the tenants was not chargeable for tax in the hands of the assessee as same has been treated as recovery of the outstanding principal and interest from those borrowers by the assessee. The assessee relied on various decisions in support of its claim before the Ld. CIT(A). However, the Ld. CIT(A) rejected the contention of the assessee observing as under:

*“After carefully considering the submissions of the appellant and contentions of the AO, and in the factual matrix, in my considered view there is no interference called for in the order of the assessing officer. The entire amount of receipts of Rs. 24,50,45,356/- should have been offered for taxation and against which the bank claims full TDS amount. However, the assessee bank has claimed full TDS amount in the return of income amounting to Rs.2,56,71,805/- but offered less income for taxation. However the department is concerned about the receipt of the assessee which should have been brought to tax, but the same has not been done in this case. Therefore I find that the A is justified in making the addition of the difference of income as per 26AS Data amounting to Rs. 14,22,26,284/- not offered for taxation. Thus this ground of appeal is dismissed.”*

6. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. Before us, the short plea of the assessee is that under the SARFAESI Act, the assessee has taken over the possession of the assets of the defaulter parties but the assessee was legal owner of those assets and the income from those assets in the hands of the assessee is in the nature of the repayment of its dues. It was submitted that tax deduction certificate for the taxes withheld by the tenants have



been issued in favour of the assessee, but then the monies are received by the assessee in a purely fiduciary capacity and towards the settlement of his dues rather than as income. **Third member of tribunal case of perfect Thread Mills Ltd. (2020) 113 taxmann.com 384 (Mumbai-Trib)** concurred with finding of the Judicial member and held *that recovery of principal amount of loan from the sale proceeds of a property imposition of the bank under SARFAESI ACT is not diversion of sale proceeds by overriding title, but on the contrary it was only a mere application of sale proceeds realised on sale of plots towards the discharge of outstanding loan liability by the assessee.* In the case of **commissioner of income-tax Vs Attili N rao (2201) 119 TAXMAN 1030 (SC)**, *the assessee was dealing in 'abkari' business and mortgaged his immovable property to the state excise department to provide security for the amount of "Kist" which were due to him to the state. The state sold the immovable property by public auction and realise its dues. A sum of ₹5,62,980/- was realising the auction. Out of that, the state deducted the amount of rupees one, 29, 020/-due to it towards "kist" interest and paid over the balance to the assessee. The assessee contended before the Assessing Officer that amount due to the state excise department i.e. Rs. one, 29, 020/-should be deducted while computing capital gains. The tribunal and the Hon'ble High Court upheld the claim of the assessee, however the Hon'ble Supreme Court reversing the order of the Hon'ble High Court held that it was the full price realised shall be subjected to capital gain and the tax*



*thereon had to be computed.* The coordinate bench of the Tribunal in the case of **Rajasthan Petro Synthetics Ltd (2014) 49 taxmann.com 599 (delhi-Trib.)** held that *where the secured creditor to cover possession and control of assets of an assessee due to default committed in repayment of loan, it did not amount to transfer of asset, within the meaning of section 2(47) of the act.* In view of the decision above, it is evident that during the pending proceedings of the SARFAESI Act, the assessee cannot be treated as owner of the assets possessed by it for recovery of its outstanding dues. In the hands of the assessee income corresponding to the interest on the advances relevant to assessment years can only be assessed. The assessee has given breakup of the sum of Rs.14,22,26,284/- which has been further reconciled before the Ld. CIT(A). The relevant part of its submission before the Ld CIT(A) is reproduced as under:

*“The appellant submitted that:*

1. Out of the sum of **Rs. 14,22,26,284/-** added by AO to the total Income:
  - a. The assessee bank has already credited in Profit & Loss A/c for AY 2013-14 an amount of **Rs. 2,07,76,389/-** (1,80,765 + 2,05,95,624) as interest recovery. Further, **Rs. 38,88,756/-** (37,38,756 + 1,50,000) represents interest which was credited to P & L Ac in earlier & subsequent years. Thus to this extent the addition by A amounts to double addition of the same receipt.
  - b. **Rs 6, 10,80, 181/-** out of the sum added by AO belongs to other consortium bankers & the appellant had only received that amount on their behalf.
  - c. The balance **Rs 5,64,80,958/-** credited to the defaulting parties account representing recovery of old outstanding



- under the SARFAESI Act and recovery of expenses incurred on behalf of them. Further, **Rs. 10,84,903/-** has been credited to Excise duty payable on behalf of the defaulting party. Thereby balance sheet items are not taxable as income in the hands of appellant in AY 2013-14.
2. Out of the TDS of Rs 1,42,22,628 (10 % of Rs. 14,22,26,284/- corresponding to the amount added by AO):
- a. TDS of Rs 20,77,639/- (10% of 2,07,76,389/-) corresponds to the amount already credited by the appellant to the Profit & loss A/c in AY 2013-14 and TDS of Rs. 3,88,876/- (10% of 38,88,756/-) corresponds to the interest amount which was credited to P & L Ac in earlier & subsequent years. Thus this TDS is clearly creditable in AY 2013-14 in the hands of the assessee bank.
- b. TDS of Rs. 61,08,018/- (10% of 6, 10, 80. 181/-) corresponds to the amount belonging to other consortium of bankers & thus is creditable in the hands of the appellant bank as TDS was deducted in the name of the appellant bank

*(Refer Toyo Engg. India Ltd. vs. JCIT, SR 27 (ITAT Mumbai) (5 SOT 616); Arvind Murjani Brands (P.) Ltd. vs. ITO, ward 5(1) (2012 ITAT Mumbai) [137 ITD 173; Escorts Ltd. vs. DCIT, Circle 11(1) (2007 ITAT Delhi) (15 SOT 368); Sunita Devi vs. ACIT, Circle 36(1) (2015 /TAT Delhi) (63 taxmann.com 349), Attili N Rao (Supreme Court) (252 IT 8801 and Mathew Varghese vs. M. Amritha Kumar (Supreme Court) (5 SCC 610); Rajasthan Petro Synthetics Ltd. (Delhi ITAT) (ITA No. 1397/Del/2013))*

- c. Balance TDS of Rs. 56,48,096/- represents the recovery of old dues under SARFAESI Act by appellant bank & amount credited to Excise duty payable on behalf of the defaulting party and is creditable in the hands of appellant bank.

*(Refer Toyo Engg. India Ltd. Vs. JCIT, SR 27 (ITAT Mumbai) (5 SOT 616); Arvind Murjani Brands (P.) Ltd. vs. ITO, ward 5(1) (2012 /TAT Mumbai) /137 ITD 173; Escorts Ltd. vs. DCIT, Circle 11(1) (2007 ITAT Delhi) /15 SOT 3681; Sunita Devi vs. ACIT, Circle 36(1) (2015 ITAT Delhi) (63 taxmann.com 349); Attili N Rao (Supreme Court) (252 ITR 880] and Mathew Varghese vs. M. Amritha Kumar (Supreme Court) [5 SCC 610); Rajasthan Petro Synthetics Ltd. (Delhi TAT) (ITA No. 1397/Del/2013)).*



6.1 Thus assessee has submitted that part of the sum of Rs.14,22,26,284/- has been credited as interest on loans to those parties during the year under consideration part of sum has been adjusted against recovery of old interest amount, part has been treated as belonging to the other lender bankers, part has been adjusted against expenses or liabilities of excise duties of the defaulting parties and balance has been adjusted against recovery of old outstanding of the defaulting parties. Thus, in our opinion the amount of Rs.14,22,28,284/- cannot be taxed in the hands of the assessee as rental income under the head “income from house property”.

6.2 As far as the issue of claim of the TDS is concerned, The assessee has taken credit of TDS of Rs. Rs 1,42,22,628 (10 % of Rs.14,22,26,284/-). The TDS has been deducted on gross rental receipt of Rs. 14,22,26,284/-. Out of this gross amount, the assessee has passed over amount of Rs. 6,10,80,181/- to other lender of the Consortium. The assessee has kept total amount of Rs. 8,11,46,103 (14,22,26,284 - 6,10,80,181) with it. This amount include the TDS deducted and claimed by the assessee of Rs. 1,42,22,628/-. Thus, the assessee has received amount of Rs. 1,42,22,628 by way of credit of TDS and balance amount (8,11,46,103-1,42,22,628) as net the amount credited out of Rs. 14,22,26,284 of lease rental receipts. Thus, the TDS amount is being part of the gross receipt shown by the assessee and the



assessee has adjusted against its share of Rs.14,22,28,284/-, thus said amount being money of the assessee, the assessee is entitled to get credit of said amount of taxes against its taxable income. The coordinate bench of the Tribunal in the case of **Arvind Murjani Brands P ltd (2012) 21 taxmann.com 131( Mumbai)**, held *that the case where amount on which tax was deducted at source is not at all chargeable to tax, command of section 199 will have to be harmoniously and pragmatically read as providing for allowing credit for tax deducted at source in the year of receipt of amount, in which tax was deducted at source.* The Tribunal Delhi Bench in the case of **Escorts Ltd (2007) 15 SOT 368 (Delhi)** held *that if the recipient of income considers that he is not liable to tax in respect of income, whether wholly or partly, and therefore does not disclose amount of such income in his return of income, income tax department cannot refuse to give credit merely by contending that income had not been disclosed in the return filed by the assessee for assessment year.* The Tribunal in the case of **Sunita devi Vs ACIT in ITA No. 4473/Del/2012** considered the various decisions and held *that Act nowhere says that credit of TDS should be restricted to only to the amount of the income offered in the return of income and credit of tax deducted at source has to be given in the hands of the deductee.* The relevant finding of the Tribunal(supra) is reproduced as under:

8. We have heard the rival submissions and arguments advanced by both the parties. The assessing officer has denied the credit of part of TDS deducted, invoking section 199 of the Act. Therefore,



*we feel it necessary to look into Section 199 of the IT Act, which reads as under :-*

*Credit for tax deducted.*

*“199. (1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be. (2) Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made. (3) The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules<sup>53</sup> as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) and also the assessment year for which such credit may be given.]”*

*9. Further, in terms of the provisions of sub section (3) of section 199 of the Act, the CBDT has made rules for the purpose of giving credit of TDS in the case of deductee and other persons as well as for multiple assessment years, which reads as under :-*

*“Credit for tax deducted at source for the purposes of section 199.*

*37BA. (1) Credit for tax deducted at source and paid to the Central Government in accordance with the provisions of Chapter XVII, shall be given to the person to whom payment has been made or credit has been given (hereinafter referred to as deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorized by such authority.*

*(2) (i) If the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for tax deducted at source shall be given to the other person in cases where---*

*(a) the income of the deductee is included in the total income of another person under the provisions of section 60, section 61, section 64, section 93 or section 94;*



*(b) the income of a deductee being an association of persons or a trust is assessable in the hands of members of the association of persons, or in the hands of trustees, as the case may be;*

*(c) the income from an asset held in the name of a deductee, being a partner of a firm or a karta of a Hindu undivided family, is assessable as the income of the firm, or Hindu undivided family, as the case may be;*

*(d) the income from a property, deposit, security, unit or share held in the name of a deductee is owned jointly by the deductee and other persons and the income is assessable in their hands in the same proportion as their ownership of the asset :*

*Provided that the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1).*

*(ii) The declaration filed by the deductee under clause (i) shall contain the name, address, permanent account number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such person.*

*(iii) The deductor shall issue the certificate for deduction of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax referred to in sub-rule (1) and shall keep the declaration in his safe custody.*

*(3) (i) Credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable.*

*(ii) Where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.*

*(4) Credit for tax deducted at source and paid to the account of the Central Government shall be granted on the basis of -*

--



(i) the information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorized by such authority; and

(ii) the information in the return of income in respect of the claim for the credit, subject to verification in accordance with the risk management strategy formulated by the Board from time to time.”

10. On plain reading of section 199 of the Act and rules made thereunder, it is apparent that sub section 2 and 3 of the section are not applicable to the facts of the case in hand. Further, sub Rule (2) and (3) of Rule 37BA of the Income-tax Rules are also not applicable to the facts of the case in hand, as the income of the assessee is not falling under any of the clauses of sub Rule (2) and issue of credit in multiple years is also not involved in the case in hand. So, only sub section (1) of section 199 of the Act, and sub Rule (1) and (4) of the Rule 37BA of the Rules are related to the case of the assessee. The first limb of the said subsection refers to the tax deducted and paid to the Central Government. The second limb of the sub section refers to allowing of credit of the tax so deducted and paid to central government, in the hands the person from whose income, the tax has been deducted. So, a plain and literal interpretation of sub section (1) of section 199 leads to result that the credit of the tax deducted has to be given in the hands of the deductee i.e. the person from whose income the deduction was made. Thus, said sub section nowhere says that credit of TDS should be restricted only to the amount of income or receipt offered in the return of Income or in the Profit and Loss Account. Further, sub rule (1) of rule 37BA of the Rules also emphasize to allow the credit in the hands of deductor on the basis of the information related to deduction of tax furnished by the deductor. With effect from 1.4.2008, the section 199 of the Act has undergone a change and the requirement of TDS certificate for tax credit has been dispensed with and now the credit is being allowed as per Rule 37BA(4) of the Rules on the basis of information available in the Income Tax Statement (ITS) of the assessee on the data base of Income Tax Department or on the basis of form no. 26AS of Income Tax forms. In the case of the assessee the information as to the income and the tax deducted was available in the ITS. The Assessing Officer, has accepted the diversion of income in the hand of Shri Kapil Ahluwalia but denied the credit of the total tax deducted by the deductor. We find that the action of the assessing officer was on the basis of the incorrect interpretation of the sub section (1) of section 199 of the Act. The Income-tax Appellate Tribunal, Mumbai Bench A in the case of Arvind Murjani Brands



(P) Ltd. vs. ITO, Ward 5 (1), Mumbai reported (Supra) has held as under :-

*“That this section recognizes a very important position of law, that the tax deducted at source is “treated as a payment of tax on behalf of the person from whose income the deduction was made” and consequently “credit shall be given to him for the amount so deducted.” So the role of section 199 is confined to allowing the credit for the tax deducted at source to the payee of the amount and none else.”*

11. Further in the case of Escorts Ltd. vs. DCIT (Supra) the Tribunal has held as under :-

*“As per our considered view, credit for TDS must in every case be given to the assessee from whose income tax was deducted at source and paid to the credit of the Central Government. If the recipient of the income considers that he is not liable to tax in respect of the income, wholly or partly, therefore, does not disclose the amount of such income in his return, the Income-tax Department cannot refuse to give credit merely by contending that the income had not been disclosed in the return filed by the assessee for the assessment year.”*

12. Further, the decisions of the Tribunal in cases of renovation technologies (Supra) and Supreme Renewable Energy Ltd. (Supra) also support the stand of the assessee. Further, the fact that the department has neither given credit for the tax of Rs. 12,23,608 to the assessee or to Shri Kapil Ahluwalia nor refunded the said sum to the deductor. The constitution has not mandated the department to swallow the rightful money of the tax payer without any rule of law. Further, the departmental representative submitted that there is possibility that Shri Kapil Ahluwalia might have taken credit of the balance Rs. 12, 23,608/- and therefore if credit of this amount is allowed to the assessee, it will amount to allowing of double credit of the same account and it will be unjust enrichment in the hands of assessee. The ld. AR however, countered the argument of the DR and stated that the TDS Certificate has been issued to the assessee only and as per data base of Income-tax department, the TDS is reflecting against the assessee only, therefore allowing credit in the hands of Shri Kapil Ahluwalia was not possible. He further submitted that Sh. Kapil Ahluwalia is liable to pay tax on the income transferred to him, and therefore, not allowing credit of Rs. 12,23,608/- to the assessee and retaining the amount by the Income-tax department without giving adjustment to either



*assessee or Sh. Kapil Ahluwalia amounts to unjust enrichment in the hands of the department. We agree with the above contention of the ld. Authorised Representative. We are of the view that neither party should be made unjust enriched at the cost of the other. We hold that the credit of the Rs. 12,23,608/- is allowable in the hands of the assessee, in view of the clear provisions of sub section(1) of section 199 of the Act and Rules made thereunder. However, we direct the assessing officer to verify whether any credit of the TDS of Rs. 12,23,608/- has been allowed by the Income-tax Department in the hands of Shri Kapil Ahluwalia or not. If it has been not allowed, then the credit of this amount should be given in the hands of the assessee. Accordingly ground no. 1 of the assessee is allowed.”*

6.3 In view of above judicial precedents, we do not find any error in the claim of the assessee. Therefore, we set aside the finding of the Ld. CIT(A) on the issue in dispute and delete the addition of Rs.14,22,28,284/-.

6.4 However, as far as the liability of the payment of the tax on the rental income by the owners of assets, is concerned, the Tribunal has passed an interim order dated 23.06.2021 and issued notices to those three defaulter parties namely (1) Priyadarshini Shetakari SSK, Udgirl Latur, (2) Shetkari Sahkari Sakhar Karkhana Ltd. and (3) Tasagon Taluka Sahakari Sahkhar Karkhana Ltd., show causing why the said rental income of Rs. 14,22,28,284/- might not be assessed in their hand. The relevant order is reproduced as under:

**“INTERIM ORDER**

*1. These cross-appeals call into question the correctness of the order dated 1st March 2019 passed by the learned Commissioner (Appeals) in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2013-14.*



2. Grievance raised by the assessee, as set out in the memorandum of appeal, is as follows:

*The learned Commissioner (Appeals) has erred in law and on facts in confirming the addition of Rs 14,22,26,284, being rental income on the properties seized under SARFAESI Act 2002 by the appellant bank, to the income of the bank.*

3. The assessee before us is a banking institution and is engaged in the business of, inter alia, extending loans and advances. As some of the borrowers end up defaulting on repayment of loans, the assessee does enforce the security takes possession of the secured assets, in terms of the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (referred to as SARFAESI Act 2002). The income in question is said to be out of rental income earned from the assets so possessed under the SARFAESI Act 2002. The short plea of the assessee is that, as is said to be the settled legal position, the assessee cannot be treated as the owner of these assets, and, as the income from the assets acquired under the SARFAESI Act 2002 is in the nature of repayment of dues to the assessee, rather than of the income nature, the said income can not be taxed in the hands of the assessee. It is submitted that the tax deduction certificates for the taxes withheld by the tenants have been issued in favour of the assessee, but then the monies are received by the assessee in a purely fiduciary capacity and towards the settlement of his dues rather than as income. Learned counsel for the assessee was, for the reasons we will set out in a short while, interrupted at this stage. Learned counsel was asked whether any notices of hearing are served to the persons who, according to him and as the actual owner of the properties in question, were taxable in respect of the said rental income and whether the assessee has filed a list of names and addresses of such persons in these proceedings. Learned counsel submitted that he has no idea about this aspect of the matter, that he has not given any list of these persons, and that, in any event, all this is irrelevant because whether these persons are served notice or not, the assessee cannot be taxed in respect of income in question. Learned counsel emphatically submitted that this aspect of the matter, so far as the



*assessee is concerned, is wholly irrelevant. If an income cannot be taxed in the hands of the assessee, it cannot be taxed in the hands of the assessee, and that we must not mix up two unrelated aspects of the matter by raising questions about the actual owners of the assesses being put to the notice. That is not germane to taxability in the hands of the assessee.*

*4. Learned Departmental Representative did not have much to say on the service of notice of this hearing on the actual alleged owners of the assets, nor did he see any legal implications to this aspect either. Nevertheless, learned Departmental Representative submits that the rental income is earned, and whether it is to be taxed in the hands of the legal owner of the asset or in the hands of this assessee, it is to be taxed nevertheless. When an income is earned, it cannot escape taxation only because the beneficial owner of the income is someone other than the legal owner. He is, however, on the same page as the learned counsel inasmuch he does not really dispute the proposition that the income in question may have arisen to the owner of the asset and, viewed thus, the repayment to the assessee is in the nature of the application of income for repayment of loans.*

*5. We are alive to the fact that the income in question cannot be taxed in the hands of the assessee just because the said income cannot be taxed in the hands of some other assessee as well, and the income is going untaxed as such. The fact, however, remains that the plea of the assessee before us, as one of the dimensions, that this income cannot be taxed in the hands of this assessee as it lawfully belongs to the owner of the assets and what is received by the assessee is an application of income earned by the said owner. On the face of it, this plea makes sense as well.*

*6. There is, however, a practical difficulty*

*7. In case we are to uphold the plea of the assessee, without putting the persons in whose hands the income is to be taxed, to notice, the assessments of this income in the hands of those persons will perhaps be clearly time-barred. However, when we accept the same plea, after putting these persons to notice, in terms of the provisions of Section 153(6)(i) read with Explanation 2 (b) to Section 153- which is materially the same*



as Section 153(3) read with Explanation 3 in the pre-amendment section, the assessments or reassessments of income, to bring the said income to tax, will not be time-barred. As the provisions in Section 153, whether as in force up to 1st June 2016 or whether as in the amended sections, are similar in nature, it is not really necessary to deal with the question as to which of these provisions will apply- as in force at the point of time when the assessment was framed or as in force now. The relevant extracts from the above provisions are as follows:

*Time limit for completion of assessment, reassessment and recomputation.*

*153. (1) No order of assessment<sup>12</sup> shall be made under section 143 or section 144 at any time after the expiry of twenty-one months from the end of the assessment year in which the income was first assessable:*

*Provided that in respect of an order of assessment relating to the assessment year commencing on the 1st day of April, 2018, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted:*

*Provided further that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2019, the provisions of this subsection shall have effect, as if for the words "twenty-one months", the words "twelve months" had been substituted.*

*(2) No order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of nine months from the end of the financial year in which the notice under section 148 was served: Provided that where the notice under section 148 is served on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.]*

.....



.....

*(6) Nothing contained in sub-sections (1) and (2) shall apply to the following classes of assessments, reassessments and recomputation which may, subject to the provisions of sub-sections (3) and (5), be completed—*

*(i) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, section 254, section 260, section 262, section 263, or section 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act, on or before the expiry of twelve months from the end of the month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be; or*

.....

*Explanation 2.—For the purposes of this section, where, by an order referred to in clause (i) of sub-section (6),—*

*(b) any income is excluded from the total income of one person and held to be the income of another person, then, an assessment of such income on such other person shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, if such other person was given an opportunity of being heard before the said order was passed.*

8. It is thus clear that under the scheme of the Act, it is permissible that the parties, other than the parties in appeal, are also served notice about the proceedings before us and the effect of such notice being served on other affected parties seriously affects the limitation of assessments or reassessments on such other person. There is also no doubt, and not even a suggestion by the learned counsel for the assessee that this course being followed does not affect legitimate, and in fact any, interests of the assessee-



*appellant, even though it may result in some inconvenience to the assessee. The service of notice on the affected parties is thus wholly of neutral impact so far as the assessee is concerned. When two courses are available to us, and one of these courses extends legitimate protection to interests of one of the parties before us (i.e. the Assessing Officer in this case), without offending legitimate interests of the other party before us (i.e. the assessee-appellant), in our considered view, we must follow the said course. The powers we hold, or indeed any public authority has, are the powers that must be exercised for the good of the public and in the manner which furthers the common cause in the most optimum way.*

*9. When these provisions were pointed out to the parties, and we put it to them as to why the notices not be issued to the actual owners of the assets from which the income in question is derived, both the parties very graciously agreed to our suggestion and extended their cooperation in service of notices to the affected parties. Learned counsel for the assessee volunteered to file the names, addresses and such other details of the actual owners of the assets in question, as the assessee may have in his possession, at the earliest possible, and learned Departmental Representative volunteered to serve the notice of next hearing to these persons. We, therefore, direct as follows:*

*(a) The assessee will furnish a list of the persons, along with their addresses and PAN-numbers- if possible, whose assets are held by the assessee- appellant under the SARFAESI Act, within one week from the date of this order to the learned Departmental Representative, as also to the ITAT Registry.*

*(b) The Learned Departmental Representative will ensure that notices of hearing for the next hearing, i.e. on 30th July 2021, along with a copy of this order, will be served upon these persons in accordance with the law. The Registry is directed to hand over copies of notices of hearings and this interim order to the learned Departmental Representative for service on affected parties, and also serve the notice per RPAD, directly on the affected parties.*



*(c) The affected parties, whose assets are held by the assessee under the SARFAESI Act, will have the opportunity of hearing on as to why this income not be held to be taxable in their hands, as they are said to continue to the legal owners of the related assets and the assessee before us is said to be holding the same only in a fiduciary capacity.*

*10. The Registry is directed to issue the notices to all the affected parties, including the parties whose assets are held by the assessee-appellant before us, along with a copy of this interim order, directly, as also through the learned Departmental Representative, for the next date of hearing, i.e. on 30th July 2021.*

*11. The interim order, as above, is without prejudice to the additional grounds of appeal and all other rights of the assessee as indeed both the parties before us. The hearing is adjourned to 30th July 2021. The matter may be treated as part-heard.”*

6.5. Out of three parties, one party namely *Tasgoan Palus Taluka Sahakari Sakahr Karkhana Ltd.* vide letter dated 26/04/23 submitted that relevant rental income was already offered for taxation in the Income-tax return filed for assessment year 2013-14. However, no reply has been received from other two parties , therefore, invoking section 150/153 of the Act, we direct the Assessing Officer to take necessary steps for taxing the said income in their hands. The ground of appeal of the assessee is accordingly allowed.

7. The ground No. 1 of the appeal of the Revenue relates to disallowance of bad debt written off amounting to Rs.9,87,88,041/-. The brief facts qua the issue in dispute are that the Assessing Officer noticed that the assessee has debited to profit and loss



account amounting to Rs.175,57,11,898/- as bad debt written off. The assessee adjusted Rs.12,95,43,316/- against provision for bad debt claimed, which was allowed in earlier years and, thus claimed deduction u/s 36(1)(vii) of the Act amounting to Rs.162,61,68,581/- (175,57,11,898- 12,95,43,316). The Assessing Officer, however, made disallowance of Rs. 9,87,88,041/-. The assessee filed a detailed submission of the computation of bad debt written off before the Ld. CIT(A), the relevant part of which is reproduced as under:

*“During the course of appellate proceedings, the appellant vide his letter dated 24.04.2017 submitted as under:*

**A. Disallowance us 36(1)(vii) of part of Bad debts written-off - Rs.9,87,88,041/-**

1. The Ld. AO has made an addition of Rs. 9,87,88,041/- on the ground that this represents excess deduction claimed by assessee us 36(1)(vii) of the Income Tax Act, 1961.

2. AO's Calculations:

The Ld. AO has contended that the assessee is entitled for deduction us 36(1)(vii) of Rs. 152, 73,80,540/- only and thus disallowed Rs. 9,87,88,041/-. His calculation is as follows:

<b>Particulars</b>	<b>Amount</b>
Bad debts debited to Profit and Loss Account for year ended 31-3-13	175,57,11,897
Less: Provision for Bad Debts claimed by the assessee u/s 36(1)(via) till AY 13-14 (ie including (i) the claim us 36(1)(via) in AY 2007-08 of Amount Rs. 5,37,34,020/- which was disallowed by the AO & CIT (A) on the ground that assessee had not made an provision in its books AND (i) Provision for Bad Debts claimed in AY 2013-14 of Rs. 7,74,16,0281-. (Copy of CIT A order for AY 2007-08 attached as Annexure 1)	(22,83,31,357)
Bad debts allowed by AO us 36(1)(vi) of the Act in his	152,73,80,540



order passed u/s 143(3)	
Disallowed amount (as claimed by assessee 162,61,68,581-152, 73,80,540)	9,87,88,041

3. Assessee's Calculations For claim u/s 36(1)(vii) :

While the bad debts written off by the assessee in its accounts for the Financial Year 2012-13 were Rs. 175,57, 11,879/-, the assessee claimed deduction under Sec 36(1)(vii) of Rs. 162,61.68.581/- in AY 2013-14 based on the following calculations:-

Particulars	Amount
Bad debts debited to Profit and Loss Account for year ended 31-3-13	175,57,11,897
Less: Opening balance of Provision For Bad debts us 36(1)(via) o/s as on 1.4.2012- as per books	12,95,43,316
Bad debts claimed us 36(1)(vi) of the Income Tax Act in ITR	162,61,68,581

ii) In fact, the assessee's claim for deduction in its Return was short and the correct amount deductible u/s 36(1)(vii) for AY 2013-14 is Rs. 165, 85,30,588/- the working of which is as follows:

Particulars	Amount
Bad debts debited to Profit and Loss Account for year ended 31-3-13	175,57,11,897
Less: Provision for bad debts actually claimed and allowed to the assessee u/s 36(1)(via) ( i.e excluding the provision for AY 2007-08 of Rs. 5,37,34.020 which was disallowed by the AO & CIT (A) and excluding the provision for current year i.e. AY 2013-14 of Rs. 7,74, 16,028 in view of the decision of Mumbai Tribunal in the case of Siam Commercial Bank PCL (15 taxmann.com 353 and CBDT Instruction No. 17/2008, dated 26-11-2008	9,71,81,309
Bad debts which should be allowed as deduction us 36(1)(vi) of the Act	165,85,30,588

4. The only two issues which, therefore, are before your Honor in so far as this Ground is concerned are:

a. The amount which is to be deducted from Bad Debts on account of Provision for bad and doubtful debts made under



*Sec 36(1) (via) should be the amount claimed and allowed us 36(1) (via) till the end of the preceding year ie opening balance (i.e. Rs. 9,71,81,309/-) and no! including the amount claimed us 36(1) (via) in the relevant assessment year ie. in AY 2013-14. In this regard reference is drawn to CBDT Instruction No. 17/2008, dated 26-11-2008 and Mumbai Tribunal ruling in the case of Siam Commercial Bank PCL (15 taxmann.com 3531 which categorically provide that what the assessee has done is the correct position i.e. only the opening balance is to be deducted and not the amount claimed us 36(1) (via) in AY 2013-14. (copy attached); and*

*b. The amount of Rs. 5,37,34,020/- claimed by assessee u/s 36(1)(vii) in AY 2007-08 but disallowed by AO and Commissioner( Appeals), as no provision for bad debts was made by assessee in that year, is not required to be deducted from the bad debts written off.”*

7.1 In view of the submissions of the assessee, the Ld. CIT(A) allowed the claim of the assessee of deduction of Rs.165,85,30,588/- u/s 36(1)(vii) of the Act. For allowing credit of the provision for bad and doubtful debt of earlier years, the Ld. CIT(A) has considered the opening credit balance i.e. balance brought forward as on 1<sup>st</sup> April of the relevant accounting year following the CBDT Instruction No. 17/2008 Rs.537,34,020/- dated 26.11.2008.

8. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The revenue is aggrieved by way of the allowing deduction of the assessee u/s 36(1)(vii) of the Act. We find that the Ld. CIT(A) has duly verified the amount which were already allowed to the assessee in earlier years and also taken into consideration the amount of Rs.13,11,50,048/-



which was not allowed to the assessee in assessment year 2007-08. The Ld. CIT(A) has followed the CBDT Instruction No. 17/2008 dated 26/11/2008, relevant part of which is reproduced as under:

**“Instruction No. 17/2008, Dated 26.11.2008**

*In a recent review of assessment of Banks carried out by C&AG, it has been observed that while computing the income of banks under the head Profit and Gains of Business & Profession', deductions of large amounts under different sections are being allowed by the Assessing Officers without proper verification, leading to substantial loss of revenue. It is, therefore, necessary that assessments in the cases of banks are completed with due care and after proper verification. In particular, deductions under the provisions referred to below should be allowed only after a thorough examination of the claim on facts and on law as per the provisions of the Income-tax Act, 1961 :*

*(i) Under section 36(1) (vii) of the Act, deduction on account of bad debts which are written off as irrecoverable in the accounts of the assessee is admissible. However, this should be allowed only if the assessee had debited the amount of such debts to the provision for bad and doubtful debt account under section 36(1) (viiia) of the Act, as required by section 36(2)(v) of the Act.*

***(ii) While considering the claim for bad debts under section 36(1) (vii), the Assessing Officer should allow only such amount of bad debts written off as exceeds the credit balance available in the provision for bad and doubtful debt account created under section 36(1) (vii) of the Act. The credit balance for this purpose will be the opening credit balance i.e., the balance brought forward as on 1st April of the relevant accounting year.***

.....”

8.1 The issue of allowability of deduction under section 36(1)(vii) vis-à-vis section 36(1)(viiia) has been examined in detail by the



coordinate bench of the Tribunal in the case of **Siam commercial Bank PCL, reported in (2011) 15 taxmann.com 353 (Mumbai)**, the relevant finding of which is reproduced as under:

*“17. We have heard the rival submissions and perused the relevant material on record. In order to decide this issue, it will be apt to take note of the section 36(1)(vii) and the relevant part of clause (viiia), which reads as under :-*

*"36. Other deductions.--(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) to (vi)*

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

*Provided that in the case of a bank to which clause (viiia) applies, the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under that clause ;*

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

*(b) a bank, being a bank incorporated by or under the laws of a country outside India, an amount not exceeding five per cent. of the total income (computed*



*before making any deduction under this clause and Chapter VI- A);"*

18. *Section 36(1)(vii) provides that subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year, shall be allowed as deduction. Section 36(1)(viiia) deals with the granting of deduction in respect of any provision for bad or doubtful debts. It is observed that the assessee is a foreign bank. As such the provisions of sub-clause (b) of section 36(1)(viiia) shall apply and not sub-clause (a). Thus it becomes evident that whereas clause (vii) of section 36(1) provides deduction in respect of bad debts actually written off, clause (viiia) grants deduction in respect of provision for bad and doubtful debts. In order to prevent double deduction, firstly at the time of creating provision under clause (viiia) and then, on actual write off under clause (viiia), two safeguards have been enshrined in clause (vii). Firstly the Explanation stipulates that any bad debt or part thereof written off as irrecoverable in the accounts of the assessee shall not include any provision for bad and doubtful debts made in the accounts of the assessee and secondly proviso explicitly mandates that where in the case of a bank to which clause (viiia) applies, the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under that clause.*

19. *It is imperative to note at this stage that the quantum aspect of the provision as not exceeding five percent of the specified income, has not been disputed by the AO. The dispute has arisen only on the question of reducing the opening or the closing provision for bad and doubtful debts.*

20. *Now coming to the sequence of allowing deduction under clauses (vii) and (viiia), deduction is first allowed towards bad debts actually written off under clause (vii) as reduced by the amount of provision already allowed and then towards provision under clause (viiia). It is interesting to observe that in common parlance when we talk of firstly creating the provision and then allowing deduction on account of bad debts, it is qua the specific debt(s) on micro*



*basis turning bad in this year for which the provision was made earlier. But when we talk of creating provision on a macro basis at the end of the year for which deduction is permissible under clause (viiia), it is on the debtors as a whole which are not properly operating but have also not become bad as at the end of the year. The conclusion of granting deduction firstly under clause (vii) is supported by the language of clause (viiia)(b), which provides for the quantum of provision permissible as deduction at 'an amount not exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VIA).' 'Total income' as referred to in clause (viiia) can be computed only at the end of the year. Since for computing total income before making deduction under this provision, it is necessary to grant deductions under all other relevant provisions including bad debts under clause (vii), naturally the amount of deduction towards provision for bad and doubtful debts can be computed only at a later stage. But while computing deduction under clause (vii), one needs to take note of the mandate of the Explanation to this provision which provides that any bad debt or part thereof written off as irrecoverable in the accounts of the assessee shall not include any provision for bad and doubtful debts made in the accounts of the assessee. It is relevant to note that bad debts are claimed as deduction as and when the advance becomes irrecoverable. It is not mandated anywhere in the provision that deduction for bad debts has to be allowed only at the end of the year. In contrast, the provision for bad and doubtful debts is created only at the end of the year and further its deductibility is computed w.r.t. the adjusted total income for the year, which is possible only at the end of the year. The amount, which is written off as bad debt during the year is net of the provision already made. As the provision for the current year is created at the end of the year and deduction for bad debts is allowed on actually write off, which may happen at any time during the year, naturally, it is only the opening balance of the provision against that debt, which has now become bad and hence written off, can be allowed as deduction. Moreover, when a debt has become bad and is written off, there can be no question of creating provision on that account. From here it clearly emerges that opening balance of the provision is required to be adjusted against the amount of bad debts*



written off during the year for computing the amount deductible under clause (vii) and it is only thereafter that the provision is made under clause (viiia) in respect of the remaining debts outstanding as at the end of the year.

21. This view is fortified from the practical angle of the position as well. Advances of the banks are broadly classified into performing or non-performing assets. In case an account does not pose any problem as regards the recovery of interest or installments of principal loan, it is categorized as performing. No provision is required to be made in respect of such advances. In case an account is not doing well, it slips into non-performing asset. The non-performing advances are further classified into sub-standard or doubtful depending upon the period for which an account remains non-performing. But once the loss is identified by the bank on account of advances, but the amount has not been written off, wholly or in part, these are considered as loss assets. Provisioning is required to be done as per the health of the advances. Provision is done at a lower percentage in respect of sub-standard advances (assets), but for doubtful debts the percentage of provision goes up. But when it is a loss asset, the entire amount is written off as unrecoverable. Thus it can be seen that on default, firstly, the advance is classified as sub-standard, then doubtful and then eventually loss. Provision is made on progressive basis until the advance is not loss. Once it becomes loss, then the entire amount is written off. From the above discussion it can be seen that the writing off of bad debts is the last step in the order of time. Firstly provision is made and when there remains no chance of recovery, after adjusting security available etc., the amount is written off as bad.

22. Coming back to the context of section 36(1), when the provision is made towards non-performing advances, deduction is allowed as per the ceiling under clause (viiia). Only when the default continues for a longer period and the advance gets converted from sub-standard or doubtful to bad, the entire amount is written off. On the basis of the performance of the debt getting worse from bad and then worst from worse, the sub-standard debt is converted into doubtful and then from doubtful to bad. When the debt becomes sub-standard or doubtful, a provision is created



*under clause (viiia). But when the debt becomes bad, the entire amount of bad debt, net of the provision already allowed in the computation of the earlier year, has to be allowed as deduction under clause (vii). Simultaneous with the the amount of debt becoming bad in the current year qualifying for deduction under clause (vii), the amount of provision created in the current year is also required to be made in respect of sub-standard and doubtful debts (exclusive of the amount of bad debts already written off during the year). In the next year, when some part of the current year's sub-standard or the doubtful debts becomes bad, the amount actually written off as reduced by the provision allowed in the earlier year under clause (viiia), shall qualify for deduction under clause (vii). Thus in each year, ordinarily there are two types of deductions, viz., firstly on account of provision made at the end of the current year by limiting it to the adjusted total income for the year; and secondly the amount of bad debts actually written off, net of the provision allowed as deduction in the earlier year. However in no case, the amount of cumulative deduction under both the clauses, that is under clause (viiia) in the preceding year and under clause (vii) in the current year, can exceed the amount of any bad debt written off as irrecoverable in the accounts of the current year. In our considered opinion the Id. CIT(A) was justified in directing the AO to restrict the claim of bad debts by the amount of opening balance in the provision for bad and doubtful debts account as at the beginning of the year instead of the closing balance and then allowing deduction u/s 36(1)(viiia). This ground of the Revenue's appeal fails.”*

8.2 The Hon'ble Gujarat High Court in the case of **CIT Vs UTI Bank Ltd (2013) 29 taxmann.com 79 (Gujarat)** has referred to the proviso to section 36(1)(vii) which says that amount of deduction relating to any such debt or part thereof shall be limited to amount by which such debt or part thereof exceeds credit balance in provision for bad and doubtful debt accounts made under the clause and held that following CBDT Instruction No. 17/2008, the



opening balance of provision for bad and doubtful debt should be reduced from the bad debt written off instead of closing balance. The relevant finding of the Hon'ble High Court is reproduced as under:

*"15. In the present case, however, the question of method of operation of proviso to section 36(l) (vii) arises. Such proviso as noted, provides that in case of an assessee to which clause (viiia) applies, the amount of deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for account made under that clause. The revenue's contention is that by virtue of such proviso, the claim of the assessee for deduction for debts write off, should be reduced by the closing balance of the assessee in his account for the provision of bad and doubtful debts. On the other hand, the assessee contents that such diminution be limited to the opening balance of such account.*

*16. We notice that in this respect the provision is silent. We may therefore record that the interpretation adopted by the Tribunal in the impugned judgment would ordinarily give rise to a question of law particularly when it is pointed out that there is no previous decision of any High Court on the subject. However, the issue has been made sufficiently clear by the CBDT Circular No.17/2008 dated 26-11-2008. In the said circular, this very issue has been examined and clarified in the following manner:-*

*" 2. In a recent review of assessment of Banks carried out by C&AG, it has been observed that while computing the income of banks under the head 'Profit and Gains of Business & Profession', deductions of large amounts under different sections are being allowed by the Assessing Officers without proper verification, leading to substantial loss of revenue. It is, therefore, necessary that assessments in the cases of banks are completed with due care and after proper verification. In particular, deductions under the provisions referred to below ITA Nos. 152 & 233/Ahd/2006, 815 & 4387/Ahd/2007 & ITA No.*



237/Ahd/2008 A.Y. 2001-02 to 2003-04 should be allowed only after a thorough examination of the claim on facts and on law as per the provisions of the I.T. Act, 1961.

(i) Under section 36(l)(vii) of the Act, deduction on account of bad debts which are written off as irrecoverable in the accounts of the assessee is admissible. However, this should be allowed only if the assessee had debited the amount of such debts to the provision for bad and doubtful debt account under section 36(3)(a) of the Act, as required by section 36(2) (v) of the Act.

(ii) While considering the claim for bad debts u/s 36(1)(vii), the assessing officer should allow only such amount of bad debts written off as exceeds the credit balance available in the provision for bad and doubtful debt account created u/s 36(1) (viii) of the Act. The credit balance for this purpose will be the opening credit balance i.e., the balance brought forward as on 1st April of the relevant accounting year."

17. As already noted, in absence of such clarification by CBDT, we would have been inclined to admit the appeals. However, when such circular issued under section 119(2) of the Act clarifies the position beyond any doubt, we have no reason to entertain the revenue's appeals. As already noted, the statutory provision is silent on the precise method of working out the deduction. It is by now well-settled that such circulars issued by the Board in exercise of its statutory powers under section 119(2) of the Act, may have the effect of relaxing the rigours of a statutory provision. In the case of Catholic Syrian Bank Ltd. (supra) itself, the Apex Court touched on the effect of the circular issued by the Board. It was observed as under:-

"Now, we shall proceed to examine the effect of the circulars which are in force and are issued by the Central Board of Direct Taxes (for short, "the Board") in exercise the power vested in it under section 119 of the Act. Circulars can be issued by the Board to explain or tone down the rigours of law and to ensure fair enforcement of its provisions. These circulars have



*the force of law and are binding on the income-tax authorities, though they cannot be enforced adversely against the assessee. Normally, these circulars cannot be ignored. A circular may not override or detract from the provisions of the Act but it can seek to mitigate the rigour of a particular provision for the benefit of the assessee in certain specified circumstances. so long as the circular is in force, it aids the uniform and proper administration and application of the provisions of the Act. (Refer to UCO Bank v. CIT(1999) 4 SCC 599). "*

18. *In case of UCO Bank vs. Commissioner of Income Tax reported in 237 ITR 889 the Supreme Court in connection with effect of circulars issued by the Board under section 119 of the Act observed:*

*" Such instructions may be by way of relaxation of any of the provisions of the sections specified there or otherwise. The Board, thus, has powers inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under section 119 which are binding on the authorities in the administration of the Act. Under section 119(2)(a), however, the circulars as contemplated therein cannot be adverse to the assessee. Thus, the authority which wields the power for its own advantage under the Act is given the right to forgo the advantage when required to wield it in the manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorised as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding^ the taxing authorities."*

19. *In the result, bearing in mind the circular issued by CBDT dated 26.11.2008 no further controversy should arise. In the result, the tax appeals are dismissed."*



8.3 In view of above discussion, we don't find any error in the order of the Ld. CIT(A) in considering the opening credit balance of the provision of the bad and doubtful debt for the purpose of reducing from bad debt written off u/s 36(1)(vii) of the Act and declining to considering the provision for bad and doubtful debt debited during the year under consideration. Accordingly, we uphold the finding of the Ld. CIT(A) on the issue in dispute and ground No. 1 of the appeal of the Revenue is dismissed.

9. Before us, the assessee has also filed an additional ground of appeal seeking enhancement of deduction u/s 36(1)(vii) of the Act to the extent of Rs.421,52,840/-. The relevant additional ground raised by the assessee is reproduced as under:

*“The Commissioner (Appeals) allowed deduction u/s 36(1)(vii) for AY 2013-14 to the extent betire of of Rs. 1,65,85,30,588 /- after reducing Rs. 4,21,52,840/- being deduction u/s 36(1)(vii) allowed in AY 2012-13. However, subsequent to the Commissioner (Appeals) Order for AY 2013-14, the AO has reassessed AY 2012-13 and vide order dated 22/12/2019 u/s 143(3) rw Section 147 disallowed the deduction of Rs. 4,21,52,840/- u/s 36(1) (via) which was earlier allowed.”*

9.1 Before us the learned DR submitted that there was no details available with the Assessing Officer regarding the claim of the assessee raised before him by way of the additional ground, and therefore following the ratio of the decision dated 6/06/2017 of Hon'ble Madras High Court in the case of **CIT Vs M/s Abhinitha Foundation P Ltd in TC(A) No. 811 of 2016**, the calim of the



assessee is not acceptable. The relevant finding of the Hon'ble Madras High Court (supra) is reproduced as under:

*“12.5. A reading of the aforesaid observations would clearly establish that the arguments advanced by Mr.Ravi that the assessee company could only raise an additional ground and not make a new claim or additional claim is not sustainable. As indicated by us hereinabove, this power of entertaining the claim vests with the appellate authorities based on the facts and circumstances of the case. The power of the appellate authorities to consider claims made based on material already on record is co-terminus with the power of the Assessing Officer. The failure to advert to the claim in the original return or the revised return cannot denude the appellate authorities of their power to consider the claim, if, the relevant material is available on record and is otherwise tenable in law. Any other view, in our opinion, will set at naught the plenary powers of appellate authorities.”*

9.2 Further the learned DR submitted that it was not a inadvertent error or due to a apparent mistake and therefore following the ratio of the Hon'ble Bombay High Court in the case of **CIT Vs Pruthvi Brokers & Shareholders in ITA No. 3908 of 2010**, claim can't be admitted. The relevant finding of the Hon'ble High Court is reproduced as under:

*“18. In the case before us, the CIT(A) and the Tribunal have held the omission to claim the deduction of Rs.40,00,000/- to be inadvertent. Both the appellate authorities held, after considering all the facts, that the assessee had inadvertently claimed a deduction of Rs.20,00,000/- paid after the end of the year in question. We see no reason to interfere with this finding. We see less reason to interfere with the exercise of discretion by the appellate authorities in permitting the respondent to raise this claim. That the respondent is entitled to the deduction in law is admitted and, in any event, clearly established. In the circumstances, the respondent ought not be prejudiced.”*



9.3 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The plea of the assessee that deduction u/s 36(1)(vii) of the Act has been reduced by the Assessing Officer while order giving effect to the order of the Ld. CIT(A) consequent to the order passed u/s 143(3) r.w.s. 147 of the Act. We find that this ground does not arise from the impugned order before us and therefore, the assessee may prefer for rectification in the order of Assessing Officer if so advised and being within the limitation period or may explore any other remedy under the statute. The additional ground of the assessee is accordingly dismissed as infructuous.

10. In the result, the appeal of the assessee is allowed partly whereas the appeal of the Revenue is dismissed.

**Order pronounced in the open Court on 21/08/2023.**

**Sd/-**  
**(SANDEEP SINGH KARHAIL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;  
Dated: 21/08/2023  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**