

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 177/Ahd/2022
Assessment Year 2017-18**

HDB Financial Services Ltd., 2 nd Floor, Radhika, Law Garden Road, Navrangpura, Ahmedabad-380009 PAN: AABCH8761M (Appellant)	Vs	The Pr.CIT-1, Ahmedabad (Respondent)
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**Assessee Represented: Shri Vartik Chokshi, A.R. &
Shri Biren Shah, A.R.
Revenue Represented: Shri Sanjeev Jain, CIT-D.R.**

Date of hearing : 06-12-2023
Date of pronouncement : 24-01-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the Revision order dated 31.03.2022 passed by the Principal Commissioner of Income Tax, Ahmedabad-1, arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2017-18.

2. The assessee company is engaged in the business of lending of secured and unsecured retail loans, distribution of insurance products, telecalling and collection activities under Business Process Outsourcing. For the Asst. Year 2017-18 the assessee filed its Return of Income on 31.10.2017 declaring total income of Rs. 1096,43,21,300/- and book profit u/s 115JB of Rs.1058,58,55,104/-. The case of the assessee was selected for scrutiny under CASS and notice u/s 143(2) of the Act was issued on 24.08.2018. Thereafter, the assessee filed its Revised Return of Income on 29.03.2019 declaring total income of Rs.1063,16,50,570/- and book profit of Rs.1058,58,55,1041-. The Revised Return was taken for scrutiny assessment under CASS and notice u/s 143(2) of the Act was issued on 27.09.2019. Regular assessment order dated 19-12-2019 was passed by the Assessing Officer by making an addition of Rs.36,98,570/- u/s 14A r.w.r 8D, and determining total assessed income at Rs. 1063,53,49,140/- and book profit of Rs. 1058,95,53,674/-.

3. On perusal of the above assessment order it was noticed by the Ld. PCIT that there were various discrepancies regarding the claim of deduction on account of bad debts and provision of bad and doubtful debts and the claim of deduction u/s.80JJAA of the Act. However the Ld AO failed to verify the above claims and passed the assessment order which is erroneous and prejudicial to the interest of Revenue. Therefore a show cause notice dated 28.03.2022 was issued as to why the deduction claimed u/s. 80JJAA of the Act should not be disallowed and also as to why the first proviso of section 36(1)(vii) of the Act should not be applied in

the case of the assessee although this case is covered u/s. 36(1)(viia) of the Act.

3.1. The assessee replied that during the assessment proceedings the Ld AO issued a notice u/s. 142(1) dated 17/11/2019 asking for various details and in response to deduction claimed by the assessee u/s.80JJAA of the Act. The assessee filed detailed reply dated 21.11.2019 along with annexures. After going through the reply and Form 10DA duly certified by Chartered Accountant, the Ld. AO has accepted the claim of the assessee u/s 80JJAA while passing the assessment order. Thus detailed inquiry was conducted by the Ld. A.O. during the course of assessment proceedings by Ld AO and after keeping in mind the provision contained in section 80JJAA of the Act and no addition was made.

3.2. On the second issue namely claim of bad debts u/s. 36(1)(vii) amounting to Rs. 2,24,81,43,124/- and claim of provision for bad and doubtful debts u/s.36(1)(viia) amounting to Rs.57,79,00,453. The assessee submitted it had written off, Bad Debts amounting to Rs. 2,24,81,43,124/- which is net of bad debt recovered during the year. The assessee company being a Non-Banking Financial Institution ("NBFC"), one of its main function/businesses is to lending money to its customers. While it grants loans, there is always a probability that some of the advances turns bad. In accordance with the provisions laid down by the Reserve Bank of India to NBFC and the NPA Management Policy of the assessee company, the assessee makes provision for Non-Performing Assets on Advances. The assessee further submitted that every year as

per accounting norms the assessee makes provision for bad debts which is disallowed (offered to tax) in the return of income. The amount of provision for NPAs as debited in the P&L A/c of Rs. 114,77,71,839/- has been disallowed in the return of income for the A.Y. 2017-18. The assessee has been consistently adding back the provision for NPA in its Return of Income, thereby it had claimed only "bad debt" written off during the year under consideration in its Return of Income. The amount of bad debt written off net of recovery is Rs. 224.81 lacs, the list of which showing with customer name along with their PAN, address, amount written off and subsequently recovered the "bad debts" written off pertains to the business of the assessee and the same has been duly written off in the books of accounts of the assessee. It is a settled position of law that once the bad debts have been duly written off in the books of accounts, amount claimed as bad debt is allowable. In this regards reliance was placed on the decision of Hon'ble Apex Court in the case of T.R.F. Ltd. Vs. CIT - (2010) 323 ITR 397 and various case laws of the Gujarat High Court.

4. The Ld PCIT considered the above reply of the assessee and having not satisfied with the same, has set aside the assessment order passed by the Ld. A.O. by observing as follows:

- (i) Collect the revised audit report in form 3CD as the auditor of the company has not certified the deduction u/s 80JJAA of the Act in col.33 of Form 3CD report and verify whether the revised return filed by the assessee company on 29.03.2019 is valid return as per provisions of section 139(9) of the Act or not? The AO is also directed to take cognizance of CBDT's Circular bearing No. 14(XL-35) dated 11.04.1995.

(2) The allowability of bad debts amounting to Rs.224,81,43,124/- claimed by the assessee company should be decided on the basis of CBDT Circular No. 12/2016 [F.No. 279/Misc./140/2015-ITJ] dated 30.05.2016 and instruction No.17/2008 [F.No.228/3/2008-ITA-II] dated 26.11.2008.

(3) The allowability of bad debts amounting to Rs.224,81,43,124/- claimed by the assessee company should also be decided on the basis of the first proviso to section 36(1)(vii) and clause (v) to section 36(2) of the Act which are clearly applicable to the assessee company as the assessee company is covered by the provisions of section 36(1)(viiia) of the Act.

(4) The allowability of bad debts amounting to Rs.224,81,43,124/- claimed by the assessee company is to be verified with the books of account of the assessee company with relevant ledger accounts of the customers along-with the Schedule 44A of the balance sheet (movement of Non-Performing Assets).

(5) The allowability of provision for bad debts and doubtful debts of Rs.57,79,00,453/- claimed u/s 36(1)(viiia)(d) of the Act is also to be examined thoroughly.

5. Aggrieved against the Revision order, the Assessee is in appeal before us raising the following Grounds of Appeal:

1) On the facts and in the circumstances of the case, the order dated 31.03.2022 passed by the learned Pr. C.I.T. u/s.263 of the I.T. Act is bad in law and ab initio void.

2) On the facts and in the circumstances of the case, the learned Pr. C.I.T. erred assessment order dated 19.12.2019 passed by the Assessing Officer 143(3) of the I.T. Act.

3) The appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.

6. Ld. Counsel Shri Vartik Chokshi appearing for the assessee submitted before us a detailed Paper Book and Case laws filed before the Ld. PCIT as well as detailed replies filed before Assessing Officer. As regarding the deduction u/s. 80JJAA, the Ld.

Counsel drawn our attention to the detailed reply filed by the assessee before the Assessing Officer on the very same issue which are available at Page Nos. 91 to 93 of the Paper Book as follows:

“Justification for claim of deduction u/s. 80JJAA (point no. 7) Your goodself has asked the Assessee to show cause as to why the deduction claimed u/s. 80JJAA should not be disallowed and added. In this regards the assessee submits that the claim has been made according to the provisions of section 80JJA which is duly certified by a chartered accountant after due verification in Form 10DA which is attached herewith vide Annexure 7. As per the provisions of section 80JJAA the deduction is available if following conditions are fulfilled.

a. Who can claim the deduction- Any entity whose gross total income includes profit or gains derived from business and is subject to tax audit under section 44AB of the Act can claim the deduction under section 80JJAA of the Act. In case of taxpayers carrying on business. Section 44AB of the Act is applicable where the sales, turnover or gross receipts in business, exceed INR 10 million in the financial year. However, the deduction, is not available in case the business is formed by splitting-up/reconstruction of existing business or when the business is acquired by way of transfer or under a business reorganisation in the case of assessee the business is not formed by splitting-up or reconstruction of existing business. As explained in earlier letter dated 28.09.2019 that the amalgamation in the case of the assessee has taken place with effect from 01.04.2014 i.e. from F. Y. 2014-15/A. Y. 2015-16 and not during the year under consideration.

b. What is allowed as the deduction - An amount equal to 30% of additional employee cost incurred in the course of business in the financial year is allowed as a deduction, for three consequent years including the year in which such employment is provided. – the same has been duly verified by the chartered accountant and certified in the form 10DA.

c. Prerequisites for availing of the deduction - There must be an increase in the total number of employees on the last day of the financial year, when compared to the total number of employees employed as on the last day of the preceding financial year – the same has been duly verified by the chartered accountant and certified in the form 10DA.

d. Who is an additional employee - An employee who has been employed during the year and d. whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the financial year. To explain in layman terms, the salary paid to an "additional employee" shall be considered for computing the deduction, when the individual is employed during the year, say during the financial year 2017-18 individual is on the payroll of the company on the last day of the financial year, i.e., on 31 March, 2018 and there is an

overall increase in total number of employees when compared to the previous year, i.e., financial year 2016-17.

However, the following employees are not covered in the definition of "additional employees":

- an employee whose total emoluments are more than INR 25,000 per month; or
- an employee whose entire contribution under the Employees' Pension Scheme is paid by the Government; or
- an employee who is employed for a period of less than 240 days/ 150 days during the year; or
- an employee who does not participate in the recognised provident fund: the same has been duly verified by the chartered accountant and certified in the form 10DA.

e. Employee cost on which the deduction is computed - Any sum paid or payable to an employee on account of employment, whether termed as salary or any other name, excluding

- any contribution paid/payable by the employer to any pension fund or provident fund or any other fund for the benefit of the employee; and
- any lump-sum payment paid/payable to the employee at the time of termination of his service or superannuation or voluntary retirement:

Provided that the emoluments are paid through banking channels only the same has been duly verified by the chartered accountant while certifying in the form 10DA.

f. Compliance requirement -Rule 19AB of the Income-tax Rules, 1962 requires the employer to obtain Form 10DA from a practicing accountant reporting the said deduction and other information as mentioned therein. The form is required to be obtained before filing of the income-tax return for the said year.

The provisions of the Act clearly mention that no deduction shall be provided to the employer in case of non-compliance with filing of the said Form 10DA. - attached vide Annexure – 7. The working prepared by chartered accountant at time of preparing certificate is as under:

Working to arrive at new employees eligible for deduction u/s 80JJAA	
Particulars	Number of Employees
As on March 31, 2016	58,807
New Joinees during financial year 2016-17	43,669

<i>Employees left during the financial year 2016-17</i>	36,570
<i>As on March 31, 2017</i>	65,906

Step 1: New Joinees who worked for 240 days and more 11290

Step 2: Out of 11,290 new joinees-employees whose salary is 25,000/-pm 10,264

Step 3: No. of employees having an effect of increase [Opening-Closing] 7,099

Step 4: Total emolument paid to 7,099 employees 1,09,17,53,327

Step 5: 30% of total emoluments 7,099 paid to employees 32,75,25,998

In view of the above discussion the claim of deduction u/s. 80JJA by the assessee is justified.

6.1. After going through the submission made by assessee, during the course of assessment proceedings and Form 10DA duly certified by Chartered Accountant submitted by the assessee, Ld. AO has accepted the claim of the assessee u/s 80JJAA while passing the assessment order. This itself shows that the detailed inquiry was conducted during the course of assessment proceedings by Ld AO and after keeping in mind the provision contained in section 80JJAA of Income Tax Act and no addition has been made by Assessing officer. However the Ld. PCIT set aside the assessment order passed by the Ld. AO with the following direction:

“Collect the revised audit report in form 3CD as the auditor of the company has not certified the deduction u/s 80JJAA of the Act in col.33 of Form 3CD report and verify whether the revised return filed by the assessee company on 29.03.2019 is valid return as per provisions of section 139(9) of the Act or not? The AO is also directed to take cognizance of CBDT’s Circular bearing No. 14(XL-35) dated 11.04.1995.”

6.2. The above direction is without any base, as the claim of the assessee is based on Form 10DA duly certified by Chartered Accountant, which is as per the requirement of section 80JJAA(2)(c) of the Act. The only requirement in section 80JJAA to file Form 10DA duly certified by Chartered Accountant to claim deduction u/s 80JJAA. Even as per the Rule 19AB of the I.T. Rules, the only requirement is to get Form 10DA duly certified by Chartered Accountant for claiming deduction, which has been complied by the assessee. Accordingly there is no justification in the action of the Ld. PCIT in invoking Revision proceedings.

6.3. Further the Ld. PCIT directed the Ld. AO to verify whether the Return is not a defective Return in terms of Section 139(9) of the Act. The Ld. Counsel of the assessee Shri Vartik Chokshi further submitted that, any claim can be raised even during the course of assessment proceedings or at appellate stage following the judgement of Bombay High Court in the case of CIT-Vs-Pruthvi Brokers & Shareholder reported in (2012) 23 taxmann.com 23, wherein it is held as follows:

15. It is indeed a question of exercise of discretion whether or not to allow an assessee to raise a claim which was not raised when the return was filed or the assessment order was made. As held by the Supreme Court there may be several factors justifying the raising of a new plea in appeal and each case must be considered on its own facts. However, such cases include those, where the ground though available when the return was filed or the assessment order was made, was not taken or raised for reasons which the appellate authorities may consider valid. In other words, the jurisdiction of the appellate authorities to consider a fresh or new ground or claim is not restricted to cases where such a ground did not exist when the return was filed and the assessment order was made.

6.4. The Ld. counsel also invited our attention to the ratio as laid down by Hon'ble jurisdictional High Court in the case of CIT-Vs- Mitesh Impex reported in (2014) 46 taxmann.com by following the judgment of Pruthvi Brokers referred above and allowed the assessee to claim deduction u/s 80IB/IC even at assessment stage or any appellate stage which was not

claimed by the assessee while filing Return of Income. Relevant facts and finding given by Hon'ble Gujarat High Court was brought to our attention as follows:

“...39. This is primarily on the premise that if a claim though available in law is not made either inadvertently or on account of erroneous belief of complex legal position, such claim cannot be shut out for all times to come, merely because it is raised for the first time before the appellate authority without resorting to revising the return before the assessing officer.

40. Therefore, any ground, legal contention or even a claim would be permissible to be raised for the first time before the appellate authority or the Tribunal when facts necessary to examine such ground, contention or claim are already on record. In such a case the situation would be akin to allowing a pure question of law to be raised at any stage of the proceedings. This is precisely what has happened in the present case. The Appellate Commissioner and the Tribunal did not need to nor did they travel beyond the materials already on record, in order to examine the claims of the assesseees for deductions under sections 80-IB and 80HHC of the Act.

41. In the decisions that we have noted above, the Courts have considered such questions when a legal contention or a claim was based on material already on record but raised at an appellate stage. On such premise we wholeheartedly agree that the appellate authority and the Tribunal would have the power to entertain any such new ground, legal contention or claim. However, it is only the Bombay High Court in the case of CIT v. Pruthvi Brokers & Shareholders (P.) Ltd. (supra), which has travelled a little beyond this preposition and come to the conclusion that even if facts necessary to examine such a claim are not placed before the assessing officer and, therefore, not on record, there would be no impediment in the Commissioner (Appeals) entertaining such a claim. Such an issue does not arise in these appeals. We would, therefore, reserve our opinion on this limited aspect of the matter if and when in future the question presents before us in such form. For the present, we answer Questions (3) and (4) against the Revenue and in favour of the assesseees in manner described above.

7. Per contra the Ld. CIT-DR Shri Sanjeev Jain appearing for the Revenue supported the order passed by the Ld. PCIT which is a detailed order with reasoning and submitted the same does not require any interference. Therefore the assessee appeal is liable to be dismissed.

8. We have given our thoughtful consideration and perused the materials available on record. In the case of the assessee company, the claim was taken while filing Revised Return of Income and further such claim was fully examined by Ld. AO during the course of assessment proceedings (see the reply filed by the assessee extracted at Para 6 of the order) after verifying all evidences and explanation produced by the assessee. No defects have been pointed out either by the Assessing Officer or the Ld. PCIT in the Revised Return of Income filed by the assessee. Further the Assessee had merely exercised its right in claiming rightful deduction while revising its Return of Income. Therefore, the direction given to the assessing officer in connection with the claim of assessee company u/s 80JJAA to verify the belated return filed by the assessee is whether valid return of income u/s 139(9) or not is totally against the law laid down by Hon'ble Jurisdictional High Court. Accordingly there is no justification in invoking Revision power u/s 263 of the Act.

8.1. Further we also find merits in the arguments of the Ld. Counsel that once the Assessing Officer has made inquires and accepted genuineness of the same after detailed verification submitted by the assessee, such view of A.O. being a plausible view, could not be considered erroneous or prejudicial to interest of Revenue as held by the Hon'ble Supreme Court of India in case of PCIT V. Shreeji Prints (P.) Ltd. reported in [2021] 130 taxmann.com 294 (SC) as follows:

"17 We thus find merit in the plea of the assessee that the Revisional Commissioner is expected show that the view taken by the AO is wholly unsustainable in law before embarking upon exercise of revisionary powers. The revisional powers cannot be exercised for directing a fuller inquiry to merely find out if the earlier view taken is erroneous particularly when a view was already taken after inquiry. If such course of action as interpreted by the Revisional Commissioner in the light of the Explanation 2 is permitted, Revisional Commissioner can possibly find fault with each and every assessment order without himself making any inquiry or verification and without establishing that assessment order is not sustainable in law. This would inevitably mean that every order of the lower authority would thus become susceptible to section 263 of the Act and, in turn, will cause serious unintended hardship to the tax payer concerned for no fault on his part. Apparently, this is not intended by the Explanation. Howsoever wide the scope of Explanation 2(a) may be, its limits are implicit in it. It is only in a very gross case of inadequacy in inquiry or where inquiry is per se mandated on the basis of record available before the AO and such inquiry was not conducted, the revisional power so conferred can be exercised to invalidate the action of AO. The AO in the present case has not accepted the submissions of the assessee on various issues summarily but has shown appetite for inquiry and verifications. The AO has passed after making due enquiries issues involved impliedly after due application of mind. Therefore, the Explanation 2 to section 263 of the Act do not, in our view, thwart the assessment process in the facts and the context of the case. Consequently, we find that the foundation for exercise of revisional jurisdiction is sorely missing in the present case."

8.2. Respectfully following the above judicial principle, it is clear that the Ld. AO had made adequate inquiries in respect of the claim of deduction u/s. 80JJAA of the Act, while passing assessment order u/s 143(3) of the Act. The Revision of assessment proceedings on this ground is not permissible and accordingly the findings of the Ld. PCIT is hereby set aside.

9. **Provision for bad debt u/s. 36(1)(viiia):** Now coming to second issue on which PCIT has initiated Revision proceedings u/s 263 of the Act,

wherein the assessee claimed bad debts u/s. 36(1)(vii) amounting to Rs. 224,81,43,124/- and claimed provision for bad and doubtful debts u/s. 36(1)(viia) of Rs. 57,79,00,453/-.

9.1. Ld. Counsel Shri Vartik Chokshi appearing for the assessee submitted before us the reply filed before Ld. PCIT as follows:

Your goodself has asked no details were called for in respect of the bad debt claimed of Rs. 2,24,81,43,124/- and claim of provision for bad debt u/s. 36(viia) of Rs. 57,79,00,453/-.

Bad debt - Rs. 2,24,81,43,124/-

In this regards the assessee company submits before your goodself that during the year under consideration, the assessee has written off Bad Debt amounting to Rs. 2,24,81,43,124/- which is net of bad debt recovered during the year. It is humbly submitted before your goodself that the assessee company is a Non Banking Financial Institution ("NBFC"). One of its main function/ businesses is to lending money to its customers. While it grants loans, there is always a probability that some of the advances turn bad. In accordance with the provisions laid down by the Reserve Bank of India ("RBI") to NBFC and the NPA Management Policy of the assessee company, the assessee makes provision for Non Performing Assets on Advances. The assessee submits that every year as per accounting norms the assessee makes provision for bad debts which is disallowed (offered to tax) in the return of income. The amount of provision for NPAs as debited in the Profit and Loss A/c of Rs. 114,77,71,839/- has been disallowed in its return of income for the AY 2017-18 i.e. the year under consideration. The assessee has been consistently adding back the provision for NPA in its return of income. Thereby it has claimed only bad debt written off during the year under consideration deduction in its return of income. The copy of Computation of Income of AY 2017-18 is attached herewith for your goodself's ready reference vide Annexure 4. Also, an extract from the Audited Accounts of the assessee company as on 31.03.2017 for amounts written off as Bad is reproduced before your goodself for your kind perusal as under:

Provisions and write offs

<i>Particulars</i>	<i>March 31, 2017</i>
<i>Provisions recognised for non-performing assets (Refer Note 44A)</i>	<i>75.73</i>
<i>Write offs (net of recovery * 75.28 crore (previous year 51.74 crore))</i>	<i>224.81</i>
<i>Provision for dimunition of investment</i>	<i>-</i>
<i>Contingent provision against standard assets</i>	<i>39.05</i>
<i>Total</i>	<i>339.59</i>

The assessee company classifies the provision for Non-Performing assets into write offs only when it has taken optimum measures for recovery of the same. The assessee company hereby furnishes before your goodself the measures it follows for recovery of dues. The steps taken for recovery of Non-performing Assets is attached vide Annexure- 5. Further the assessee company attaches the notices issued for recall of loan is also attached herewith vide Annexure -6.

Further, the assessee company keeps an up to date track of amounts written off. The amount of bad debt written off net of recovery is Rs. 224.81 lacs, the list of which showing with customer name along with their PAN, address, amount written off and subsequently recovered is attached herewith vide Annexure7.

Without prejudice to that above, it is submitted that the bad debts written off pertains to the business of the assessee and the same has been duly written off in the books of accounts of the assessee. It is a settled position that once the bad debts have been duly written off in the books of accounts, amount claimed as bad debt is allowable. In this regards reliance is place on the decision of Hon'ble Apex Court in the case of T.R.F. Ltd. Vs. CIT - (2010) 323 ITR 397, wherein it was held as under:

Whether after 1-4-1989, it is not necessary for assessee to establish that debt, in fact, has become irrecoverable; it is enough if bad debt is written off as irrecoverable in accounts of assessee - Held, yes - Whether where Assessing Officer had not examined whether, in fact, bad debt or part thereof was written off in accounts of assessee, matter was to be remitted back to Assessing Officer for de novo consideration of above mentioned aspect only - Held, yes

In view of the above Apex court decision, no disallowance / adjustment shall be made in this respect as the decision of Apex

Court is binding on the AO (emphasis applied). Also as per the provisions of section 36(1)(vii) of the Income tax Act the said bad debt claimed by the appellant is allowable.

The assessee company further relies on the following decisions of Gujarat High Court

2013] 36 [taxmann.com](#) 437 (Gujarat)/(2013) 217 Taxman 184 (Gujarat)(Mag.) CIT v. Gujarat Industrial Investment Co. Ltd.

Section 37(1), read with section 36(1)(vii), of the Income-tax Act, 1961 – Business expenditure - Allowability of (Reversal of income) - Assessee financial institution was following mercantile system of accounting - Whenever it charged penal interest from customers, same was reflected as income - On settlement with parties, interest was either waived or reduced - Whether amount waived or reduced was either allowable as revenue expenses under section 37(1) or as bad debt - Held, yes [Paras 8 & 11][In favour of assessee]

2013] 29 [taxmann.com](#) 140/[2013] 212 Taxman 293 (Gujarat) (Gujarat) DCIT v. Hindustan MI Swaco Ltd.

Section 254, read with section 36(1)(vii), of the Income-tax Act, 1961 – Appellate Tribunal - Powers of - Power to recall - Assessee had written off an advance of Rs. 65lakhs as bad debts on ground that despite filing a suit sum was not recoverable – Issue had reached up to Tribunal - Tribunal by an ex-parte order held against assessee - Subsequently, however, assessee applied for recall of such an order – Tribunal thereupon proceeded to decide appeal afresh - In such exercise Tribunal overruled objections of Assessing Officer and allowed claim of assessee by holding that loan written off had become bad debt which was allowable, since assessee was in business of banking or money lending

[2017] 85 [taxmann.com](#) 259 (Gujarat) PCIT v. Gujarat State Co-OP Bank Ltd.

Section 36(1)(vii) of the Income-tax Act, 1961 - Bad debts (Writing off of debt) Assessee was co-operative bank - It claimed deduction on account of bad debts written off which comprised of debt shown in statement of income and outside statement - Assessing Officer noted that assessee had not written off bad debts in books of account and a mere mention in audit report would not satisfy such requirement - He, accordingly, disallowed claim of bad debt - Tribunal held that debt had been written off in sense that account of debtor was squared up by crediting

debtor and debiting bad debt reserve account and, that, said accounting treatment did amount to actual write off of debt - Whether Tribunal was justified in its decision - Held, yes [Para 7] [In favour of assessee]

In view of the above Apex court decision and the Gujarat High Court decisions, no disallowance / adjustment should be made in this respect at this stage. No different view can be taken in respect of the same and therefore it cannot be said that the order of the AO is prejudicial in nature to the revenue. The decisions of both the Courts are binding. Not following the decisions of these courts will result into contempt of Court by the lower authorities. Claim u/s. 36(via) - Rs. 57,79,00,453/-

9.2. Ld. Counsel brought to our notice that as per clause (d) of Section 36(1) of the Act, the assessee being a non-banking financial company, an amount not exceeding 5% of the total income computed before making any deduction under this clause and Chapter VI-A of the Act. Thus, it would be evident that the amounts claimed as deduction u/s. 36(1)(viiia) in the Return of Income is not an actual basis but is 5% of the gross total income for that year. Thus the claim of deduction under Chapter VIA is just a prior entry which is reversed in the subsequent year and actual amount of bad debt is claimed, which is evident in the following table:

<i>Asst. Year</i>	<i>Amount claimed as deduction u/s. 36(1) (viiia) (in Rs.)</i>	<i>Amount added back in the return of income (in Rs.)</i>	<i>Amount of actual provision for bad debt disallowed (in Rs.)</i>
<i>2017-18 – original computation of income – copy attached wide Annexure-8 with acknowledgement</i>	<i>57,81,71,229</i>	<i>0</i>	<i>1,14,77,71,839</i>
<i>2017-18 – revised computation of income – copy attached wide Annexure-4 with acknowledgement</i>	<i>57,79,00,453</i>	<i>0</i>	<i>1,14,77,71,839</i>

2018-19 – original computation of income – copy attached wide Annexure-9 with acknowledgement	85,01,51,889	57,81,71,229	1,35,41,72,567 (752685120 + 601487447)
2018-19 – revised computation of income – copy attached wide Annexure-10 with acknowledgement	85,12,58,444	57,81,71,229	1,35,41,72,567 (752685120 + 601487447)

From the above table it is evident that the assessee has during the year under consideration disallowed more than in A. Y. 2018-19 than the amount claimed u/s. 36(via) in A. Y. 2017-18 vide its revised return.

9.3. The Ld. Counsel further submitted that during the year under consideration the assessee has actually made provision for bad debt of Rs. 1,14,77,71,839/- which consists of Rs. 75.73 crores and Rs. 39.05 crores. The same is evident from the extracts of audited annual accounts under:

<i>Particulars</i>	<i>March 31, 2017</i>
<i>Provisions recognised for non performing assets (Refer Note 44A)</i>	<i>75.73</i>
<i>Write offs (net of recovery * 75.28 crore (previous year 51.74 crore))</i>	<i>224.81</i>
<i>Provision for dimunition of investment</i>	<i>-</i>
<i>Contingent provision against standard assets</i>	<i>39.05</i>
<i>Total</i>	<i>339.59</i>

10. We have considered the submissions made above and the case laws relied by the Ld. Counsel, it is seen clearly that the assessee company has duly written off bad debt in books of accounts and simultaneously reduced such amount from debt receivable in balance sheet. Copy of Audited Financial statements which includes details of bad debt written off has been compiled in the paper book placed before us. Further the Ld. Counsel has also

highlighted the fact that this practise has been followed by the assessee on a consistent basis and also accepted by the Ld. AO while passing scrutiny assessment order for the earlier assessment years. This fact is also pointed out to the Ld. PCIT by the assessee in its reply to the notice issued u/s 263 of the Act. However for the sake of completeness we observe that the assessee's company reverses the provision created u/s 36(1)(vii) in the immediately next year and claims actual bad debt incurred for the year under consideration only (as extracted in Para 9.2 of this order). Further, details of bad debt written off for the year under consideration of Rs 224.81 lacs, which shows list of customer name, amount written off, PAN, Address and subsequently recovered was also given before the PCIT. It was also explained that Net off bad debt written off, which means Bad debt incurred for the Assessment Year 2017-18, less the amount recovered from the customer has been written off by the assessee. Though, all such details were produced before the Ld. PCIT, he has without giving any finding on how the assessment order passed by Ld. AO is erroneous or pointing out any defect in the claim made by assessee u/s 36(1)(vii) and 36(1)(vii), directly set aside the assessment order passed by the Ld. AO, which is beyond the scope of powers conferred u/s 263 of the Act.

10.1. Thus the very same issue what was considered by the Ld. A.O. in the assessment proceedings is revised by the Ld. PCIT on the ground that the Ld. A.O. has verified the claim properly. In our considered view, the Ld. PCIT partially looking into the assessment record initiated the Revision proceedings which is factually not

correct. The Ld. PCIT failed to consider the reply to the notice issued u/s. 143(2) dated 21.11.2019 filed by the assessee already reproduced in Paragraph 6 of this order. Thus both the ingredients i.e order must be erroneous in nature; and the error must be such that it is prejudicial to the interest of Revenue are present in a given case, it is not legally permissible for a Commissioner to initiate suo motu proceeding under section 263 of the Act, the same has been upheld by Hon'ble Supreme Court in case of Malabar Industrial Co. Ltd.-Vs-CIT 243 ITR 83. However, an assessment cannot be revised if there is no jurisdictional error in the order or if it has been passed after due application of mind or in case where PCIT has a view different from that taken by A.O. Therefore we have no hesitation in quashing the Revision order passed by the Ld. PCIT.

11. Our above view is supported by the following judicial precedents:

(a) **Supreme Court of India in case of CIT Vs. Nirav Modi [2017] 77 taxmann.com 78 (SC)** wherein it was held as under.

Section 68, read with section 263, of the Income-tax Act, 1961 - Cash credit (Gift) - Assessment years 2007-08 and 2008-09- Assessee received certain amount as gifts from his father and sister who were non-residents in India Assessing Officer after making detailed enquiries, took a view that assessee had duly proved identity, source and creditworthiness of donors Commissioner, however, passed a revisional order under section 263 directing Assessing Officer to enquire into capacity of donors and to decide about genuineness of gifts afresh It was noted that Commissioner in his order of - revision, did not indicate any doubt in respect of genuineness of evidence produced by assessee Moreover, satisfaction of Assessing Officer on basis of documents produced was not shown to be erroneous High Court by impugned order held that it was a case where a view had been taken by Assessing Officer after making proper enquiry and, thus, Tribunal was justified in setting aside impugned revisional order Whether Special Leave Petition filed against impugned order was to be dismissed. Held, yes [Para 2] [In favour of assessee]

(b) Commissioner of Income-tax Vis Arvind Jewellers [2002] 124 Taxman 615 (Gujarat)

Section 263 of the Income-tax Act, 1961 Revision Of orders prejudicial to interests of revenue Assessment year 1981-82 - Whether provisions of section 263 cannot be invoked to correct each and every type of mistake or error committed by Assessing Officer and it is only when an order is erroneous that section will be attracted and incorrect assumption of facts or an incorrect application of law will satisfy requirement of order being erroneous Held, yes In pursuance of notices issued under sections 142(1) and 143(2), assessee produced relevant material and offered explanation ITO had raised all possible enquiries in view of a search conducted under section 132 After considering those materials and explanation, ITO came to a definite conclusion and made certain additions - However, Commissioner did not agree with conclusion reached by ITO on ground that on material already brought on record, better assessment could have been framed than that framed by ITO and invoked section 263 Whether since material was there on record and said material was considered by ITO and a particular view was taken, mere fact that different view could be taken, should not have been basis for an action under section 263 Held, yes - Whether Commissioner was unjustified in arriving at a conclusion that order passed by ITO was erroneous and prejudicial to interest of revenue - Held, yes

(c) Spectra Shares & Scrips (P.) Ltd. V/s Commissioner of Income-tax III, Hyderabad [2013] 36 taxmann.com 348 (Andhra Pradesh)

Section 263 of the Income-tax Act, 1961 Revision Of order prejudicial to interest of revenue [Scope of] Assessment year 2006-07 Whether Assessing Officer in assessment order is not required to give detailed reasons and once it is clear that there was application of mind by an enquiry, Commissioner, merely because he entertains a different opinion in matter, cannot invoke his powers under section 263 Held, yes [Para 59] [In favour of assessee]

(d) Decision of Gujarat High Court in case of Aryan arcade Ltd. Vs. CIT [2017] 84 taxmann.com 293 wherein it was held as under:

Section 24, read with section 263, of the Income-tax Act, 1961 Income from house property - Deductions (Interest) - Assessment year 2011-12 Assessee-company was engaged in renting of property During relevant period assessee raised funds by issuing debentures - Funds raised through such debentures were utilised for repayment of past loans taken for purpose of construction of building Assessee pointed out this aspect to Assessing Officer during original assessment Through accounts assessee could establish precise correlation between debentures and repayment of past loans Assessing Officer after examining issue accepted assessee's claim for deduction under section 24(b) even with respect to interest paid on debentures which were utilised for repayment of past loans used for purpose of construction of building Further, CBDT in its circular dated 20-8-1969 had clarified position that if second borrowing had really been used

merely to repay original loan and this fact was proved to satisfaction of Income-tax Officer, interest paid on second loan would also be allowed as a deduction Whether view of Assessing Officer being plausible, it was not open for Commissioner to take such order in revision Held, yes [Para 16] [In favour of assessee]

(e) Decision of **Gujarat High court in case of CIT Vs. Mehsana District Co-Operative Milk Producers Union Ltd. 263 ITR 645** whereby court has held as under:

The provisions of section 263(1) of the Income-tax Act, 1961, cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, and it is only when the order is erroneous that the section will be attracted. The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. When two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law.

The powers of the Commissioner under sub-section (1) of section 263 extend to such matters as have not been considered and decided in appeal. The revisional powers under section 263 do not extend to matters on which the appellate authority has bestowed consideration and given a decision....”

(f) **Commissioner of Income-tax-III V/s R.K. Construction Co [2008] 175 Taxman 165 (Gujarat)**

Section 263 of the Income-tax Act, 1961 - Revision Of orders prejudicial to interest of revenue - Whether where Assessing Officer has taken a particular view on basis of evidence produced before him, it is open for Commissioner, in revisional proceedings under section 263, to take a different view on same material Held, no Whether on facts stated under heading 'Business disallowance - Excessive or unreasonable payments' when Assessing Officer had duly verified all details from books and records, and had made no addition in regular assessment, Commissioner was justified in invoking revisional jurisdiction under section 263 - Held, no]

12. We have perused the findings of the above decision. Respectfully following the above ratio, it transpires that the Ld. PCIT ought to have proved that the order of the Assessing Officer is both erroneous as well as prejudicial to the interests of the revenue. Even lack of adequate inquiries by the Ld. AO should result fulfilment of these critical twin conditions. Since the

assessee has been following a consistent method and claim of deduction as and when it is actually written off in the annual accounts and the Ld. PCIT did not rebut the submissions made by the assessee. Further the claim of the assessee is also valid in light of the Judgment of the Apex court in the case of T.R.F. Ltd., (cited supra) we find merit in the submissions made by the Ld. Counsel of the assessee and set aside the order passed by the Ld. PCIT and restore the order passed by the Assessing Officer.

13. In the result, the appeal filed by the Assessee is hereby allowed.

Order pronounced in the open court on 24 -01-2024

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 24/01/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद