आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं /**ITA Nos.1796/Hyd/2017,241/Hyd/2018, 464/Hyd/2023 & 460 to 463/Hyd/2023)**
(निर्धारण वर्ष/Assessment Years("A.Ys."): 2008-09 to 2014-15)
&
(S.A. Nos.63,67,64 to 66/Hyd/2023)
(निर्धारण वर्ष/A.Ys: 2008-09, 2010-11, 2011-12, 2012-13 & 2014-15)

The Andhra Pradesh State Co-operative Bank Limited, Hyderabad. PAN: AAAAT2971J	**Vs.**	Asst. Commissioner of Income Tax, Circle 4(1), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri M.V.Anil Kumar, Advocate	
राजस्व द्वारा/Revenue by::	Ms. K. Haritha, CIT-DR	
सुनवाई की तारीख/Date of hearing:	27/06/2024	
घोषणा की तारीख/Pronouncement:	29/07/2024	

आदेश/ORDER

PER BENCH:

These appeals for A.Ys. 2008-09 to 2014-15 and stay applications for A.Ys. 2008-09, 2010-11, 2011-12, 2012-13 & 2014-15, filed by The Andhra Pradesh State Co-operative Bank Limited ("the assessee") are arising out of the orders of first appellate authority ("Ld. CIT(A)") passed by separate orders on

different dates. As the facts of the case in all these appeals/S.As. are similar, for the purpose of convenience, all these appeal/S.As. are heard and are being disposed off together.

2. First, we take up the appeal of the assessee in ITA No. 241/HYD/2018 for A.Y. 2009-10. The grounds of appeal raised by the assessee read as under:

" 1. Your Appellant submits that the Assessing Officer as well as the Commissioner of Income Tax (Appeals)-1 erred in not giving effect to the Hon'ble ITAT directions in ITA No. 1481/h/2013 & 88/H/2014 dated 9-10-2014.

2. Your Appellant submits that the Assessing Officer not given effect to the CIT(A) - III, order in ITA No. 0257/Addl.CIT,R-2/CIT(A)-III/2011-12, dated 16-08-2013 and the Hon'ble ITAT directions in ITA No. 1481/h/2013 & 88/H/2014 dated 9- 10-2014, consequentially the Consequential order dated 31-3-2016, is bad in law. 3. Your appellant submits that the amounts written off as debts have been confirmed by the predecessor's order, CIT(A)-III, and the amounts have been actually written off in the books as bad debts, the Assessing Officer as well as CIT(A)-I ought to have verified as per the ITAT directions, whether provisions of section 36(viia) r.w.s 36(2)(v) have been complied with effect from 1-4-2007 and allow the bad debts written off.

4. Your Appellant submits that the Assessing Officer having not filed an appeal against CIT(A)-III finding that the amount of Rs. 173,15,46,253/-, written off under the Agricultural Debt Waiver and Debt Relief Scheme, 2008 (ADWDRS) are debts written off, ignored the directions of the ITAT that provisions of section 37(viia) r.w.s 36(2)(v)A are applicable only from 1-4-2007, it is an undisputed fact that no provision for bad debts or provision as per section 36(1)(viia) was made in the books and allowed by the Assessing Officer in any of the earlier years, ought to have allowed the bad debts written off.

5. Your Appellant submits that the CIT(A)-1 ignored findings of the predecessor's finding and the directions ITAT travelled beyond the powers in giving direction to the Assessing Officer to verify the receipts from Government whether offered to tax on receipt or to tax the same.

6. Your appellant submits that Commissioner of Income Tax (A) erred in law and facts of the case in not allowing the entire bad debts written off in the books and in not following the decisions of the Hon'ble Supreme Court in the case of TRF Ltd Vs CIT 323 ITR 397 (SC) and Vijaya Bank Vs CIT 323 ITR 166 (SC) and A.P. High Court in the case of CIT vs Inventa Chemicals (2013).

7. The Commissioner of Income Tax (Appeals) ought to have appreciated the fact that the Assessing Officer while computing the income from business should not have included investment depreciation of Rs. 7,05,18,382/- and profit on sale of investments of Rs. 5,11,09,716/- and the same should be excluded from the taxable income as these do not form part of the taxable income.

For these and such other grounds that may urged at the time of hearing, your appellant prays that the relief claimed may be allowed."

3. The assessee also raised the following additional ground before us:

"1. Your Appellant submits that the provisions of section 36(1)(vii) are applicable to the facts of the case, as debts have been written off in the books of account.

2. Your Appellant submits that share of APCOB in the debts irrecoverable by PACS, followed by DCCBS, are debts written off and eligible for deduction under section 36(1)(vii) in absence of any provision under section 36(1)(viia) r.w.s 36(2)(v) of the Income Tax Act, 1961.

3. Your Appellant submits that provision of section 36(1)(vii) and 36(1)(viia) operate independently subject to the condition that any debts written off in books will be first setoff against any provision under section 36(1)(viia) made and allowed by the Assessing Officer in the earlier assessment years, otherwise the

entire amount written off ought to be allowed as deduction under section 36(1)(vii) of the Act."

4. Ld. AR submitted that additional ground so filed are admissible in view of judgment rendered by the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC). The prayer for admission of additional ground noted above which are not in memorandum of appeal are being admitted for adjudication in terms of Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963 owing to the fact that objections raised in additional ground are legal in nature for which relevant facts are stated to be emanating from the existing records.

5. Facts of the case, in brief are that, the assessee is a Scheduled State Cooperative Bank for the State of Andhra Pradesh. The assessee is committed to agricultural and rural development through the Cooperatives. The cooperative credit system in Andhra Pradesh with the assessee at its apex level is a federal system consisting of a family of 13 affiliated District Cooperative Central Banks (DCCBS), which in turn, have 386 Branches and 1959 Primary Agricultural Cooperative Societies (PACS) through which, developmental agricultural credit is provided. The assessee extends financial support to Apex Cooperative Federations like MARKFED, APCO, FEDCON etc. It has also provides direct finance to small and medium industries and agro-based units.

5.1 The assessee filed its return of income for the AY 2009-10 on 30.09.2009 admitting a total income of Rs. 62,19,22,600/- . Subsequently, assessee filed a revised return of income on 30.03.2011, declaring a net loss of Rs.18,04,47,434/-. The assessment was completed by the learned Assessing Officer (" Ld. AO") u/s.143(3) of the income tax Act, 1961(" the Act") on 30.12.2011 determining total income at Rs.2,78,46,98,694/-. Aggrieved by the order of Ld. AO, the assessee filed appeal before the Ld. CIT(A) and subsequently filed appeal before the Hon'ble ITAT. The Hon'ble ITAT vide order in ITA Nos1481/Hyd/2013 & 88/Hyd/2014 dated 09.10.2014 set aside certain issues in the assessment order to the Ld. AO. Accordingly, the Ld. AO passed a consequential order on 31.03.2016. Aggrieved by the order of Ld. AO dated 31.03.2016, the assessee filed appeal before the CIT(A) and again aggrieved by the order of Ld.CIT(A) dated 31/07/2017, the assessee is in appeal before us.

6. There are three issues involved as per the ground of appeal of the assessee. The First issue of the assessee relates to the disallowance made by the Ld. AO amounting to Rs.173,15,46,253/- on account of debts written off by the assessee. The brief facts with regard to this ground are that, the Ld. AO made disallowance of Rs.173,15,46,253/- on account of debts written off by the assessee as per his observation under para No.2 of his consequential order dated 31/03/2016, which is reproduced as under :

" 2. WRITE OFF OF AMOUNTS UNDER (ADWDRS} AMOUNT RS. 173,15,46,253/-

On this issue it was directed that the Assessing Officer shall satisfy himself about the fulfillment of the condition stipulated in Section 36(2) (v) by the assessee keeping in view that Section 36(1)(viia) is applicable in the case of the assessee only with effect from 01.04.2007 for deduction on account of Bad Debts under while considering the claim of the assessee ADWRDS.

During the course of assessment proceedings, the assesses Authorised Representative submitted as under:

"We (APCOB) have charged the amount of Rs. 173,15,46,253/- to their Profit and Loss account and credited the accounts of respective DCCB's. These amounts represent amounts advanced to DCCB's during normal course of business of banking and accrued interest. It is the practice of APCOB to recognize interest on advances on accrual basis and credit to the revenue account every year. The account with DCCB is a running account. Therefore the entire amount written off under waiver scheme is a portion of the amount recoverable from the DCCB. Therefore, it is purely a debt written off in the books.

APCOB also submits that they were charging interest from DCCB's by calculating on daily product basis at the rate mutually agreed upon. Therefore it is submitted that all amounts released to DCCB's including the farmer loans have been subjected to interest and the same have been recognized as income in the past. Therefore, the entire write off of the amounts under the debt relief scheme including the other interest and incidental charges if any squarely covered by the provision of section 36(vii) as bad debts.

It is submitted that provisions of section 36(1)(viia) are applicable to APCOB only from 01.04.2007. The Hon'ble Income Tax Appellate Tribunal, A-Bench, Hyderabad, vide their order dated 9/10/2014 in ITA no.148/Hyd/2013 and ITA No.88/Hyd/2014, on page 9, held:

Accordingly, the direction given by the learned CIT(A) is modified to the extent the Assessing Officer shall satisfy himself about the fulfilment of the condition stipulated in Sec.36(2)(v) by the assessee, keeping in view that Sec.36(1)(viia) is applicable in the case of the assessee only with effect from 1.04.2007 while considering claim of the assessee for deduction on account of bad debts under the Agricultural Debt Waiver and Debt Relief Scheme, 2008.

It is therefore submitted that what transpired prior to 01.04.2007 is not relevant and it is also a fact that never in the past any deduction on account of this was allowed by the Department/Assessing Officer".

It was also stated that "The present case the provision of section 36(1)(viia) are applicable from 01.04.2007 to APCOB and carlier to that date it was not required to make any provision under the said section. APCOB has never made any provision under the said section in the books of accounts till date. However as per the RBI IRAC norms had made provision in the books In the and had never been allowed under the Income Tax Act, 1961. computation for the Asst. Year 2007-08 and 2008-09 APCOB made an adjustment for the provision under section 36(viia) as the said section was applicable to it. For the Asst. Year 2007-08 this, was not allowed at all. As far as Asst. year 2008-09 is concerned the Assessing Officer allowed the provision of 7.5% of the gross total income only. APCOB, despite the fact that the provision for 2007-08 was in dispute had reduced this amount as well the provision for 2008-09 from the amounts written off and claimed the balance only under section 36(1)(vii), which has to be allowed as per the directions of the CIT(A), APCOB had no rural branches and therefore need not make any provisions on rural advances as per section 36(1)(viia) and to this extent the provision of the said section are not applicable to the facts of this case.

We submit that we have satisfied all the conditions related to allowance of bad debts under section 36(1)(vii) r.w.s. 36(2) of the Income Tax Act. We therefore

request that entire claim for bad debts written off of Rs.173,15,46,253/- be allowed U/s. 36(1)(vii) r.w.s. 36(2)(v) of the Income Tax Act".

The above argument of the assessee is not acceptable. As per the directions of the ITAT, the Assessing Officer has to satisfy himself about the fulfillment of the conditions stipulated in Section 36(1)(viia) and Section 36(2)(v). On the own admission of the assessee, APCOB has never made any provision under the said Section in the books of accounts till date. In the computation of the income for the A.YS.2007-08 & 2008-09 APCOB has made an adjustment for the provision U/s. 36(1)(viia).

Therefore, there is violation of provision of Section 36(1)(viia). The assessee cannot claim that the conditions stipulated U/s. 36(1)(viia) are fulfilled without creating any provision in the books of account. It cannot be said that the condition are fulfilled by reducing the amount in the computation of income statement without creating any provision in the books of account. This view is also supported by various judicial pronouncements. As per Section 36(2) (v) no deduction for Bad Debt or part thereof can be allowed where such debt or part of debt relates to advances made by an assessee to which clause-(viia) of sub-section (1) applies, no such deduction shall be allowed unless the assessee has debited the amount of such debt or part of debt in that previous year to the provision for bad and doubtful debts account made under that clause. In this case the assessee has neither created any such provision under section 36(1)(viia) nor debited the amount to that provision. Therefore, it cannot be said that the conditions stipulated U/s. 36(2)(v) have been fulfilled. In view of the above the assessee has violated the conditions stipulated under sections 36(1)(viia) and also 36(2)(v).

The argument of the assessee that the entire claim for Bad Debts return of is to be allowed U/s. 36(1)(vii). Is also not acceptable for the reason that as per the proviso to Sec.36(1)(vii).

"In the case of the assesse to which clause (viia) 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"

From the above it is evident that the deduction under Sub-clause-(vii) can be allowed only where the amount of such debt exceeds the credit balance in the provision made under Sub-clause (viia). This is not a case where the assessee has created provision under sub-clause- (viia) and the amounts written off was debited to that account and excess amount is claimed as deduction under Sub-clause (vii). The assessee has not created any provision under Sub-clause -(viia). In view of violation of the above provisions as discussed above the assessee is not entitled to claim deduction under Sub-clause (vii) without fulfilling the conditions stipulated under Sub-clause (viia) of clause (1) of Sec.36 and also Sec.36(2)(v).

From the above it is clear that the assessee was not able to satisfy that the conditions stipulated-under Sub-clause (viia) of clause (1) of Sec.36 and also Sec.36(2) (v), as directed by the Tribunal. Therefore, no deduction can be allowed with reference to the amounts written off under ADWDRS Scheme."

6.1 Feeling aggrieved by the order passed by Ld. AO, the assessee filed appeal before the Ld. CIT(A), who dismissed the claim of the assessee as per his observation under para No. 9 of his order, which is reproduced as under:

" 9. The submissions of the appellant have been carefully considered. The issue before me, is whether Rs.1,73,15,46,253/- written off under the Scheme of ADWDRS should be allowed u/s.36(2)(v) r.w.s.36(1)(viia). It is no doubt that under ADWDRS, the appellant's loans to marginal farmers were written off and the same was reimbursed by the

Government. The appellant submitted before me, that the reimbursement by the Government of India through NABARD, are as follows:

S.No.	Date	Remarks	Amount (In Rs.)
1	17.10.2008	1st Instalment	*4,30,20,89,938*
2	29.10.2008	2nd Instalment	88,000
3	03.11.2008	3rd Instalment	*2,35,44,75,000*
Total		A.Y.2009-10	6,65,66,52,938
4	19.06.2009	4th Instalment	*1,44,49,45,000*
5	29.06.2009	5th Instalment	*5,51,05,55,000*
6	07.10.2009	6th Instalment	*4,18,27,38,000*
7	22.01.2010	7th Instalment	*1,59,92,300*
8	26.02.2010	8th Instalment	27,79,000
Total		A.Y. 2010-11	11,15,70,09,300
Grand Total			17,81,36,62,238

Hence, for AY 2009-10, Amount received is Rs.6,65,66,52,938/- AY 2010-11, Amount received is Rs.11,15,70,09,300/-

As seen from the audited Annual Reports, Rs.1,73,15,46,253/- has been Idebited to P&L account under the head 'Operating expenses' in Schedule- 16A. The appellant has also submitted that out of Rs.306.81 crores loss borne by Cooperative Credit System, the APCOB share of loss was Rs.173.16 crores. Other DCCBS and PACS have the balance share of loss. Coming to the issue whether this loss is allowable or not, is the question. The Assessing Officer disallowed the claim of the appellant, firstly because no provision was made as per the RBI Guidelines and the directions of the NABARD. Adhoc disallowances cannot be made in the banking principles. Before me, the appellant has not submitted any clarification on this issue. Secondly, the appellant submitted that they had created a provision of Rs.8 crores towards bad and doubtful debts, as required by the RBI under IRAC Norms during the AY 2007-08. However, this was not allowed as per Income Tax purposes. Hence it was disallowed by the appellant in their computation of income for the AY 2007-08. However, the appellant could not prove whether this provision of Rs.8 crores includes the ADWDRS amount or not. Making of the provisions of NPAs (Non Performing Assets) is a regular accounting procedure for banking institutions. balance sheet, no reference has been made to show that in previous year, provision for write off of the loans relating to the ADWDRS (Agricultural Debt Waiver and Debt Relief Scheme 2008). That has not been confirmed by the appellant during the appeal proceedings. Thirdly, it is pertinent to note that during the relevant Assessment year, the appellant has received Rs.6,65,66,52,938/- (3 instalments mentioned above) reimbursement on this account from Government of India through NABARD under ADWDRS. Hence it is to be taken that out of the total of Rs.1,73,15,46,253/- share of loss, this amount of instalment during the year has been received. During this year, the appellant has not offered this amount as income.

It is pertinent to note that the Agricultural Debt Waiver and Debt Relief Scheme 2008 came into a picture when the Government envisaged to write off the loans to the farmers. The relief was supposed to given to the farmers who have taken loans from the banks to the accounts and most of the case, these loans have become bad and termed as Non Productive Assets (NPA). As per the Banks Accounting System, write off of NPAs are a regular exercise, however, write off are without foregoing the right to recovery. Further write off generally carried out against accumulated provisions made for such loans which go bad. recovered, the provisions made for those, flow back into profit & loss account of the Bank. The Government reimbursements are actually a sort of collection of recoveries. Hence, whatever received by the Bank under "Agricultural Debt Waiver and Debt Relief Scheme" has to flow into the Profit & Loss account. In this particular case, the appellant has received Rs.6,65,66,52,938/- for the AY 2009-10. Neither appellant has brought in this amount of subsidy/ reimbursement into the Profit and loss account nor has accounted the write off against this. The claim of the appellant that loans given to marginal farmers has become bad and were part of the scheme of ADWDRS, it does not qualifies as bad debts as per Income Tax purposes. As this are part of NPAs which has been recovered under the Scheme of ADWDRS. Hence, this cannot be termed as Irrecoverable Bad debts.

To conclude, the appellant has not made provision for the waiver of part of loans under the scheme of ADWDRS nor has brought into the reimbursement received from the Government of India through NABARD during the relevant Financial Year as Income. The basic business of the appellant is lending and banking. In this activity, loans were given to farmers. Some loans were constituted under ADWDRS and were received back. Hence, the question of bad debts does not arise in the cases of loans under ADWDRS.

9.2 The appellant also relied on the following decisions however they are no or little relevance to the present case:

a) M/s Catholic Syrian Bank Ltd Vs. CIT (2012) 18 taxmann.com 282 (SC)

In this case, the issue is whether the provisions of Section 36(1)(viia) and Section 36(1)(vii) independent items of deduction and operate in there are distinct and respective fields, which is not an issue in the present case. Hence, the above case law has no relevance to the present case.

b) CIT Vs. Bank of Rajasthan, [2002] 124 Taxman 781 (Raj.)

In this case, the issue is whether both the clauses i.e., Section 36(1)(vii) and (viia) are separate and distinct and independent and it is open for an assessee to claim benefit of provision which enables a larger benefit. This is not an issue here. Hence, the above case law has no relevance to the present case.

c) Vijaya Bank Vs. CIT [2010] 190 Taxman 257 (SC)

In this case, the issue is regarding whether closing the individual account of each of its debtors in its books required while claiming deduction u/s 36(1)(vii). This issue has no relevance to the present case.

d) TRF Ltd Vs. CIT [2010] 190 Taxman 391 (SC)

In this case, the issue was regarding whether after 01.04.1989, it is not necessary for assessee to establish that debt, in fact has become irrecoverable. In the present case, the write-off is under scheme of Agricultural Debt Waiver and Debt Relief Scheme, 2008. And not because of actual. This issue has no relevance to the present case.

In view of the above, since the assessee failed to fulfil the conditions required u/s 36(2)(v), to allow the deduction u/s 36(1)(viia), nor has given the complete picture of the reimbursement of these NPAS. I direct the Assessing Officer to verify the receipts from Government of India under the Scheme of Agricultural Debt Waiver and Debt Relief Scheme 2008 for the AY 2009-10 and AY 2010-11. In case, these amounts have been received and not offered to tax as Income, then the Assessing Officer may include the amounts as Income, if any as per Law. I uphold the addition and the stand taken by the Assessing Officer."

6.2 Feeling aggrieved with the order of Ld. CIT(A), the assessee is in appeal before us. The Ld.AR submitted that the assessee had not claimed any deduction on account of provision for bad and doubtful debt u/s 36(1)(viia) of the Act. Instead the assessee had write off the debt of Rs.173,15,46,253/- in its books of account and claimed the deduction u/s 36(1)(vii) of the Act. Further, the Ld. AR submits that Section 36(1)(vii) and 36(1)(viia) are independent provisions. The only connection between these two sections are that the same amount cannot be allowed as a deduction twice merely because they are overlapping to some extent.The deduction on account of doubtful debts are allowed to all the assessee under section 36(1)(vii) on the basis of actual write off in the books of accounts. However the deduction on account of doubtful

debts are allowed to banks on the basis of provision made under section 36(1)(viia), even if there is no actual write off have been made in the books of accounts. Section 36(2)(v) put a restriction for deduction u/s 36(1)(vii) up to the deduction already allowed under section 36(1)(viia) on the basis of provisions, so that there can not be allowance of double deduction i.e. on the basis of provision u/s 36(1)(viia) and other is on the basis of actual write off in the books of accounts. Hence, once deduction have been allowed under section 36(1)(viia), the deduction under section 36(1)(vii) will be allowed to the extent of the amount written off in the book in excess of the provision made and claimed under section 36(1)(viia), as per the stipulation under section 36(2)(v). In support of their argument the Ld. AR rely on the decision of the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd Vs CIT 343 ITR 270 and he brought our attention to para 16, 17 and 25 of the said order, which are extracted as under:

> *"16. Sections 36(1)(vii) and 36(1)(viia) provide for such deductions, which are to be permitted, in accordance with the language of these provisions. A bare reading of these provisions show that Sections 36(1)(vii) and 36(1)(viia) are separate items of deduction. These are independent provisions and, therefore, cannot be intermingled or read into each other. It is a settled canon of inter-orientation of fiscal statutes that they need to be construed strictly and on their plain reading.*
>
> *17. The provisions of Section 36(1)(vii) would come into play in the grant of deductions, subject to the limitation contained in Section 36(2) of the Act. Any*

bad debt or part thereof, which is written off as irrecoverable in the accounts of the assessee for the previous year is the deduction which the assessee would be entitled to get, provided he satisfies the requirements of Section 36(2) of the Act. Allowing of deduction of bad debts is controlled by the provisions of Section 36(2). The argument advanced on behalf of the Revenue is that it would amount to allowing a double deduction if the provisions of Sections 36(1)(vii) and 36(1)(viia) are permitted to operate independently. There is no doubt that a statute is normally not construed to provide for a double benefit unless it is specifically so stipulated or is clear from the scheme of the Act. As far as the question of double benefit is concerned, the Legislature in its wisdom introduced Section 36(2)(v) by the Finance Act, 1985 with effect from 01.04.1985. Section 36(2)(v) concerns itself as a check for claim of any double deduction and has to be read in conjunction with Section 36(1)(viia) of the Act. It requires the assessee to debit the amount of such debt or part thereof in the previous year to the provision made for that purpose.

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25. The language of Section 36(1)(vii) of the Act is unambiguous and does not admit of two interpretations. It applies to all banks, commercial or rural, scheduled or unscheduled. It gives a benefit to the assessee to claim a deduction on any bad debt or part thereof, which is written off as irrecoverable in the accounts of the assessee for the previous year. This benefit is subject only to Section 36(2) of the Act. It is obligatory upon the assessee to prove to the assessing officer that the case satisfies the ingredients of Section 36(1)(vii) on the one hand and that it satisfies the requirements stated in Section 36(2) of the Act on the other. The proviso to Section 36(1)(vii) does not, in absolute terms, control

the application of this provision as it comes into operation only when the case of the assessee is one which falls squarely under Section 36(1)(viia) of the Act. We may also notice that the explanation to Section 36(1)(vii), introduced by the Finance Act, 2001, has to be examined in conjunction with the principal section. The explanation specifically excluded any provision for bad and doubtful debts made in the account of the assessee from the ambit and scope of any bad debt, or part thereof, written off as irrecoverable in the accounts of the assessee. Thus, the concept of making a provision for bad and doubtful debts will fall outside the scope of Section 36(1)(vii) simplicitor. The proviso, as already noticed, will have to be read with the provisions of Section 36(1)(viia) of the Act. Once the bad debt is actually written off as irrecoverable and the requirements of Section 36(2) satisfied, then, it will not be permissible to deny such deduction on the apprehension of double deduction under the provisions of Section 36(1)(viia) and proviso to Section 36(1)(vii). This does not appear to be the intention of the framers of law. The scheduled and non-scheduled commercial banks would continue to get the full benefit of write off of the irrecoverable debts under Section 36(1)(vii) in addition to the benefit of deduction of bad and doubtful debts under Section 36(1)(viia). Mere provision for bad and doubtful debts may not be allowable, but in the case of a rural advance, the same, in terms of Section 36(1)(viia)(a), may be allowable without insisting on an actual write off."

Hence the Ld. AR also submitted that any how the deduction will be allowed up to the actual amount of debts written off in the books of the assessee.

6.3 With regards to the reimbursement received from government under Agricultural Debt Waiver and Debt Relief Scheme,2008 ("ADWDRS") the Ld. AR clarified that the amount of reimbursement received from government under ADWDRS had already been reduced before writing off the debt of

Rs.173,15,46,253/- in its books of account and claiming the deduction u/s 36(1)(vii) of the Act. Hence he prayed that the actual amount of debt written off by the assessee after reducing the amount received from government under ADWDRS should be allowed as deduction u/s 36(1)(vii) of the Act.

6.4 Per contra, the Ld. DR placed heavy reliance on the order of authorities below and requested to uphold the order of the revenue authorities. The Ld. DR opposed to the allowability of the additional ground raised by the assessee regarding applicability of section 36(1)(vii) to their case.

6.5 We have heard the rival contentions and gone through the records in the light of submissions made by the either side. For the purpose of better understanding of the case it is necessary to go through the relevant section i.e.36(1)(vii), 36(1)(viia) and 36(2)(v), which are to the following effect :

> *"**Other deductions.***
> ***36.** (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—*
> *(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 an assessee to which clause (viia) 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;]

[(viia) [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 [1][or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank], an amount [2][not exceeding seven and one-half per cent] of the total income (computed before making any deduction under this clause and Chapter VIA) and an amount not exceeding [3][ten] per cent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner :

*[**Provided** that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed in any of the relevant assessment years, deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf, for an amount not exceeding five per cent of the amount of such assets shown in the books of account of the bank on the last day of the previous year:]*

*[**Provided further** that for the relevant assessment years commencing on or after the 1st day of April, 2003 and ending before the 1st day of April, 2005, the provisions of the first proviso shall have effect as if for the words "five per cent", the words "ten per cent" had been substituted :]*

*[**Provided also** that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed a further deduction in excess of the limits specified in the foregoing provisions, for an amount not exceeding the income derived from redemption of securities in accordance with a scheme framed by the Central Government:*

***Provided also** that no deduction shall be allowed under the third proviso unless such income has been disclosed in the return of income under the head "Profits and gains of business or profession."]*

Explanation. For the purposes of this sub-clause, "relevant assessment years" means the five consecutive assessment years commencing on or after the 1st day of April, 2000 and ending before the 1st day of April, 2005;]

(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 VIA);]

[(c) a public financial institution or a State financial corporation or a State industrial investment corporation, an amount not exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VI-A) :]

*[**Provided** that a public financial institution or a State financial corporation or a State industrial investment corporation referred to in this sub-clause shall, at its option, be allowed in any of the two consecutive assessment years commencing on or after the 1st day of April, 2003 and ending before the 1st day of April, 2005, deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf, of an amount not exceeding ten per cent of the amount of such assets shown in the books of account of such institution or corporation, as the case may be, on the last day of the previous year.]*

Explanation.—For the purposes of this clause,—

[(i) "non-scheduled bank" means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949), which is not a scheduled bank;]

[(ia)] "rural branch" means a branch of a scheduled bank [13][or a non-scheduled bank] situated in a place which has a population of not more than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year;

[(ii) "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934)]

[(iii) "public financial institution" shall have the meaning assigned to it in section 4A of the Companies Act, 1956 (1 of 1956);

(iv) "State financial corporation" means a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporations Act, 1951 (63 of 1951);

(v) "State industrial investment corporation" means a Government company within the meaning of section 617 of the Companies Act, 1956 (1 of 1956), engaged in the business of providing long-term finance for industrial projects and [eligible for deduction under clause (viii) of this sub-section];]

[(vi) "co-operative bank", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank" shall have the meanings respectively assigned to them in the Explanation to sub-section (4) of section 80P;]

(2) In making any deduction for a bad debt or part thereof, the following provisions shall apply—

[(i) no such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee;]

(ii) if the amount ultimately recovered on any such debt or part of debt is less than the difference between the debt or part and the amount so deducted, the deficiency shall be deductible in the previous year in which the ultimate recovery is made;

(iii) any such debt or part of debt may be deducted if it has already been written off as irrecoverable in the accounts of an earlier previous year [(being a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year)], but the [42][Assessing] Officer had not allowed it to be deducted on the ground that it had not been established to have become a bad debt in that year;

(iv) where any such debt or part of debt is written off as irrecoverable in the accounts of the previous year [(being a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year)] and the [Assessing] Officer is satisfied that such debt or part became a bad debt in any earlier previous year not falling beyond a period of four previous years immediately preceding the previous year in which such debt or part is written off, the provisions of sub-section (6) of section 155 shall apply;

[(v) where such debt or part of debt relates to advances made by an assessee to which clause (viia) of sub-section (1) applies, no such deduction shall be allowed unless the assessee has debited the amount of such debt or part of debt in that previous year to the provision for bad and doubtful debts account made under that clause.]"

6.6 The tribunal in the earlier round of litigation had directed the lower authorities to examine whether the assessee was entitled to the benefit of section 36 (1) (viia) r.w.s. 36(2)(v) of the Act or not . The lower authority after examination had found that the assessee had not made any provision in the books of account for bad and doubtful debt and therefore the lower authorities have disallowed the claim of the assessee. We have reproduced the relevant provision of the Act, herein above and from the bare reading of the provisions of the Act it is abundantly clear that, for the purpose of invoking the provisions of section 36 (1) (viia), it is essential for the assessee bank to make a provision in the books of account for bad and doubtful debts. Admittedly the assessee has not made any provision for bad and doubtful debts in its books of account, therefore in our considered opinion the assessee is not entitled to benefits of section 36 (1) (viia) of the Act. In view of the above, the ground raised by the assessee is dismissed.

6.7 Now coming to the additional ground raised by the assessee before us. It is the contention of the Ld.AR before us that the assessee is entitled to raise the legal ground as per the provisions of the Act and also in the light of the judgement of the Hon'ble Supreme Court. The Ld.

DR had disputed the same and submitted that once the matter has been remanded back by the tribunal for examining the single issue, new ground cannot be agitated in the remand proceedings before the tribunal.

6.8 We have heard the rival contention of the parties and perused the material available on record. Admittedly as per the CBDT Circular No. 14 (XL-35) dated 11/04/1955, it is a duty of the Ld. AO to apprise the rights of the assessee . Further more the coordinate Bench of ITAT in the case of M/S. Omega Biotech Ltd., Ghaziabad vs Ito, ITA No.2570/Del./2015 dated 12/04/2019, had held that the assessee is entitled to take the legal ground even in the second round of litigation . Respectfully relying upon the judgement of the coordinate Bench of ITAT in the case of M/S. Omega Biotech Ltd., Ghaziabad vs Ito (Supra), the additional ground raised by the assessee is admitted. Having admitted the additional ground raised by the assessee, which is relating to entitlement of the assessee u/s 36(1)(vii) of the Act to claim deduction on account of the bad debts actually written off in their books of account, since this issue has been raised before us for the first time and has not been considered by the lower authorities, therefore we deem it appropriate to remand back the matter to the file of the Ld. AO with the direction to examine

afresh the issue in accordance with law after affording opportunity to the assessee. The assessee is also directed to prove that they have complied all the requirement of the law for claiming the deduction on account of the bad debts actually written off in their books of account

6.9 In the result, the first issue of the assesee is allowed for statistical purpose.

7. The Second issue of the assessee relates to addition of Rs.5,11,09,716/- towards profit on sale of investment. The brief facts with regard to this ground are that, the assessee had wrongly credited to the profit and loss account Rs. 5,11,09,716/- on account of profit on sale of investment and during the assessment proceedings the assessee filed the revised computation of income by deleting the said amount of Rs. 5,11,09,716/- . However the Ld. AO completed the assessment without giving effect to the revised computation as per his observation under para No.4 of his consequential order dated 31/03/2016, which is reproduced as under :

> *" 4. DISSALLOWANCE OF CLAIM OF Rs. 5,11,09,716/-, ON ACCOUNT OF PROFIT ON SALE OF INVESTMENTS:*
>
> *It is stated for the assessee APCOB while submitting the return of Income for A.Y.2009- 10, by mistake included Rs. 5,11,09,716/- as Profit on sale of Investments as business income, in the Statement of Total Income. In fact there was no income from sale of investments for APCOB during that year. We are*

enclosing Schedule no.14 to audited profit and loss account APCOBand for the F.Y ending on 31.03.2009 which shows income/loss from sale of investments as '0'. This fact was brought to the notice of earlier Assessing Officer through a letter dt. 07.12.2011 and a revised computation of total income. But the same was not considered by him while 827 completing the assessment. With regard the above it is to be stated that this issue was already considered in the consequential order dt.18.10.2013, wherein it was stated that the assessee could not produce any evidence as to how the amount of Rs. 5,11,09,716/- was arrived it. In absence of any supporting evidence the claim was rejected while passing consequential order.

As far as the current assessment is concerned, it is to be stated that there are no specific directions by the Tribunal on this issue. In the absence of any specific directions issued by the ITAT the same cannot be considered while completing the Set-aside assessment. In view of the above the claim of the assessee is rejected".

7.1 Feeling aggrieved by the order passed by Ld. AO, the assessee filed appeal before the Ld. CIT(A), who dismissed the claim of the assessee as per his observation under para no. 10 of his order, which is reproduced as under:

" 10. Ground No.7: Addition of Rs.5,11,09,716/- towards Profit on sale of investments

10.1 The assessee has claimed that they had debited Rs.5,11,09,716/- in the profit and loss account towards Profit on sale of investments. assessee submitted that while passing original assessment order, the Assessing Officer has not considered the re-revised computation of income in which the profit on sale of investments of Rs.5,11,09,716/- was excluded. The assessee has claimed that they had excluded Profit on sale of investments of Rs.5,11,09,716/- from the taxable income since the same does not part of the taxable income. The appellant raised this issue firstly before the CIT(A), Hyderabad. The appellant submitted that it relates to the calculation mistake made by the Assessing Officer in including investment depreciation reserve and capital receipt on sale of investments in the total income of the bank. The CIT(A), Hyderabad directed the Assessing Officer to verify the claim and to remove any amount of reserve which does not form part of the total income as per law. The Hon'ble ITAT restored the issue to the Assessing Officer directing him to decide the same afresh, in assessee's own case for the AY 2008-09.

10.2 During the consequential proceedings, the assessee company submitted that mistakenly while submitting the return of Income for A.Y.2009-10, Rs.5,11,09,716/- had included as Profit on sale of Investments as 'Income from Business'. But there was no

income from sale of investments for the assessee, during the relevant year under consideration. The assessee submitted before the Assessing Officer that the income/loss from sale of investments was shown in P&L account for the FY ending on 31.03.2009 AY 2009-10. The same was not considered in the original assessment order. The Assessing Officer stated that this issue was already considered in the consequential order dated 18.10.2013, wherein the assessing Officer has rejected the claim as the assessee failed to submit any supporting evidences as to how the amount of Rs.5,11,09,716/- was arrived at. Hence the Assessing Officer rejected the claim of the assessee with regard to the profit on sale of investments and added income Rs.5,11,09,716/- under Business Income.

10.3 Before me the appellant submitted that :

a) Rs.5,11,09,716/- was wrongly added in the revised return as profit on sale of investment which was not there in the original return filed, and that there were no sales of investments and no profit on sale of investments during the year.

b) For the AY 2009-10, the income from sale of investments was 'Nil' which was evidenced by Schedule 14 to Audited Financials of that year.

c) the income which is otherwise not taxable though wrongly admitted cannot be subjected to tax and can be rectified at any time before the assessment is completed and there is no need to file a revised return as held by the Hon'ble Supreme court in the case of M/S Gotez in 284 ITR 323.

d) The appellant relied on the following decisions:

- *CIT Vs. Metalman Auto (P) Ltd 336 ITR 434 (P&H)*
- *CIT Vs. Jai para Bolic Springs Ltd 306 ITR 42 (Del)*

e) The appellant submitted audited profit and loss account and revised computation of Income for the AY 2009-10.

10.4 The submissions of the appellant have been carefully considered. The Assessing Officer has categorically said in the Consequential order dated 31.03.2016 that this issue was brought before to the Assessing Officer through a letter dated 07.12.2011 and revised 'computation of total Income' was filed. While passing the consequential order dated 18.10.2013, the Assessing Officer stated that the assessee could not produce any evidence regarding the issue i.e., how Rs.5,11,09,716/- was arrived at. In absence of any supporting evidences, the claim of the appellant that there is a mistake in saying that there was nil income by sale of investments. During the consequential order dated 31.03.2016, the Assessing Officer said that the Tribunal has not given any direction, hence the claim of the appellant was rejected. In the appeal No. ITA: No.1481/Hyd/2013 & ITA No.88/Hyd/2014 dated 09.10.2014, this issue is In Ground No.8 raised by the appellant and the Tribunal give directions as follows:

"Accordingly, the issue involved in ground no.8 of the assessee's appeal is restored to the file of the Assessing Officer for deciding the same afresh, as per the same directions as given by the Tribunal in assessee's own case for assessment year 2008-09."

The Assessing officer has followed the findings of the earlier Assessing Officer and disallowed the claim. Before me, the issue is not whether there was a mistake in the

computation of income as submitted by the appellant. This income has already been taxed by the Assessing Officer and when opportunity was given to the appellant, after being set aside by the Hon'ble ITAT, the appellant did not submit any information during the two consequential order proceedings. That is to say, the appellant was given an opportunity and was not availed by the appellant. Before me, the appellant submitted that it was a mistake and it was brought before the Assessing Officer during the assessment proceedings. However, no. further clarification was given to the Assessing Officers during the various proceedings of different Assessing Officers. Before me, the appellant has submitted that this income does not form part of business income and so should not be included as Income of the appellant. As per the balance sheet, the total investment is Rs.1206,89,56,953/- during the year. The details of investments as per balance sheet as follows:

S.No.	Particulars	As on 31.03.2009 (Amount in Rs.)	As on 31.03.2008 (Amount in Rs.)	Increase / Decrease
a.	Government Securities	*9,61,95,49,039*	*6,84,30,73,071*	Increase Rs.277,64,75,968/-
b.	Trustee securities approved	*23,00,00,000*	3,00,22,00,000	Decrease Rs.7,02,00,000
c.	Tyrustee securities Non-approved	*2,18,60,60,000*	2,28,32,30,000	Decrease Rs.9,71,70,000/-
d.	Debentures and Bonds	0	1,55,00,000	Decrease Rs.1,55,00,000/-
e.	Investments in shares approved	21,25,000	21,25,000	--
f.	Investments in shares - non-approved	3,12,22,914	3,12,22,914	--
	Total	12,06,89,56,953	9,47,53,50,985	Increase Rs.259,36,05,968/-

As seen from the balance sheet given above, there has been a decrease in Securities approved and non-approved, besides debentures and bonds. These securities have been sold and gain has been calculated by the Appellant. Hence, there has been a sale of investments during the year. Total amount of decrease has been Rs.18,28,70,000/- and the profits have been Rs.5,1109,716/-. The appellant has only submitted that this is not his part of business income. Appellant has calculated depreciation on this and claimed under Profit and loss account. During the year, the appellant has claimed Rs.7,05,18,382/- as depreciation of the investments.

Appellant has not given notes on accounts while submitting the annual reports. As per the guidelines, the appellant is directed by. "NABARD by letter dated 27.06.2008, to submit the disclosure as per the following format:

Particulars	Outstanding during the year (Rs. In Crores)			As on March, 31
Securities sold under reports	Minimum	*Maximum*	*Daily Average*	
Securities purchased under reverse repo				

Appellant did not submit any such disclosure in the above format, as per the information submitted. Hence before me, no further information regarding the sale has been given. Even if, the contention of the appellant s accepted that no profits has been there, this has not been brought out as per the NABARD guidelines dated 27.06.2008. Hence, for this Financial ear the mistake happened in the annual accounts in which this has been pointed out by the NABARD's letter dated 27.06.2008. In this background, the contention of the appellant cannot be accepted.

-Ground Dismissed"

7.2 Feeling aggrieved with the order of Ld. CIT(A), the assessee is in appeal before us. The Ld.AR submitted that the assessee had wrongly credited to the profit and loss account Rs. 5,11,09,716/- on account of profit on sale of investment. However during the assessment proceedings the assessee filed the revised computation of income by deleting the said amount of Rs. 5,11,09,716/- and requested the Ld. AO to correct the mistake. But the Ld. AO completed the assessment without considering the request of the assessee and giving effect to the revised computation . Therefore the Ld. AR requested the bench to restore the issue to the file of the Ld. AO so that the assessee can produce all the necessary evidence/documents before the Ld. AO to justify their claim.

7.3 Per contra, the Ld. DR placed heavy reliance on the order of authorities below and requested to uphold the order of the revenue authorities.

7.4 We have heard the rival contentions and gone through the record in the light of submissions made by the either side. We have seen from the orders of the revenue authorities that the revenue authorities did not allowed the claim of the assessee due to the reason that the assessee did not produced necessary evidence/documents before them. However the Ld. AR brought our attention to page number 420 to 429 of their paper book consisting of the copy of computation, acknowledgement, revised computation, submissions etc. to justify their contention that sufficient prosecution where made before the Revenue Authority for their claim. . It is a fact that the assessee does not stand to gain by not producing such documents. Be that as it may, now that the assessee is ready to produce all such documentary evidence in support of his contentions and get the matter disposed of on merits. The highest that would happen by allowing an opportunity to the assessee is that a cause would be decided on merits. With this view of the matter, we are of the view that fresh opportunity should be given to the assessee and, accordingly, we set aside the impugned issue to the file of the Ld. AO for

deciding the issue afresh on merits after affording the opportunity of hearing to the assessee. Accordingly, the ground of the assessee is allowed for statistical purposes.

7.5 In the result, the Second issue of the assessee is allowed for statistical purposes.

8. The Third issue of the assessee relates to disallowance of Rs.7,05,18,382/- on account of depreciation claimed on investment. The brief facts with regard to this ground are that, the assessee had claimed Rs.7,05,18,382/- on account of depreciation on investment. However the Ld. AO completed the assessment by disallowing the said claim of the assessee for Rs.7,05,18,382/- on account of depreciation claimed on investment as per his observation under para no.3 of his consequential order dated 31/03/2016, which is reproduced as under :

> *" 3. DISALLOWANCE OF INVESTMENT DEPRECIATION OF RS. 7,05,18,382/- AND PROFIT ON SALE OF INVESTMENTS OF Rs. 5,11,09,716/-.*
>
> *On this issue it was stated that a similar issue was restored by the Tribunal to the file of the Assessing Officer in assessee's own case for the A.Y. 2008-09 for the deciding the same afresh. Accordingly the Tribunal directed the Assessing Officer to decide the same afresh as per the same directions as given by the Tribunal in assessee's own case for the A.Y. 2008-09. As seen from the order of the Tribunal the observations of the Tribunal on this issue are as under:*
>
> *"In our opinion, the above additional evidence go to the root of the matter in deciding the issue whether the investment made by the assessee form part of SLR and/or whether the investment is current investment or long term investment. Being so, it is appropriate to remit the issue back to the file of the AO for fresh consideration to decide the diminishing in the value of investment is to be allowed*

or not. Accordingly, we remit the entire issue back to the file of the AO for considering the issue do novo".

As seen from the P & L A/c the assessee debited an amount of Rs.7,05,18,382/- towards investment depreciation reserve fund. The assessee stated that the investments were the P&L A/c the assessee debited an amount of Rs. 7,05,18,382/8 valued on market to market basis as per guidelines of NABARD, and if the market value of the securities was below the book value, depreciation was provided for the same.

While completing the assessment for the A.Y. 2008-09 it was observed that the assessee has not categorized the securities into the HTM (Held To Maturity), AFS (Available for Sale) and HFT (Held For Trading) as directed by the RBI (Reserve Bank of India). It was stated that they are following the valuation of securities as per the guidelines of NABARD and claiming depreciation. It is seen from the script wise details of securities that all the securities are neither for held for trading nor available for sale. As such the investment made in the securities is to be treated as capital investments, and not as stock in trade. It is already decided by various judicial pronouncements mentioned in the assessment order for the A.Y.2008-09, that the guidelines issued by RBI or NABARD cannot over ride income tax provisions meant for computing the income of the assessee. In view of the above the depreciation claimed for the A.Y.2008-09 was disallowed. Aggrieved of the above the assessee preferred appeal before the CIT(A) and also further appeal before the ITAT. On the above the ITAT had Set-aside assessment for the A.Y. 2008-09 with a direction to examine the issue afresh. Subsequently, the Set-aside assessment for the A.Y. 2008-09 was completed on 30.03.2015. Wherein it was held that the assessee claimed of notional decrease in the value of investment cannot be accepted as expenditure incurred by the assessee. The assessee has been disclosing the investment under current category following the prudential norms prescribed by the NABARD. However, the guidelines for prudential norms cannot be overriding the Income Tax Act as envisaged in the Apex Courts judgment in the case of Southern Technologies Ltd. Vs. JCIT(320 ITR 577). The assessee, if required by the prudential norms can make a provision for diminished value as part of appropriation but it cannot equate the investment in bonds to the stock in trade for claiming the diminished value as expenditure. In view of the above the claim of depreciation was disallowed. On the above order for the A.Y.2008-09 the assessee preferred appeal before the CIT(A) and the same is pending.

In view of the above mentioned facts and also pending finalization of the appeal by the CIT(A), the deduction claimed for the A.Y.2009-10 amounting to Rs. 7,05,18,382/- is not treated as allowable".

8.1 Feeling aggrieved by the order passed by Ld. AO, the assessee filed appeal before the Ld. CIT(A) who dismissed the claim of the assessee as per his observation under para No. 11 of his order, which is reproduced as under:

" 11. Ground No.8: Disallowance of Rs.7,05,18,382/-

Investment Depreciation Reserve

11.1 The assessee has claimed that they had debited Rs.7,05,18,382/- in the profit and loss account towards Investments Depreciation Reserve Fund. The assessee submitted that while passing original assessment order, the Assessing Officer has not consider the re-revised computation of income in which the investment depreciation reserve of Rs.7,05,38,382/- was excluded. The assessee has raised this issue firstly before the CIT(A), Hyderabad. The CIT(A), Hyderabad directed the Assessing Officer to verify the claim and to remove any amount of reserve which does not form part of the total income as per law. 09.10.2014 restored the issue to the Assessing Officer directing him to decide the same afresh, as per the directions given by the Tribunal in assessee's own case for the AY 2008-09. The Hon'ble ITAT, Hyderabad on this issue for the AY 2008-09 is held as under:

"In our opinion, the above additional evidence go to the root of the matter in deciding the issue whether the investment made by the assessee form part of SLR and/or whether the investment is current investment or long term investment. Being so, It is appropriate to remit the issue back to the file of the Assessing Officer for fresh consideration to decide the diminishing in the value of investment is to be allowed or not. Accordingly, we remit the entire issue back to the file of the Assessing Officer for considering the issue do novo".

11.2 During the consequential proceedings, the assessee submitted that the investments were valued on market to market basis as per guidelines of NABARD, and if the market value of the securities was below the book value, depreciation was provided for the same. The findings of the

Assessing Officer in the AY 2008-09, is as under :

- *The Assessing Officer also noticed that the assessee has not categorized the securities into the HTM (Held to Maturity), AFS (Available For Sale) and HFT(Held For Trading) as directed by the RBI (Reserve Bank of India).*
- *As per the submissions, the Assessee is following the valuation of securities as per the guidelines of NABARD and claiming depreciation.*

As seen from the script wise details of securities the securities are neither held for trading nor available for sale. As such the investment made in the securities is to be treated as capital investments, and not as stock in trade.

- *It was already decided by various judicial pronouncements mentioned in the assessment order for the A.Y.2008-09 that the guidelines issued by RBI or NABARD cannot over ride Income Tax provisions meant for computing the income of the assessee.*

In view of this, the depreciation claimed for the A.Y.2008-09 was disallowed.

- *For the assessment for the A.Y.2008-09 completed on 30.03.2015, wherein it was held that the assessee's claim of notional decrease in the value of investment cannot be accepted as expenditure incurred by the assessee.*
- *The assessee has been disclosing the investment under current category following the prudential norms prescribed by the NABARD. However, the guidelines for prudential norms cannot be overriding the Income Tax Act as envisaged in the Apex Courts judgment in the case of Southern Technologies Ltd. Vs. JCIT(320 ITR 577).*
- *The assessee, if required by the prudential norms can make a provision for diminished value as part of appropriation but it cannot equate the investment in bonds to the stock in trade for claiming the diminished value as expenditure.*
- *The claim of depreciation was disallowed by the Assessing Officer for the AY 2008-09.*

In view of the above, the Assessing officer disallowed the deduction claimed for the AY 2009-10 amounting to Rs.7,05,18,382/-.

11.3 Before me, the appellant submitted that the investments is in non-SLR securities were valued on market to market basis as per guidelines of NABARD, and if the market value of the securities was below the book value, depreciation was provided for the same. The appellant submitted that this is not issue relating to prudential disclosure but accounting of current investments at the time closure of every year. It is cardinal principle of accounting that current assets are to be valued at cost or market/realizable value, whichever is lower. All losses and expenses are to be recognised whereas any unrealised gains/Incomes should not be recognised. The appellant submitted that the NABARD has communicated the guidelines duly compiling the various circulars issued by the Reserve Bank of India from time to time for adherence by all the State Coop. Banks and the Dist. Coop. Central Banks. The appellant submitted that the guidelines issued by the NABARD from time to time are binding with them. The appellant submitted that the investments were valued as on 31.03.2009 as per Fixed Income Money market & Derivatives Association of India (FIMMDA) and if the market value of the securities was below the book value depreciation was provided for the same. Depreciation was made on the total investment as on 31.03.2009 as under:

Provision required on 31.03.2009 *Rs.37,11,55,325/-*

Outstanding Provision as on 31.03.2008 *Rs.30,06,36,943/-*

Depreciation made for the year ended on 31.03.2009 *Rs.7,05,18,382/-*

Hence, the depreciation was made for Rs.7,05,18,382/- for the FY 2008-09 in the books of accounts. The Appellant relied on the following decisions

a) Canara Bank Vs. JCIT (182 TTJ 203) (Bang.)

b) Uttaranchal High Court decision in the case of CIT Vs. Nainital Bank Ltd (309 ITR 335)

c) United Commercial Bank Vs. CIT (1999) 237 ITR 889/104 Taxmann 547 (SC)

d) Southern Technology Ltd Vs. JCIT (2010) 320 ITR 577/187 Taxman 346

11.4 The appellant submitted the following evidences, before me :

- Copies of guidelines of NABARD.

- Summary of investment in Non-SLR investments and

- Depreciation during the FY 2008-09, Statement of Reserve funds

for the years 2004-05 to 2008-09 and

- Valuation working and details of investments for 31.03.2005 to 31.03.2009.

- RBI letter dated 25.04.2005, NABARD Circular No.100/DOS- 15/2208 dated 27.06.2008, CBDT Circular No.599 dated 24.04.1991 and Circular No.665 dated 05.10.1993.

11.5 The submissions of the appellant have been carefully considered. The appellant submitted following:

SLR Investments

Sl. No.	Type of Security	Book Value	Face Value	Market Value
i)	Central and State Govt. Securities	961,95,49,039	957,19,66,000	986,92,24,060
ii)	Other Trustee Securities	23,00,00,000	23,00,00,000	24,94,53,250
iii)	Other Institutions (Debentures)	0	0	0
iv)	Total	984,95,49,039	980,19,66,000	10,11,86,77,310

NON-SLR iNVESTMENTS

Sl. No.	Issuer	Amount	Extent of Privat placement	Extent of below Investment grade securities already invested	Extent of unrated securities already invested	Extent of unlisted securities
1	PSU	218,60,60,000	218,60,60,000	-	-	22,90,60,000
2	FI (Shares)	3,3347,914	1,88,58,926	-	1,88,58,926	1,88,58,926
3	Total	221,94,07,914	220,49,18,926	-	1,88,58,926	24,79,18,926
4	Provision held towards depreciation	37,11,75,325	-	-	-	-
5	Net	184,82,32,589	-	--	-	-

Appellant has submitted that referred investments are Non-SLR Investments, hence they are to be given depreciation. The RBI issued a circular Master Circular on Investments by Primary (Urban) Co-operative Banks-2015/30UBD. BPD(PCB).MC.No.12/16.20.000/2014-15, wherein the banking institutions have to classify Investments for SLR and Non-SLR Investments. The entire investment portfolio of the banks (including SLR securities and non-SLR securities) should be classified under three categories viz., 'Held to Maturity', 'Available for Sale' and 'Held for Trading'. However, in the balance sheet, the investments will continue to be disclosed as per the existing six classifications viz., a) government securities, b) other approved securities, c) shares, d) debentures and bonds, e) subsidiaries/joint ventures and f) other (CP Mutual Fund Units, etc.). Banks should decide the category of the investment at the time of acquisition and the decision should be recorded on the investment proposals. Banks may shift investments to / from Held to maturity category with the approval of the Board of Directors once a year. Such shifting will normally be allowed at the beginning of the accounting year. No further shifting to/from this category will be allowed during the remaining part of that accounting year. Based on this, it was held that investments in Government securities which are classified as HTM cannot be considered as stock-in-trade and therefore, depreciation in value of such securities cannot be allowed. In the Apex court in the case of UCO Banks Vs. CIT reported in 240 ITR 355 has held that the value of the securities at cost or market value whichever is less should be accepted for income tax even if the banks in their books do not value on that basis. Therefore, it is an accepted proportionate that investments by banks to comply with SLR investments would constitute their stock in trade and depreciation in value of the same is an allowable deduction. However, in case of Non-SLR investments, the investments are treated as Stock-in- trade and no such depreciation should be allowed. Since the appellant has submitted before me, the depreciation calculated for Non-SLR investments, a provisions of Rs.37,11,75,325/- towards depreciation has been made as per the Notes on

Accounts, the appellant is not entitle for depreciation of Stock-in-trade, which is as follows:

CONSOLIDATED BREAK UP OF INVESTMENTS DEPRECITION POSITION FOR THE FY 2008-09 (In Rs.)					
Sl. No.	Particulars	Face Value	Book Value	Market Value	Depreciation
1	GOI Dated Securities	*4,86,89,00,000*	*4,87,22,20,767*	4,96,48,95,860	9,25,06,020
2	State Govt. Dated Securities	4,70,30,66,000	4,74,73,28,272	4,90,43,28,200	2,36,30,867
3	Trustee Securities	2,33,00,00,000	23,00,00,000	24,94,53,250	0
4	Bonus Non Approved Securities	2,18,60,60,000	2,18,60,60,000	1,95,10,20,704	23,84,75,500
5	Shares	1,80,90,000	2,18,60,60,000	1,95,10,20,704	23,84,75,500
	Total	11,99,89,16,000	12,06,89,56,953	12,08,85,56,040	37,11,75,325
PROVISION REQUIRED FOR THE F.Y. 2008-09 (AS ON 31.03.2009)					37,11,75,325
PROVISION ALREADY AVAILABLE IN THE RESERVE UPTO 30.03.2009					30,06,36,943
PROVISION MADE BY DEBITING P&L AS ON 31.03.2009					7,05,38,382
TOTAL PROVISION VAILABLE IN THE RESERVE AS ON 31.03.2009					37,11,75,325

To conclude the contention of the appellant is not accepted because of the following reasons:

a) The appellant has not differentiated investments of SLR investments into the three categories. It is not known whether the above mentioned investments (Non-SLR investments) are HTM or AFS.

b) Secondly, the working of the depreciation has not been given before me. It is pertinent to note that the working was asked by the Assessing Officer before passing the consequential orders also. Even during that time, the appellant did not submit the details.

c) The Non-SLR investments are not statutory requirement as per banking rules. The bank can make investments beyond the SLR requirements. However, referred issue is for Non-SLR investments. As the appellant has treated these investments as Stock-in-trade, the question of depreciation does not arise.

d) Thirdly, in the case of ACIT Vs. Vijaya Bank in ITA No.253/Bang/2007 Dt.24.01.2008, it is held that the securities held under the category of HTM as stock in trade, then such securities cannot be treated as Capital Asset.

e) Special Bench in Delhi in the case of New India Insurance Vs. ACIT (2007) 18 SOT 51, the Special bench held that the RBI guidelines in respect of NPAs are not binding in the computation of income under Income Tax Act. Income is to be assessed as per the Income Tax.

f) Madras High Court in the case of Tamil Nadu Power and Infrastructure Development Corporation Limited Vs. CIT in 286 ITR 491 held that the provisions

for NPAS debited to Profit and loss account is not allowable as directive of RBI may overwrite statutory provisions.

g) As per CBDT circular No.18/2015 dated 02.11.2015 and the fact that investments made in pursuant to SLR requirements of RBI shown as stock as trade in books of account, depreciation on account of fall in value of securities held by assessee-bank were to be allowed as deduction while computing business income of a banking company.

In light of the above, it is clear that the appellant has not differentiated the nature of the investments under Non-SLR. Hence it cannot be said that these investments are stock in trade / capital assets. In this juncture, I uphold the stand taken by the Assessing Officer, the depreciation claimed by the appellant on unspecified category of Non-SLR investments is not allowed" .

8.2 Feeling aggrieved with the order of Ld. CIT(A), the assessee is in appeal before us. The Ld.AR submitted that the assessee has been disclosing the investments in the annual accounts as per the RBI/NABARD circulars. He also submitted that the depreciation have been claimed on Non-SLR investments, which are classified as current assets (Stock in trade) and have been valued at cost or market value whichever is lower. Therefore, he prays for allowance of the depreciation on investment on account of valuation of current assets.

8.3 Per contra, the Ld. DR placed heavy reliance on the order of authorities below and requested to uphold the order of the revenue authorities. The Ld. DR also submitted that in this case the investments are not part of stock in trade of the assessee. The investments are assets; the depreciation on the said assets is governed by the Section 32

of the IT Act and in the prescribed tables of depreciation (schedules of the IT rules), the investments in securities by the assesse are not covered.

8.4 We have heard the rival contentions and gone through the record in the light of submissions made by the either side. As submitted by the Ld. AR the investment on which depreciation has been claimed by the assessee, have been treated as current assets by the assessee. However under the provisions of the Act, depreciation is allowed only on fixed assets and no depreciation is allowed on current assets. Hence we are of the concerned opinion that no depreciation will be allowable to the assessee on the investment treated as current assets. We here by make it clear that, neither we have decided the nature of the investment, whether it is current or otherwise, nor it was an issue before us to decide the nature of the investments. We have only decided on the issue whether the assessee is eligible to claim depreciation on the investments, which the assessee has shown as current assets. Accordingly, on this count, this issue of the assessee is dismissed .

8.5 However it is also the contention of the assessee that the investment are in the nature of non SLR and has been shown under the

current assets. He further contended that the investment are stock in trade for the bank and therefore as per the accepted accounting principle, the value of the investment which are stock in trade for the bank, are to be valued at lower of cost or market rate. CBDT vide circular no. 665 dated 03/10/2/1993 has clarified that the investment which has been classified as per the guidelines of RBI as Available For Sale(AFS) and Held For Trading (HFT) will be treated as stock in trade and can be valued at lower of cost or market rate. Therefore in our opinion, whether the claim of the assessee that the investment are stock in trade or not in lieu of the aforesaid circular of CBDT is required to be verified from the relevant documents and books of accounts of the assessee. Therefore we remand the matter back to the file of Ld. AO with a direction to verify, whether the investment falls under stock in trade or not in lieu of the CBDT circular no. 665 dated 03/10/2/1993. If the Ld. AO after verification found it to be stock in trade, then he is directed to value the same at lower of cost or market rate as per the accepted accounting principle. It is needless to mention here that the Ld. AO must give an opportunity of hearing to the assessee before deciding the issue. Accordingly on this count, this issue of the assessee is allowed for statistical purposes.

8.6 In the result, the third issue of the assessee is allowed for statistical purpose.

9. To sum up, the appeal of the assessee is allowed for statistical purpose.

ITA No.1796/Hyd/2017 for A.Y. 2008-09 :

10. The solitaire issue involved in this appeal is similar to the issue decided in ITA No.241/Hyd/2018 for A.Y. 2009-10 under para no. 8 to 8.6 above. Hence following the same view as decided in ITA No.241/Hyd/2018 for A.Y. 2009-10, we held that the appeal of the assessee is allowed for statistical purpose.

ITA No.464/Hyd/2023 for A.Y. 2010-11 :

11. In this appeal also 3 issues are involved and all the three issues involved in this appeal are similar to the issue decided in ITA No.241/Hyd/2018 for A.Y. 2009-10 above. Hence following the same view as decided in ITA No.241/Hyd/2018 for A.Y. 2009-10, we held that the appeal of the assessee is allowed for statistical purpose.

ITA No.460/Hyd/2023 for A.Y. 2011-12, ITA No.461/Hyd/2023 for A.Y. 2012-13,

ITA No.462/Hyd/2023 for A.Y. 2013-14 & ITA No. 463/Hyd/2023 for A.Y. 2014-15 :

12. The solitaire issue involved in all these appeals are similar to the issue decided in ITA No.214/Hyd/2018 for A.Y. 2009-10 under para Nos. 6 to 6.9 above. Hence following the same view as decided in ITA No.241/Hyd/2018 for A.Y. 2009-10, we held that the appeal of the assessee is allowed for statistical purposes.

S.A. Nos.63,67,64 to 66/Hyd/2023 for A.Ys. 2008-09, 2010-11, 2011-12, 2012-13 & 2014-15 :

13. Since all the appeals involved in these S.As. are decided, the S.As. filed by the assessee are dismissed as infructuous.

14. In the result, the S.As. filed by the assessee are dismissed.

Order pronounced in the open Court on 29th July, 2024.

Sd/-	Sd/-
(**LALIET KUMAR**)	(**MADHUSUDAN SAWDIA**)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Hyderabad.
Dated: 29.07.2024.

** Reddy gp*

Copy of the Order forwarded to :

1. The Andhra Pradesh State Co-operative Bank Ltd., C/o M. Anandam & Co., CAs, 7A, Surya Towers, S.D. Road, Secunderabad-500 003
2. The ACIT, Circle 5(1)/4(1), Hyderabad.
3. The CIT(A)-4, Hyderabad.
4. Pr.CIT-I, II, III & IV, Hyderabad.
5. DR, ITAT, Hyderabad.
6. Guard file.

BY ORDER,

//True Copy//