

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND**  
**SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.787 & 789/Chny/2024  
निर्धारण वर्ष/Assessment Years: 2016-17 & 2013-14

M/s.TN Mercantile Bank Ltd., 57 V.E.Road, Tuticorin Central Bus Stand, S.O. Thoothukudi, Tuticorin-628 002.	v.	The ACIT, Circle-1, Tirunelveli.
[PAN: AACT 5558 K]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri Arjunraj, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri A. Sasikumar, CIT
सुनवाईकीतारीख/Date of Hearing	:	19.06.2024
घोषणाकीतारीख /Date of Pronouncement	:	26.07.2024

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

These are appeals preferred by the assessee Bank against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "theLd.CIT(A)"), Delhi, both dated 12.02.2024 for the Assessment Years(hereinafter in short "AY") 2016-17 & 2013-14.

2. At the outset, the Ld.AR of the assessee brought to our notice that the only issue raised in these appeals are regarding the action of the NFAC sustaining the disallowance claimed u/s.36(1)(viiia) of the Income



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Tax Act, 1961 (hereinafter in short "the Act"); viz for AY 2013-14, the assessee is aggrieved with the action of the Ld.CIT(A) sustaining the disallowance claim of deduction u/s.36(1)(viia) of the Act to the extent of Rs.41,63,78,805/- as against the claim of deduction by the assessee to the tune of Rs.46,58,97,587/- ; and for AY 2016-17, the assessee is aggrieved with the action of the Ld.CIT(A) sustaining the disallowance claim of deduction u/s.36(1)(viia) of the Act to the extent of Rs.125,04,74,566/- as against the claim of deduction of the assessee to the tune of Rs.133,60,67,877/-. Since both the issues are similar/identical, therefore, the appeal for AY 2013-14 is taken as the lead case and the result of which will be followed for AY 2016-17.

**3.** At the outset, Ld.AR of the assessee pointed out that this issue is permeating from earlier years and subsequent years in assessee's own case and this Tribunal in the AY 2017-18 (in ITA No.542/Chny/2021) vide order dated 08.09.2023, was pleased to restore this issue back to the file of the AO for re-adjudication with certain observations which may be followed in this case also and drew our attention to the Tribunal's order found placed in Page Nos.199-207 of the Paper Book.

**4.** The brief facts are that the assessee made provision for bad and doubtful debts to the tune of Rs.46,58,97,857/- for AY 2013-14 in the P & L A/c, as per the provisions laid down in RBI norms. According to the



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assessee, the provision made for Rs.46,58,97,857/- represents the actual provision for bad and doubtful debts against the advances pertaining to non-performing assets as laid out as per guide lines/provisioning norms. The AO during scrutiny called for the details of working of deduction u/s.36(1)(viiia) of the Act; and pursuant to it, the assessee filed details regarding the deduction claimed to the tune of Rs.46,58,97,857/-; and the AO also asked the assessee to give bifurcation of provisions with respect of rural and non-rural branches for the said amount and the assessee gave the same; and thereafter, the AO noted that out of Rs.46,58,97,857/- provision for bad and doubtful debts for rural *advances* made by the rural branches in the accounts was only Rs.4,95,19,052/- and therefore, he computed the provision made for bad and doubtful debts for rural branches as under:

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

<b>Particulars</b>	<b>Amount</b>
10% of the Aggregate Rural advances made	108,90,39,400
7.5% of the Total Income	45,09,11,051
Total deduction as per 36(1)(viiia)	153,99,50,451
Provision in Books	46,58,97,857
Restricted to	46,58,97,857

Thus, under the facts and circumstances of the case, the assessee prays for deleting the disallowance made on account of the Provisions for bad and doubtful debts amounting to 46,58,97,857/-.



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**5.** Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) and brought to his notice that the AO erred in not looking into the provision of Rs.108,90,39,400/- shown in the computation of income which amount was equal to 10% of the rural advances made by the assessee. Further, according to the assessee, a sum of Rs.45,09,11,051/- represents 7.5% of the total income of the assessee. Thus, according to the assessee, as per the provisions of Sec.36(1)(viiia) of the Act, the assessee is eligible for lower of the provisions made i.e. Rs.153,99,50,451/- and Rs.46,58,97,857/-. Hence, assessee contended that it has rightly claimed Rs.46,58,97,857/- which claim was in consonance with the provisions of Sec.36(1)(viiia) of the Act and raised the following submissions before the Ld.CIT(A):

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

The assessing officer failed to appreciate the fact that the 10% of aggregate rural advances amounted to 153,99,50,451/- The amount of Rs.4,95,19,052/- as brought out in the Assessment order is not in any manner connected with computation as per the provisions of 36(1)(viiia) but is the provision made in accordance with the RBI norms in respect of the nonperforming assets in relation to rural advance. The said sum has no bearing with the amount claimed in the return of income. Thus the assessing officer erred in his understanding of how the provisions were made.

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



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

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

The action of the Assessing officer in treating the amount of Rs.4,63,23,070/- as a provision made for rural advances as per the provisions of income tax act u/s.36(1)(viiia) is factually incorrect since the said sum is the provision made on account NPA on account of the rural advances as per RBI Norms.

The understanding of the law by the AO declared in respect of the Supreme Court judgment in the case of M/s.Catholic Syrian Bank is accordingly tangential in nature and the issue for the consideration of the Supreme Court is entirely different from the facts of the present case.

In fact, the understanding of the decision of the Supreme Court/the law declared therein is consistently understood thereafter in the following decisions:

(a) DCIT vs ING Vysya Bank Ltd 42 Taxmann.com 303 Paras 34 to 40.

(b) State Bank of Hyderabad vs DCIT-63 Taxmann.com 322-Para 39.

**6.** However, the Ld.CIT(A) confirmed the action of the AO by citing the decision of this Tribunal for AY 2011-12, wherein, the Tribunal in ITA No.2297/Mds/2015 by order dated 20.07.2016 in-turn, relied on the decision of the Hon'ble Supreme Court in the case of M/s.Catholic Syrian Bank v. CIT and held that the assessee cannot claim deduction of provision for bad and doubtful debts of non-rural branches u/s.36(1)(viiia) of the Act. However, it is noted that this Tribunal in the decision for AY 2017-18 (supra) has restored the very same issue back to the file of the AO for re-adjudication by taking note of this Tribunal earlier order for AY



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2012-13. For taking a consistent view by the Revenue on this issue, we are inclined to set aside the impugned order of the Ld.CIT(A) and restore this issue back to the file of the for *de novo* assessment and the AO to consider the submissions made by the assessee and after hearing the assessee to pass speaking order.

**7.** For AY 2016-17, since the issue is identical, our aforesaid decision would apply *mutatis mutandis*, and therefore, we set aside the impugned order of the Ld.CIT(A) and restore the issue back to the file of the for *de novo* adjudication as noted (*supra*).

**8.** In the result, both appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on the 26<sup>th</sup> day of July, 2024, in Chennai.

**Sd/-**

(एस. आर. रघुनाथा)

**(S.R.RAGHUNATHA)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**

(एबी टी. वर्की)

**(ABY T. VARKEY)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 26<sup>th</sup> July, 2024.

**TLN, Sr.PS**

**आदेश की प्रतिलिपि अग्रेषित/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF