IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

ITA No. 933/Coch/2022
(Assessment Year: 2017-18)

Kerala State Financial Enterprises Ltd. Bhadratha, Museum Road Chembukkavu - 680020 Thrissur [PAN:AABCT3817A]	vs.	Dy. CIT, Circle - 1(1) & TPS Thrissur
(Appellant)		(Respondent)

Appellant by:	Shri Harikrishnanunny, CA
Respondent by:	Shri Sanjit Kumar Das, CIT-DR

Date of Hearing:	18.10.2023
Date of Pronouncement:	16.01.2024

O R D E R

Per: Sanjay Arora, AM

This is an Appeal by the Assessee agitating the dismissal of it's appeal contesting it's assessment under section 143(3) of the Income Tax Act, 1961 (the Act) dated 29.12.2019 for Assessment Year (AY) 2017-18 by the Commissioner of Income Tax (Appeals), Income Tax Department [CITA], vide it's order dated 16.3.2022.

2. The appeal, filed on 17.10.2022, is time barred by 79 days, which is explained per the accompanying affidavit dated 12.10.2022 by the Principal Officer of the assessee-company as on account of Covid-19 related issues, i.e., of the functioning of the Office being impacted thereby. This is not supported by any facts or figures. The appeal before the first appellate authority was filed in time on 28.01.2020, and there is nothing on record to show that there was no representation before the first appellate

authority, even as the dates of hearing, as indeed the date of filing the appeal, fell, broadly speaking that is, within the Covid period. That apart, the affidavit itself states that the functioning of the firm became normal by the end of f.y. 2021-22. The Hon'ble Apex Court has per its Suo Motu WP(C) No. 3 of 2020, dated 10.01.2022, directed exclusion of the period from 15.3.2020 to 28.02.2022 in reckoning limitation due to Covid-19 and its aftermath, signifying restoration of normalcy since. The impugned order stands passed only thereafter on 16.3.2022. The affidavit is without specifics and in general/vague terms. Why, the appellant files another appeal (in ITA No. 628/Coch/2022), posted for hearing along with, against an order dated 24.3.2022, i.e., a week later, in time on 23.5.2022. No case for condonation is made out. It is a clear case of laches; the affidavit dated 12.10.2022 being internally inconsistent, vague and, in fact, disproved by the filing of it's other appeal by the assessee. Any person approaching a court must do so with clean hands. We, accordingly, hold the instant appeal as incompetent, and dismiss it as not maintainable.

3. Without prejudice; our order being appealable, we may also adjudicate the appeal, argued before us inasmuch as the delay in its filing was – and which we regard as unfortunate, not brought to our notice during hearing, on merits. We emphasize on it being without prejudice to our finding the appeal as not maintainable, and we may not be for that reason construed as having condoned the delay. Reference in this context may be made to the decision in *Mela Ram & Sons v. CIT* [1956] 29 ITR 607 (SC). In the facts of the case, the appeal was decided in the first instance by the first appellate authority on merits, oblivious of the delay attending its filing. The restoration thereto for considering the same, challenged on the ground of the appeal having been already decided, did not find acceptance by the Hon'ble Apex Court, explaining that an order dismissing an appeal as barred by time is also an order disposing the appeal, since admitted, passed in exercise of the appellate power. In other words, there is no concept of deemed condonation under the Act.

4.1 The appeal raises a single issue, i.e., whether the assessee's claim for deduction u/s. 36(1)(vii) of the Act for the relevant year is in accordance with law, i.e., as explained by the Hon'ble Apex Court per it's decision in *Southern Technologies Ltd. v. Jt. CIT* [2010] 320 ITR 577 (SC), and as further reiterated and explained by it in *Vijaya Bank v. CIT* [2010] 323 ITR 166 (SC). Interestingly, both the assessee and the Revenue claiming satisfaction of the conditions for a write off (of a bad debt as irrecoverable) in accounts, i.e., as mandated by section 36(1)(vii) of the Act, and the law laid down per the cited decisions, i.e., where effected not directly by a debit to the operating statement (for the relevant year) with a corresponding credit to the Debtor's account, but indirectly through a provision (for bad and doubtful debts) account, the ld. CIT(A) restored the matter to the file of the Assessing Officer (AO) to verify if the twin conditions for a write off, i.e.,

(a) debit to the Profit & Loss A/c. with the amount provision; and

(b) reduction of the Debtor account (being Loans & Advances in the case of a Bank) by the amount so debited, i.e., the amount of provision,

stand met, for which reference is hereby made to paras 15 & 16 of the impugned order. *How, one wonders, could that be faulted with*? During hearing, Shri Harikrishnanunny, the learned counsel for the assessee, on being so queried by the Bench, would claim that the amount of provision under reference (Rs.224.98 cr.) stands reduced from the amount of loans and advances (Debtors) on the asset side of the Balance-Sheet as at the relevant year-end. True, but that would only imply that the Debtors (loans and advances) stand reduced to that extent. It is nobody's case, even as clarified in *Vijaya Bank* (supra), that the total debtor amount as reflected in the Balance-Sheet as at the year-end, i.e., net of provision, does not agree with the aggregate of the individual debtors accounts in the books of the Bank, maintained across it's several branches. The Balance-Sheet of the assessee-bank, after all, is only a reflection – in a particular format, of the individual accounts, compiling them by

listing separately the credit (liability) and the debit (asset) account balances under different heads, so as to convey it's financial position.

4.2 The provision in respect of a current asset, it may be appreciated, is an amount set aside from the profit of an enterprise, which it's management anticipates, on an assessment of the several factors impinging thereon, to be realized less, so as to state the Debtor/s at it's realizable value/s. This is what a provision against a current asset is understood as in accountancy, which gets validated on the basis of the fundamental accounting assumptions of prudence and conservatism which inform the preparation and presentation of final accounts. Further, while a provision for an expenditure gets reflected on the liability side of the Balance-Sheet, being the estimated amount of expense that, on the basis of the contractual obligation of, or the claims raised on, the assessee, is liable to be incurred, a provision against a current asset, being essentially a restatement of the asset (Debtor) at the amount expected to be realized in its respect, is reduced from its book-value. That is, in either case, whether the provision against a debt is in the nature of an amount charged to profit & loss account for being estimated to be realized less in its respect, or for effecting an actual write-off thereof, its presentation, in keeping with its purport, is its reduction from the relevant asset in accounts. The fundamental difference between the two would be that while in the latter case, being only a manner of write off, it would, obtaining no longer on being set-off against the relevant asset, not survive the Balance-Sheet date. *That is, both the provision and the Debtor account would, to the extent the latter is written off in accounts as irrecoverable, would stand obliterated*. This is precisely what the Hon'ble Court has clarified unambiguously per it's decisions afore-referred.

4.3 It is the other – the regular provision, which survives the Balance-Sheet date, being not set-off and, thus, written off in accounts, to which the Hon'ble Apex Court refers to *Southern Technologies Ltd.* (supra), when it speaks of the provision being reflected on the credit (liability) side of the Balance-Sheet. The Apex Court's stating

so was on account of the Revenue submitting before it that in respect of provision for NPA, the RBI, i.e., the regulatory body in the case of NBFCs, insists that the provision for NPA should not be netted against the assets, and should be shown separately on the liability side of the Balance Sheet, so as to inform its users about the quantum and quality of NPA, i.e., in more transparent manner (para 11/pg. 584). The Revenue was in that case, as a reading of the decision would show, seeking to project that the said provision is in the nature of reserve (and not a provision), even as it was not required to inasmuch as the law is well-settled that it is the real income, *subject to the provisions of the Act*, which is to be subject to tax, and for which one may refer to the discussion thereon under the head '*Theory of "real income*", as indeed '*Applicability of section 145*' (at paras 35 to 40 of the decision). Referring to decisions in *Poona Electric Company Supply Ltd. v. CIT* [1965] 57 ITR 521, 530 (SC) and *CWT v. Bombay Suburban Electric Supply Ltd*. [1976] 103 ITR 384, 391 (Bom), holding so, the Hon'ble Apex Court further holds as under:

"38. The point to be noted is that the Income-tax is a tax on " real income", i.e., *the profits arrived at on commercial principles subject to the provisions of the Income-tax Act*. Therefore, if by the *Explanation* to section 36(1)(vii) a provision for doubtful debt is kept out of the ambit of the bad debt which is written off then, one has to take into account the said Explanation in computation of total income under the Income-tax Act failing which one cannot ascertain the real profits. This is where the concept of " add back" comes in. In our view, a provision for NPA debited to the profit and loss account under the 1998 Directions is only a notional expense and, therefore, there would be added back to that extent in the computation of total income under the Income-tax Act."

It then proceeds to discuss section 36(1)(viia), which also bears reference to section 36(1)(vii), which, deemed relevant, is accordingly reproduced as under:

"43. Even section 36(1)(vii) has been amended to provide that in the case of a bank to which section 36(1)(viia) applies, the amount of bad and doubtful debt shall be debited to the provision for bad and doubtful debt account and that the deduction shall be limited to the amount by which such debt exceeds the credit balance in the provision for bad and doubtful debt account.

44. The point to be highlighted is that in the case of banks, by way of incentive, a provision for bad and doubtful debt is given the benefit of deduction, however, subject to the ceiling prescribed as stated above. Lastly, the provision for NPA created by a scheduled bank is

added back and only thereafter is deduction made permissible under section 36(1)(viia) as claimed."

In *Vijaya Bank* (supra), the write off of an account stands explained further, as under:

"7. One point needs ……However, as stated by the Tribunal, in the present case, besides debiting the profit and loss account and creating a provision for bad and doubtful debt, *the assessee-bank had correspondingly/simultaneously obliterated the said provision from its accounts by reducing the corresponding amount from loans and advances/debtors* on the assets side of the balance-sheet and, consequently, at the end of the year, the figure in the loans and advances or the debtors on the asset side of the balance- sheet was shown as net of the provision "for the impugned bad debt". In the judgment of the Gujarat High Court in the case of *Vithaldas H. Dhanjibhai Bardanwala* [1981] 130 ITR 95, a mere debit to the profit and loss account was sufficient to constitute actual write off whereas, after the *Explanation*, the assessee(s) is now required not only to debit the profit and loss account but simultaneously also reduce loans and advances or the debtors from the assets side of the balance-sheet to the extent of the corresponding amount *so that, at the end of the year, the amount of loans and advances/debtors is shown as net of the provisions for the impugned bad debt*. This aspect is lost sight of by the High Court in its impugned judgment. In the circumstances, we hold, on the first question, that the assessee was entitled to the benefit of deduction under section 36(1)(vii) of 1961 Act *as there was an actual write off by the assessee in its books, as indicated above*." (pgs. 171-172)

Doubts expressed by the Revenue that the obliteration of the provision account may yet not serve the purpose of, similarly, obliterating the debtor account inasmuch as the individual accounts at the branch level may not be closed, were allayed by it, as:

"9. Before concluding, ……. Although, *prima facie*, this argument of the Department appears to be valid, on a deeper consideration, it is not so for three reasons. Firstly, the head office accounts clearly indicate, in the present case, that, on repayment in subsequent years, the amounts are duly offered for tax. Secondly, one has to keep in mind that, under the accounting practice, *the accounts of the rural branches have to tally with the accounts of the head office*. If the repaid amount in sub- sequent years is not credited to the profit and loss account of the head office, which is ultimately what matters, *then, there would be a mismatch between the rural branch accounts and the head office accounts*. Lastly, in any event, section 41(4) of the 1961 Act, inter alia, lays down that, where a deduction has been allowed in respect of a bad debt or a part thereof under section 36(1)(vii) of the 1961 Act, then, if the amount subsequently reco- vered on any such debt is greater than the difference between the debt and the amount so allowed, the excess shall be deemed to be profits and gains of business and, accordingly, chargeable to Income-tax as the income of the previous year in which it is recovered. In the circumstances, we are of the view that the Assessing Officer is sufficiently empowered to tax such subsequent repayments under section 41(4) of

the 1961 Act and, consequently, there is no merit in the contention that, if the assessee succeeds, then it would result in escapement of income from assessment." (pg. 173)

Reference here may profitably also be made to the decision in *Catholic Syrian Bank Ltd. v. CIT* [2012] 343 ITR 270 (SC), wherein the Hon'ble Apex Court clarified that sections 36(1)(vii) and 36(1)(viia) operate in different fields; that section 36(1)(vii), vide *Explanation* thereto, introduced by Finance Act, 2001, specifically excludes any provision for bad and doubtful debts from the ambit and scope of any debt or part thereof written off as irrecoverable in the accounts of the assessee, i.e., the subject matter of deduction u/s. 36(1)(vii), being also the purport of first *proviso* thereto.

4.4 The matter stands also explained by the coordinate bench in *Dy. CIT v. Dhanalakshmi Bank Ltd*. (in ITA No. 702/Coch/2022, dated 11.12.2023/AY 2015-16), i.e., passed in quantum proceedings; the Hon'ble jurisdictional High Court having set aside the appellate order by the Tribunal in the revisionary proceedings, on which the assessee relies upon before the ld. CIT(A). Paras 5.2 and 5.3 of the order are, being particularly relevant, reproduced hereunder; the Tribunal bringing forth the basic difference between two sets of provisions, i.e., toward write off of an asset (Debtor) and a regular provision in its respect, on the basis of the accounting entries inasmuch as in either case the provision is not reflected on the credit (liability) side of the Balance-Sheet, but, being in respect of an asset, by way of reduction, in view of the disclosure norms and, as explained hereinbefore, its purport, the Debit (Asset) side:

'5.2 We, though, consider it incumbent to, before parting with our order, add that the Hon'bleCourt had in *Vijaya Bank* (supra) clarified in no uncertain terms that the provision for bad and doubtful debts, where it operates as a write off of the relevant debts in accounts, is to be obliterated, which aspect stands also highlighted by the AO in his order, reproducing it in its relevant part. That is, though the individual debtor accounts may not be closed, the outstanding debts, to the extent claimed as written off as irrecoverable, obtain no

longer as at the end of the relevant year on the assessee's books. The provision for bad and doubtful debts, being not *qua* an expense, but an asset, the disclosure norms and accounting standards would in any case require it being reflected, instead of on the credit side of the Balance Sheet, as a reduction from the relevant asset/s, being toward diminution in its value. However, this provision being claimed u/s. 36(1)(vii), being only a manner of write off of the relevant debt accounts, does not survive the year-end. As such, it is not, as is generally the case for a provision, reversed on the first day of the following year (with a corresponding credit to the operating statement), to be substituted for another provision, to be made likewise, on the basis of the debts outstanding at its end. Or, where in the alternative, the provision continues to outstand as such, with the incremental provision as at the end of the following year being booked, either adding thereto or, as the case may be, reducing there-from, with a corresponding adjustment to the Profit & Loss Account. That is, it survives the closure of accounts on the last day of the account period. *There is no obliteration of the provision account in such a case*, which, as explained in *Vijaya Bank* (supra), is only a manner of write off of debts in accounts, with equivalent result in terms of reduction in the debts outstanding as at the year-end. Inasmuch as the individual debtor accounts are not closed, this manner has the advantage of the debtor being pursued for recovery. We may exhibit the difference between the two sets of provisions, i.e., one operating to write off the debtor account and obliterated as at the year-end, and the regular provision, through the relevant accounting entries, as under: (Amt in Rs. lacs/say)

A. Regular Provision

1.	Profit & Loss A/c.	Dr.	100	
	Provision for Bad & Doubtful Debts	Cr.		100
	(provision made as at the year-end)			
2.1	Provision for Bad & Doubtful Debts	Dr.	100	
	Profit & Loss A/c.	Cr.		100
	(as on the first day of the following year)			
2.2	Profit & Loss A/c.	Dr.	105	
	Provision for Bad & Doubtful Debts	Cr.		105
	(provision made as at the following year-end)			

(alternatively, a provision for only Rs. 5 could be made, i.e., without reversing the existing provision in the following year)

B. Provision obliterating the Debtor A/c.

1.	Profit & Loss A/c.	Dr.	100	
	Provision for Bad & Doubtful Debts	Cr.		100
	(provision created at the year-end)			
2.	Provision for Bad & Doubtful Debts	Dr.	100	
	Debtors Control A/c	Cr.		100
	(provision written off to Debtors A/c)			

Clearly in case (B), the reduction in the debtor control account (representing aggregate debtor accounts), implies that the individual debtor account (and the corresponding provision), in contradistinction to case (A), outstands no longer. The individual debtor accounts are, in effect and substance, reduced to memoranda accounts.

Continuing further, this manner, unconventional as it is, is not without its added issues. Firstly, separate debtor ledger would have to be maintained for all such written off accounts, being no longer live, representing only memoranda accounts, maintained for collateral purposes. Again, how, for example, a recovery in written off account is to be accounted. The individual debtor account (in the separate debtor ledger) would have to be formally closed, removing it from this ledger. Further, the account having been written off in accounts, credit on any recovery (in the bank) is to be directly to the Profit & Loss A/c.

5.3 Our second observation in the matter is that where and to the extent the provision for bad and doubtful debts does not satisfy the second condition of section 36(1)(vii), i.e., is not obliterated (written off), and represents normal provision toward diminution in the value of debtors, it would be liable to be allowed u/s. 36(1)(viia), an independent provision, which stands on its own footing, as explained in *Catholic Syrian Bank v. CIT* [2012] 343 ITR 270 (SC). This provision, though again liable to be reflected by way of a reduction from the debtor account in the Balance Sheet, does not have the effect of reducing the debtor/s to that extent. This provision is not obliterated (written off) as at the year-end, representing a provision in the actual sense of the term, *qua* a doubtful debt, i.e., toward diminution in its realizable value. As afore-stated, it may continue to outstand as such in accounts, providing

for incremental provision each successive year, or, alternatively, written back in accounts in the following year for being estimated afresh at each year-end, to, of course, identical results, both in effect and substance. This provision, to be quantified in terms of section 36(1)(viia), is to be with reference to debts other than those written off and, further, w.e.f. 01.04.1999 (i.e., AY 2000-01 onwards), to include advances by both rural and urban branches of a scheduled or unscheduled bank and, further, statutorily mandated (w.e.f. 01.04.2013) to be per a single account. Without doubt, recovery in an account *qua* which such a provision has been made, would be accompanied by a reversal of provision to that extent (section 36(2)(v)). All the applicable provisions are to be read in harmony and consistent with each other.'

5. The matter, clearly, therefore, ought to travel to the file of the assessing authority to examine if the write off by the assessee conforms to the requirement of law, or is merely a provision for bad and doubtful debts, which is allowable, as per section 36(1)(viia), only in the case of banks and, further, to the extent specified therein. This, we understand to be precisely what the ld. CIT(A) seeks, as was also the contention of Sh. Harikrishnanunny; nay, the parties, before us. We, therefore, find no room for interference. We decide accordingly.

6. In the result, the assessee's appeal is dismissed.

Order pronounced on January 16, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-	Sd/-
(Manomohan Das)	(Sanjay Arora)
Judicial Member	Accountant Member

Cochin, Dated: January 16, 2024

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The CIT-DR, ITAT, Cochin
5. Guard File

n.p.

By Order

Assistant Registrar
ITAT, Cochin