

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, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.542/Chny/2021
(निर्धारण वर्ष / Assessment Year: 2017-18)

Tamilnad Mercantile Bank Limited 57, Victoria Extension Road, Tuticorin-628 002.	बनम / Vs.	DCIT Circle-1 Tuticorin.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No.	AAACT-5558-K	
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी/ Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri S. Sridhar (Advocate)-Ld.AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri R. Mohan Reddy (CIT)-Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	02-08-2023
घोषणाकीतारीख/ Date of Pronouncement	:	08-09-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2017-18 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 04-11-2021 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 30-12-2019. The grounds taken by the assessee read as under: -

1. The order of National Faceless Appeal Centre at Delhi in DIN & Order No. ITBA/NFAC/S/250/2021-22/1036736506(1) dated 04.11.2021 for the above assessment year is contrary to law, facts, and in the circumstances of the case.

2. The NFAC erred in sustaining the disallowance of claim of deduction u/s 36(1)(viiia) of the Act to the extent of Rs.278,40,16,111/- as part of the computation of taxable total income without assigning proper reasons and justification.
3. The NFAC failed to appreciate that the claim for deduction u/s 36(1)(viiia) of the Act was correct and proper and ought to have appreciated that the conditions prescribed in relation thereto were fulfilled thereby vitiating the related findings.
4. The NFAC failed to appreciate that the written submissions filed 011 26.01.2021 and 22.10.2021 even though extracted fully as part of the appellate order under consideration, the decision to sustain the said disallowance for claim for deduction u/s 36(1)(viiia) of the Act was wrong, erroneous, unjustified, incorrect, invalid and not sustainable both on facts and in law.
5. The NFAC failed to appreciate that the decision to follow the Appellate Tribunal's order dated 20.7.2016 for the assessment year 2011-12 in contra distinction to the decision of the Appellate Tribunal for the later year should be reckoned as wrong appreciation of law on the judicial precedence.
6. The NFAC failed to appreciate that the claim for 10% of the aggregate rural advances and another deduction contemplated in section 36(1) (viiia) of the Act being 7.5% of the total income aggregating to Rs.278,40,16,111/as against the provisions made in the books to the extent of Rs.290,36,78,595/- was completely omitted to be considered, thereby vitiating the related findings.
7. The NFAC erred in partly allowing the ground pertaining to the disallowance of notional expenses as per section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 without assigning proper reasons and justification.
8. The NFAC failed to appreciate that the provisions of section 14A of the Act had no application to the facts of the case and ought. to have appreciated that further the lack of requisite satisfaction would vitiate the applicability of section 14A of the Act, thereby nullifying the recomputation of notional expenses made in the impugned order as per Rule 8D of the Income Tax Rules, 1962.
9. The NFAC failed to appreciate that in any event the quantification of notional expenses as per Rule 8D of the Income Tax Rules, 1962 on various facets was wrong, erroneous, unjustified, incorrect, invalid and not sustainable both on facts and in law.
10. The NFAC failed to appreciate that there was no proper/ reasonable opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.”

As is evident, the substantial issue that arises for our consideration is deduction of provision for Bad and Doubtful debts u/s 36(1)(viiia). The assessee is also aggrieved by computation of disallowance u/s 14A.

Arguments of Ld. AR

2.1 The Ld. AR advanced arguments and relied on various decisions, the copies of which has been placed on record. The written submissions filed by the Ld. AR read as under: -

1. The Appellant most respectfully submits the following written arguments in support of the contentions, submissions and facts already placed and submitted on records.

2. In respect of the disallowance provision for bad and doubtful debts amounting to **Rs.268,97,66,392/-** in support of the grounds as brought out in the Grounds of Appeal that is submitted along with Form 35, the appellant wishes to place on record the following:

3. The Appellant has made a provision for bad and doubtful debts to the tune of Rs.290,36,78,595/- towards bad and doubtful debts in the profit and loss account as per the IRAC Norms (Income Recognition and Asset Classification Norms) laid out by the Reserve Bank of India. This provision for bad and doubtful debts made is disallowed in the memo / computation of income completely since the said sum is not allowable as deductions as per the provisions of Income Tax Act, 1961. The IRAC Norms requires the banks to provide for provision at the prescribed rate in respect of assets classified as Standard/ the Non-Performing Assets.

4. As per the provisions of the Income tax Act, 1961 the amount allowable as deduction towards "*Provisions for bad and doubtful debts*" are brought out in 36(1)(viiia) of the Income Tax Act, 1961.

5. As per the said section, the amount of provision for bad and doubtful debts allowable needs to be calculated as under:

i)7.5% of the total income (before making a deduction under this clause and chapter VIA); Plus

ii)An amount not exceeding 10% of the aggregate average advances made by the rural branches of such bank.

iii)The sum of the above need to be restricted to the provisions provided for in the books of account i.e., the Profit & Loss account.

6. The Appellant computed the amount allowable as per the provisions of section 36(1)(viiia) of the Income Tax Act, 1961 which is brought out in the memo/ computation of Income. The following is the break-up:

Particulars	Amount
7.5% of of the total income	54,66,29,812
An amount not exceeding 10% of the aggregate average advances made by the rural branches of such bank.	223,73 ,86 ,299
Total Rs.	278,40,16,111

7. Thus, as per the provisions of 36(1)(viiia) the appellant is eligible deduction i.e., lower of Rs.278,40,16,111/- (calculated as per the provisions of 36(1)(via) of the Income Tax Act, 1961) & Rs.290,36,78,595/-(the amount of provisions debited to the profit & Loss A/ c).

8. Hence, the Appellant has claimed Rs.278,40,16,111/- under the provisions of section 36(1)(viiia) of the Income tax act, 1961.

9. Since, the provisions for bad and doubtful debts u/s 36(1)(viiia) provides for lower of (a) the computation based on the aggregate of 10% rural advances plus the total income the appellant (b) The actual provision made. The Appellant restricted to the amount made to provision in books of account.

10. The Learned Assessing Officer failed to understand the fact that the 10% of aggregate rural advances amounted to Rs. 223,73,86,299/-.

11. The amount of Rs. 9,42,49,719/- as brought out in the Assessment order is not in any manner connected with computation as per the provisions of 36(1)(viiia) but is the provision made in accordance with the RBI norms in respect of the non-performing assets in relation to rural advances. The said sum has no bearing with the amount claimed. Thus, the assessing officer erred in his understanding the provisions of the act.

12. The amount of provision made in the books of account and the methodology of the provision value arrived is completely based on the norms laid out by the RBI and the same must not be construed and linked to the claim u/s 36(1)(viiia). It is for this fact that the provision made in the books of account is completely disallowed as ineligible deduction in computation of Income.

13. The provisions of section 36(1)(viiia) is an independent calculation which needs to be done based on the 10% of aggregate value of rural advances plus the amount 7.5% of the total income.

14. Since, there is a ceiling laid down in respect of the claim that the provision should be lesser of provision made in books and the provision computed in respect of 36(1)(viiia), the amount arrived is restricted to the provision made in the books of account.

15. The Assessing officer is evidently confused by treating amount of Rs. 9,42,49,719/- as a provision made for rural advances as per the provisions of income tax act u/s 36(1)(viiia), whereas the said sum is the provision made on account NP A on rural advances as per RBI Norms.

16. The Appellant wishes to bring that the facts of the case brought out has no connection / link in whatsoever manner in respect of the case law brought out by the Assessing Officer i.e., M/s Catholic Syrian Bank in Civil Appeal No. 1143/2011. The substantial question of law answered by the Hon'ble Supreme Court has no connection in the facts and circumstances of the present case of the appellant.

17. As per the provisions of section 36(1)(viiia) of the Income Tax Act, 1961 the break-up of claim in respect of Provision for Bad and Doubtful debts are as under:

Particulars	Amount
10% of the Aggregate Rural advances made	223,73,86,299
7.5% of the Total Income	54,66,29,812
Total deduction as per 36(1)(viiia)	278,40,16,111
Provision in Books	290,36,78,595
Restricted to	278,40,16,111

18. Thus, under the facts and circumstances of the case, the NATIONAL FACELESS APPEAL CENTRE may kindly allow the provisions for bad and doubtful debts amounting to Rs.278,40,16,111/- as per section 36(1)(viiia) of the Act and thus render justice.

2.2 On the issue of disallowance u/s 14A, the submissions made by Ld. AR read as under: -

Submissions on incorrect application of Section 14A of the Act

19. There was no recording of satisfaction by the Assessing officer regarding the non-acceptance of amount disallowed by the appellant *suomoto* as contemplated in subsection 2 of section 14 of the Act. The provisions contained in rule 8D is not be invoked mechanically without application of mind especially when appellant has quantified and disallowed a sum of Rs.9,86,055/- under the provisions of section 14A of the Act.

20. Hon'ble Supreme court in Maxopp Investment Ltd., Vs CIT, New Delhi [91 Taxmann.com154 (SC)] has held that as per the language of section 14A(2) of the Act, read with rule 8D of the rule, it is necessary that AO needs to record satisfaction in case where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment.

21. Further, Hon'ble Supreme court in Godrej & Boyce Manufacturing Company Ltd Vs DCIT, [11 Taxmann.com 111 (SC)] & CIT Vs. The Upper India Couper Paper Mills Co P Ltd. (Allahabad HC) has held also that satisfaction has to be recorded by the Assessing officer.

22. Without prejudice to the above, we would also like to bring on record that the Appellant bank had interest free funds which is far exceeding the investments done in case of tax-free securities. Thus, disallowance on account of interest paid is not warranted and uncalled.

23. The existence of the interest free funds can be clearly seen from the financial statements of the Appellant. (M/s. Roca Bathroom Products P Ltd. Vs. PCIT) TC(Appeal) No. 775/2018 Madras High Court) In view of the above submissions made, it is humbly prayed that the grounds brought out by the appellant may considered in their favour and the assessment order be set aside upholding the contention of the appellant in terms of disallowance made.”

Arguments of Ld. DR

3. The Ld. CIT-DR, on the other hand, submitted that adjudication in impugned order is based on the decision of Tribunal in assessee's own case for earlier year and the issue of deduction u/s 36(1)(viiia) has been held against the assessee. On the issue of disallowance u/s 14A, Ld. CIT-DR referred to the findings given by lower authorities.

4. Having heard rival submissions and upon perusal of case records, the appeal is disposed off as under. The assessee being resident corporate assessee is stated to be engaged in banking business.

Assessment Proceedings

5.1 During the course of assessment proceedings, upon perusal of computation of income, it transpired that the assessee claimed deduction of provision for bad and doubtful debts u/s. 36(1)(viiia) for Rs.278.40 Crores. The actual provision made by the assessee in the books for provision for doubtful debts / loss assets was Rs.290.36 Crores. However, the same was added back in the computation of income and the assessee claimed an amount of Rs.278.40 Crores which was nothing but 10% of rural advances which came to Rs.223.73 Crores and 7.5% of total income which was Rs.54.66 Crores. The Ld. AO held an opinion that the amount of Rs.278.40 crores as claimed by the assessee includes provision in respect of non-rural branches also and therefore, the assessee claimed excess deduction to that extent.

5.2 The findings of Ld. AO, in this regard, are as under: -

3. Disallowance of provision for bad and doubtful debts u/s.36(1)(viiia):

Upon perusal of the submissions made by the assessee wherein it is noticed in the Statement of Total Income it has claimed an amount of Rs.278,40,16,111/- as deduction on account of Provision for Bad and doubtful Debts u/s. 36(1)(viiia). Further the assessee in support of its above claim has given the details as under:'

According to the Assessee, the above claim was worked out as under:-

Deduction u/s 36(1)(viiia) of the IT Act			
i)	Actual provision made for doubtful debts/ loss assets	290,36,78,595	
ii)	10% of rural advance	223,73,86,299	
	7.5% of total income	54,66,29,812	278,40,16,111
	Restricted to the lower of (i) & (ii)		278,40,16,111

3.1 During the course of scrutiny proceedings, the assessee was requested to give bifurcation in respect of rural and non-rural branch provisions for the above said amount. The Assessee furnished the bifurcation details of Provision for bad and doubtful debts made for rural and non rural branches for the financial year ended 31.03.2017 as under:

Provisions in respect of the Rural Branches	Rs.94249719
Provisions in respect of the Non-Rural Branches	Rs.2689766392
Total deduction u/s 36(1)(viiia)	Rs.2784016111

3.2 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 sub-section (1) of section 36 to provide for deduction in the computation of the 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 Income-tax Rules, 1962.

3.3 The assessee had made a claim for provision for bad and doubtful debts u/s 36(1)(viiia) amounting to Rs.278,40,16,111/- whereas provision for bad and doubtful debts for rural advances made by the rural branches in the accounts is only Rs.9,42,49,719/-. As discussed in the aforesaid paragraph, sec.36(1)(viiia) is a provision allowable relating only to rural advances by rural branches as held by the Hon'ble Supreme Court in its Order dated 17.02.2012 in the case of **M/s. Catholic Syrian Bank** in Civil Appeal No.1143/2011 as reported in (2012) 18 taxmann.com 282(SC). Moreover The same issue of disallowance u/s 36(1)(viiia) in the case of the assessee for the A.Y 2011-12 was decided in favour of the department, by the Hon 'ble ITAT 'C' bench, Chennai vide order in ITA No 2297/Mds/2015 dated 20.07.2016.

3.4 The Income Tax Act is very clear that any provision made for rural advance alone is allowable u/s.36(1)(viiia) subject to the limits prescribed therein. Accordingly, the provision made for bad and doubtful debts for rural branches is Rs.9,42,49,719- for the year ended 31.03.2017 alone is eligible for deduction u/s 36(1)(viiia). Hence the excess claim made which works out to Rs 268,97,66,392- (Rs. 2784016111 - 94249719 = 268,97,66,392) is added back to the total income returned by the assessee.

In other words, Ld. AO held an opinion that provision made against rural advances alone would be eligible for deduction u/s 36(1)(viiia).

5.3 Disallowance u/s.14A:

The assessee offered suo-motu disallowance u/s 14A for Rs.9.86 Lacs. However, applying Rule 8D, Ld. AO computed aggregate disallowance of Rs.21.24 crores which was interest disallowance under Rule 8D(2)(ii) for Rs.19.65 Crores and indirect expense disallowance u/r 8(D)((2)(iii) for Rs.1.59 Crores. After adjusting suo-motu disallowance offered by the assessee, the disallowance thus worked out to be Rs.21.15 Crores.

First appellate Proceedings

6.1 The Ld. CIT(A) confirmed AO's action qua deduction u/s 36(1)(viiia) by relying on the decision of this Tribunal in assessee's own case for AY 2011-12 .

6.2 Regarding disallowance u/s 14A, the assessee raised a plea that AO did not record any satisfaction as to why the disallowance as offered by the assessee was not acceptable. Further, interest free funds far exceeded the investments made by the assessee. The interest free funds were stated to be Rs.5728.56 crores as on 31.3.2017 as against average value of investment of Rs.318.42 Crores. Considering the same, Ld. CIT(A) held that interest disallowance u/r 8D(2)(ii) was not justified. The Ld. AO clearly mentioned that disallowance u/s 14A should be made as per the methodology prescribed in Rule 8D which was not done by the assessee. The said notings could be treated as satisfaction as there is no prescribed format to draw a satisfaction. The disallowance of Rs.1.59 Crores as computed by Ld. AO u/r 8D(2)(iii) was held to be justified. Aggrieved as aforesaid, the assessee is in further appeal before us.

Our findings and Adjudication

7. It is undisputed fact that the issue of deduction u/s 36(1)(viiia) stood covered against the assessee in earlier decision of the Tribunal for AY 2011-12 vide ITA No.2297/Mds/2016 order dated 20-07-2016. In this order, the bench relied on the decision of Hon'ble Supreme Court in the case of **Catholic Syrian Bank vs. CIT (343 ITR 270)** and held that the assessee cannot claim deduction of bad and doubtful debts of non-rural branches u/s 36(1)(viiia) of the Act. However, in Tribunal's decision for AY 2012-13 vide ITA No.1400/Chny2016 order dated 07-02-2019, this issue was restored back to the file of Ld. AO for re-adjudication.

8. The argument of Ld. AR is that the provision made for Rs.9.42 Crores was not in any manner connected with the computation as per the provisions of Sec.36(1)(viiia) but the same was in accordance with

the RBI norms in respect of non-performing assets in relation to rural advances. The said sum had no bearing on the amount claimed. The provision so made as per RBI norms, in no way, must be construed and / linked to the claim made u/s 36(1)(viiia). The provisions made u/s 36(1)(viiia) is independent calculation which is to be done as per the prescribed formula only. The Ld AR also submitted that the cite case law of Hon'ble Supreme Court has no connection to the facts and circumstances of the present case.

9. After due consideration of material fact, the bench is inclined to restore this matter back to the file of Ld. AO as done in AY 2012-13 with a view to enable the revenue to take a consistent stand in the matter since the issue is recurring in nature. The assessee is free to raise all the issues which shall be considered by Ld. AO and the issue shall be adjudicated de novo. This ground raised by the assessee stand allowed for statistical purposes.

10. Regarding disallowance u/s 14A, we concur with the findings of Ld. CIT(A) that Ld. AO had recorded the required satisfaction. The interest disallowance u/r 8D(2)(ii) has already been deleted by Ld. CIT(A). So far as disallowance u/r 8D(2)(iii) is concerned, we direct Ld. AO to consider only those investments which has actually yielded any exempt income during the year. This is as per the decision of Tribunal in assessee's own case for AY 2012-13, ITA No.864/Chny/2019 dated 30-07-2021.

11. The appeal stand partly allowed for statistical purposes.

Order pronounced on 8th September, 2023

Sd/-
(MAHAVIR SINGH)
उप-अध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेख-सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated :08-09-2023
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF