

**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND**

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No.318/RJT/2023

(Assessment Year: 2014-15)

(Hybrid Hearing)

Jivan Commercial Co-operative Bank Ltd, Vittalay, Dhebar Road, One way Sidi Vadi Street, Rajkot-360001	Vs.	The ACIT, Circle-2(1), Rajkot.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No.: AAAAJ0410C		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारित की ओर से/Appellant by : Shri D. M. Rindani, AR

राजस्व की ओर से/Respondent by : Shri Shramdeep Sinha, CIT-DR

सुनवाई की तारीख/ Date of Hearing : 11/06/2024

घोषणा की तारीख/Date of Pronouncement : 30/08/2024

आदेश/ORDER

PER DR. ARJUN LAL SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year 2014-15, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals-NFAC), vide order dated 18/07/2023, which in turn arises out of an assessment order passed by the Assessing Officer, under section 143(3) of the Income Tax Act, 1961 (in short, 'the Act'), dated 16/12/2016.

2. The grounds of appeal raised by the assessee are as follows:

“1. The learned Commissioner of Income-tax (Appeals), Income Tax Department NFAC, Delhi erred in upholding action of assessing officer in disallowing claim of deduction of Rs.20,38,284/- made by the Appellant u/s 36(1)(viia) of the Act in the return of income filed for the year.

2.The Ld. Commissioner of Income-Tax (Appeals), Income Tax Department NFAC, Delhi erred in holding that deduction u/s.36(1)(viia) was applicable to rural advances only, and that since the appellant had not rural branches, said deduction was not available to the Appellant.

3.The appellant craves leave to add, amend, alter and withdraw any ground of appeal anytime up to the hearing of this appeal.”

3. The facts necessary for disposal of the appeal, are stated in brief. The assessee before us, is a Co-operative bank and engaged in the business of banking. The assessee-bank claimed deduction, under section 36(1)(viia) of the Act, in respect of provision for bad and doubtful debts. During the assessment proceedings, the assessing officer asked the assessee, to explain, why deduction u/s 36(1)(viia) of the Act, should not be disallowed, as there are no rural branches and no rural advances.

4. During the assessment proceedings, the assessee submitted, its detailed reply, before the assessing officer, which is reproduced below:

“Assessee has claimed deduction of Rs.20,38,284 in respect of provision for bad and doubtful debt u/s 36(1)(viia) on the ground that the said section allows any co-operative bank other than a primary co-operative agricultural and rural development bank, a deduction of 7.5% of the total income after all adjustment but before deduction u/s 36(1)(viia) and Chapter VIA. However, the amount of deduction u/s 36(1)(viia) should not exceed 10% of the aggregate average advances of such bank. As assessee does not have any rural advances, this limit is not applicable on assessee, while calculating the amount of deduction u/s 36(1)(viia).

Plain text of section 36(1) viial is as follows.....

Please also note that during the year assessee had incurred bad debts of Rs. 50,44,149.48 which would otherwise have been allowable to assessee u/s 36(1)(vii) being actual bad debt written off during the year. As assessee has claimed

deduction of Rs. 20,38,284/- u/s 36(1)(viia), being 7.5% of total income, balance amount of Rs. 30,05,865.48 is claimed u/s 36(1)(vii) being the difference of actual bad debt incurred and deduction u/s 36 (1)(viia). Hence, effectively, there is no loss to the revenue on claiming the deduction u/s 36 (1) (viia).

6.3 Another angle to this issue is that, the Hon Supreme Court in the case of Catholic Syrian bank has held as under. The gist of which is given below

The Supreme Court had to consider whether a bank was eligible to claim a deduction for bad debts u/s 36(1)(vii) in respect of its (rural & urban) advances and also claim a provision for bad and doubtful debts u/s 36(1)(viia) in respect of its rural advances in view of the Proviso to section 36(1)(vii) which provides that only the excess over the credit balance in the provision for bad and doubtful debts account made u/s 36(1)(viia) can be claimed. The Special Bench of the Tribunal in DCIT vs. Catholic Syrian Bank 88 ITD 185 held that as section 36(1)(viia), was confined to rural advances, a claim for bad debts of urban advances was not subject to the limitation of the Proviso to section 36(1)(vii). However, the Full Bench of the Kerala High Court took a contrary view in CIT vs. South Indian Bank 233 CTR 214 (Ker) (FB) and held that a bank was entitled to claim deduction of bad debts u/s 36(1)(vii) only to extent it exceeded the provision allowed as deduction under section 36(1)(viia). On appeal to the Supreme Court, HELD reversing the Full Bench of the High Court:

As Per the Apex Court:

The clear legislative intent of s. 36(1)(vii) & 36(1)(viia) together with the circulars issued by the CBDT demonstrate that the deduction on account of provision for bad and doubtful debts u/s 36(1)(viia) is distinct and independent of s. 36(1)(vii) relating to allowance of bad debts. The legislative intent was to encourage rural advances and the making of provisions for bad debts in relation to such rural branches. The functioning of such banks is such that the rural branches were practically treated as a distinct business though ultimately these advances would form part of the books of accounts of the head office. An interpretation which serves the legislative object and intent is to be preferred rather than one which subverts the same. The deduction u/s 36(1)(vii) cannot be negated by reading into it the limitations of s. 36(1)(viia) as it would frustrate the object of granting such deductions. The Revenue's argument that this would lead to double deduction is not correct in view of the Proviso to s. 36(1)(vii) which provides that in respect of rural advances, the deduction on account of the actual write off of bad debts would be limited to excess of the amount written off over the amount of the provision which had already been allowed u/s 36(1) (viia) (Southern Technologies 320 ITR 577 (SC) & Vijaya Bank 323 ITR 166 (SC) referred)

(ii) U/s 119, the CBDT is entitled to issue Circulars to explain or tone down the rigours of law and to ensure fair enforcement of its provisions. These circulars have the force of law and are binding on the income tax authorities, though they cannot be enforced adversely against the assessee. Normally, these circulars cannot be ignored. A circular may not override or detract from the provisions of the Act but it can seek to mitigate the rigour of a particular provision for the benefit of the assessee in certain specified circumstances. So long as the circular is in force, it aids the uniform and proper administration and application of the provisions of the Act (UCO Bank vs. CIT 237 ITR 889 (SC) followed)

Per S. H. KAPADIA, CJI (concurring)

(iii) S. 36(1) (vii) & 36(1)(viia) are distinct and independent items of deduction and operate in their respective fields. Section 36(1)(vii) allows deduction for bad debts in respect of urban and rural debts. However, by virtue of the Proviso to s. 36(1)(vii), the deduction in respect of rural debts is limited to the extent of difference between the debt or part thereof written off in the previous year and the credit balance in the provision for bad and doubtful debts account made under section 36(1) (viia). The proviso prevents benefit of double deduction with reference to rural loans. This is in consonance with the CBDT's interpretation in the Circulars."

6.4 From the above it is clear that the deduction u/s 36(1)(viia) is allowable only for rural advances. Any loss arises out of urban loan and advances can be directly debited in the P/L account. Section 36(1)(viia) provides two fold deduction.

a) 7.5% of the total income before making any deduction under this section and Chapter VIA, and

b) 10% of the average aggregate rural advances

The legislature has a clear intention to boost rural banking by providing this deduction, in order to encourage banks to set up branches in rural areas, it is allowing them 7.5% deduction of total income. Further as an incentive, it is allowing them a deduction of 10% as given in (b) above for advances given by rural banks.

6.5 For further reference we would like to give the details of the history of the section 36(1)(viia)

a) For the first time in 1979 the finance ministry introduced the new clause 36(1)(viia) to promote rural advances by benefiting the banks to make provisions on their average rural advances. The relevant para of the speech of Shri Charan Singh deputy Prime Minister and Minister of Finance introducing the budget for the year 1979-80 is as follows

"in recent years, commercial banks, public sector banks, have been asked to reach out into the rural areas and to expand rural credit in order to promote rural banking and to assist the scheduled commercial banks in making adequate provisions from their current income to provide for risks in rural advances, I propose to amend the Income-tax Act to grant a deduction in respect of provisions made for bad and doubtful debts by scheduled commercial banks relating to advances made by their rural branches Such a deduction will however be limited to 1.5 per cent of the aggregate average advances made by the rural branches. This measure will result in a revenue loss of Rs. 12 crores during 1979-80 but it will be in a good cause."

b) CBDT CIRCULAR NO 258 DATED 14-06-1979

"Amendments to income-tax Act, Finance Act, 1979

In order to promote rural banking and assist the scheduled commercial banks in making adequate provisions from their current profits to provide for risks in relation to their rural advances, the Finance Act, 1979 has inserted a new clause (viiia) in sub-section (1) of section 36, to provide for a deduction

c) In 1985 the finance ministry introduced another concept for increase in social commitments of banks regarding provision made out of income for bad and doubtful debts i.e 10% of total income of 2 is of rural advance whichever is higher there is no mention that income should be of rural advance but we have to count taxable income before this clause.

d) CBDT CIRCULAR NO 421 DATED 12-06-1985

"Having regard to the increasing social commitments of banks, section 36(1)(viiia) been amended to provide that in respect of any provision for bad and doubtful debt made by a scheduled bank [not being a bank approved by the Central Government for the purposes of section 36(1)(viiia) or a bank incorporated by or under the laws of a country outside India) or a non-scheduled bank, an amount not exceeding ten per cent of the total income (computed before making any deduction under the proposed new provision) or two per cent of the aggregate average advances made by rural branches of such Banks whichever is higher, shall be allowed as a deduction to computing the taxable profits."

e) Then in 1986 the Finance Ministry separated this clause in two parts one of 2% of rural advances and the second of 10% of total taxable income before this clause.

f) Explanatory Notes on the provisions of the Income-tax (Amendment) Act, 1986, Circular No 464 Dated 18/7/1986.

"Modification is respect of deduction on provisions for bad and doubtful debts made by the banks. Under the existing provisions of clause (viiia) of sub-section (2) of section 36 of the Income-tax Act inserted by the Finance Act, 1979, provision for bad and doubtful debts made by a scheduled or a non-scheduled Indian bank is allowed as deduction within the prescribed limits. The limit prescribed is 10% of the total income or 2% of the aggregate average advances made by the rural branches of such banks, whichever is higher it had been represented to the Government that the foreign banks entitled to any deduction under this provision and to that extent, they were being discriminated against. Further, it was felt that the existing ceiling in this regard, i.e. 10% of the total income or 2% of the aggregate average advances made by the rural branches of Indian banks, whichever is higher, should be modified. Accordingly, by the Amending Act, the deduction presently available under clause (viiia) of subsection (1) of section 36 of the Income-tax Act has been split into two separate provisions. One of these limits the deduction to an amount not exceeding 2% of the aggregate average advance made by the rural branches of the banks concerned may be clarified that foreign banks do not have rural branches and hence this amendment will not be relevant in the case of the foreign banks. The other provisions secures that a further deduction shall be allowed in respect of the provision for bad and doubtful debts made by all banks, not the banks incorporated in India, limited to 5% of the total income computed before making any deduction under this clause and Chapter VIA. This will imply that scheduled or non-scheduled banks having rural branches would be allowed the deduction upto 2% of the aggregate average advances made by such branches and a further deduction up to 5% of their total income on respect of provision for bad and doubtful debts."

g) In 2002 this 5% limit was increased to 7.5% which is still continued.

h) Hon'ble Supreme Court of India in the case of Catholic Syrian Bank (July-2012) held that

"27 As per this proviso to clause (vii), the deduction on account of the actual write off of bad debts would be limited to excess of the amount written off over the amount of the provision which had already been allowed under clause (viiia). The proviso by and large protects the interests of the Revenue. In case of rural advances which are covered by clause (via), there would be no such double deduction. The proviso, in its terms, limits its application to the case of a bank to which clause (viiia) applies. Indisputably, clause (viiia) applies only to rural advances."

1) Observations and judgement by the Chief Justice of India Shri S. KAPADIA in the above Apex Court Judgement

2. Under Section 36(1)(vii) of the ITA 1961, the tax payer carrying on business is entitled to a deduction, in the computation of taxable profits, of the amount of any debt which is established to have become a bad debt during the previous year, subject to certain conditions. However, a mere provision for bad and doubtful debt(s) is not allowed as a deduction in the computation of taxable profits in order to promote rural banking and in order to assist the scheduled commercial banks in making adequate provisions from their current profits to provide for risks in relation to their rural advances, the Finance Act, inserted clause (viia) in sub-section (1) of Section 36 to provide for a deduction, in the computation of taxable profits of all scheduled commercial banks, in respect of provisions made by them for bad and doubtful debt(s) relating to advances made by their rural branches.

....A reading of the Circulars issued by CBDT indicates that normally a deduction for bad debt(s) can be allowed only if the debt is written off in the books as bad debt(s), No deduction is allowable in respect of a mere provision for bad and doubtful debt(s). But in the case of rural advances, a deduction would be allowed even in respect of a mere provision without insisting on an actual write off. However, this may result in double allowance in the sense that in respect of same rural advance the bank may get allowance on the basis of clause (viia) and also on the basis of actual write off under clause(vii). This situation is taken care of by the proviso to clause (vii) which limits the allowance on the basis of the actual write off to the excess, if any of the write off over the amount standing to the credit of the account created under clause (viia).....

.....The proviso limits its application to the case of a bank to which clause(viia) applies, clause (viia) applies only to rural advances. This has been explained by the Circulars saved by CBDT. Thus, the proviso indicates that it is limited in its application to bad debt(s) arising out of rural advances of a bank, it follows that if the amount of bad debt(s) actually written off in the accounts of the bank represents only debt(s) arising out of urban advances, the allowance thereof in the assessment is not affected controlled or limited in any way by the proviso to clause (vii).

j) From the above discussion it is clear that the provisions of sections 36(1)(vi) and 36(1)(via) of the Act are distinct and independent items of deduction and operate in their respective fields Bad debt written off relating to non- rural of urban advances are allowable in full and not restricted to the credit balance of provision for doubtful debits allowed as per section 36(1)(a) of the Act. Bad debts written off relating to rural advances allowable only in excess of the credit balance in the provision for doubtful debts as per section 36(1)(viia) of the Act. Which implies that the deduction under section 36(1)(viia) is specifically for banks having rural branches.

From the history of the section 36(1) (viiia) given above it is clear that since its inception the only intention behind is to promote rural banking. In the beginning only scheduled and non -scheduled bank are eligible for the deduction. As you have rightly, pointed out in the budget speech for 2006-07 the relevant portion which talks about the reason for removing the cooperatives from section 80P begins as

“...cooperative banks like any other banks are lending institutions and should pay tax on their profits...”

6.6 Therefore in the changed position after 1/4/2007 along-with scheduled and non scheduled banks, cooperative banks are also included for deduction u/s 36(1)(viiia). However this doesn't change the nature of deduction available under section 36(1)(viiia). From the beginning it was for rural advances and the status quo is still maintained.”

5. However, the assessing officer, rejected the contention of the assessee and the claim of the assessee of deduction u/s 36(i)(viiia) of the Act, of Rs.20,38,284/- towards provision for bad and doubtful debt was disallowed.

6. Aggrieved by the order of the assessing officer (AO), the assessee carried the matter in appeal, before Ld. CIT(A), who has confirmed the action of the AO. The Ld CIT(A) noticed that Assessing Officer held relying on the decision of Hon'ble Supreme Court in case of Catholic Syrian Bank Ltd. vs. CIT(A) (dated 17-02-2012 in Civil appeal No. 1147/2018) wherein it has been held that indisputably clause (viiia) (a) of section 36(1) of the Act applies only two rural advances and since there were no rural branches in case of the appellant the Assessing Officer disallowed the deduction of Rs.20,38,284/- claimed by the appellant u/s 36(1)(viiia) of the Act. During the appellate proceedings, the assessee submitted before Ld. CIT(A) that out of the two limbs of this provisions, that is –

(a) 7.5% of the total income before making any deduction under this section and chapter VIA and;

b) 10% of the average aggregate rural advances the appellant is eligible for deduction under the first limb. It has also been submitted that similar deduction was allowed in earlier years.

However, Id CIT(A) rejected the plea of the assessee and observed that appellant has not made any submission with respect to the applicability of the decision of Hon'ble Apex Court in case of Catholic Syrian Bank Ltd. (supra). Further, in income tax proceedings allowing any expense in earlier years cannot be a criterion for allowing that expense in the next year, as rest-judicata is not strictly applicable in income tax proceedings. Further, it has not been submitted by the appellant whether the previous decisions on this issue were arrived after due inquiry. In view of these facts Id CIT(A) confirmed the addition made by the assessing officer.

7. Aggrieved by the order of the Ld. CIT(A), the assessee is in further appeal before us.

8. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. Shri D. M. Rindani, Ld. Counsel for the assessee, pleaded that the assessee has claimed the deduction u/s 36(1)(viiia) of the Act for the assessment year 2014-15, and as per the provisions of the said section 36(1)(viiia) of the Act, the assessee, cooperative bank, is entitled to claim such deduction. The Ld. Counsel for the assessee, took us through the provisions of section 36(1)(viiia) of the Act, which is reproduced as under:

“Section 36. Other deductions

(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 68 –

.....
(viiia) *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 [or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank], an amount not exceeding eight and one-half per cent, of the total income (computed before making any deduction under this clause and Chapter VI-A) and an amount not exceeding ten per cent, of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner....”

9. The Ld. Counsel for the assessee stated that Finance Act, 2017, substituted rate of deduction for 7.50%, with effect from 1st April 2018, at 8.50%. In assessee`s case, under consideration, the assessment year involved is the assessment year 2014–15, therefore, the deduction available, to the assessee bank, is at the rate of 7.5% and 10% as per clause (viiia) of sub-section 1 of section 36 of the Act. We find that as per clause (viiia) of sub-section 1 of section 36 of the Act, the assessee can claim the deduction in respect of any provision for bad and doubtful debts made by a scheduled bank or a co-operative bank, an amount not exceeding eight and one-half per cent, of the total income computed before making any deduction under this clause and Chapter VI-A **and** an amount not exceeding ten per cent, of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner. The section uses the word **and (not or)** between “eight and half percent” and “ten percent”, therefore this deduction is available to the assessee, under consideration. Therefore, the Id Counsel stated that if the bank does not have rural advances or rural branches then the assessee-bank shall not claim the deduction of 10%, however deduction at the rate of “eight and half percent” or “seven and half percent”, whichever is applicable, as the case may be, to the assessee under consideration, can be claimed by the assessee,

and accordingly, the assessee has claimed the deduction, therefore, as per the statutory provisions of the Act, the deduction should be allowed to the assessee. For this, Ld. Counsel for the assessee, relied on the following judgments:

- (i) *Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. vs. CIT, [2012] 80CCH 0193 ISCC*
- (ii) *Co-ordinate Bench of ITAT, Surat in ITA No.590/Srt/2019 in the case Surat District Co-operative Bank Ltd. Vs. ACIT [2023] 152 taxmann.com 549 (Surat-Trib.)*
- (iii) *Co-ordinate Bench of ITAT, Pune in ITA No.167/Srt/2015 in the case Bhaggini Nivedita Sahakari Bank Ltd Vs. DCIT [2018]100 taxmann.com 375 (Pune)*
- (iv) *Hon'ble Bombay High Court in the case of Yes Bank Ltd. vs. ACIT [2024] 160 taxmann.com 329(Bombay).*
- (v) *Co-ordinate Bench of ITAT, Hyderabad in ITA No.450/Hyd/2015 in the case of State Bank of Hyderabad vs. DCIT [2015] 63 taxmann.com 322(Hyderabad-Trib.)*
- (vi) *Co-ordinate Bench of ITAT, Bangalore in ITA No.53/Bang/2013 in the case DCIT vs. ING Vysya Bank Ltd. [2014] 42 taxmann.com 303 (Bangalore-Trib.)*

10. On the other hand, Learned Commissioner of Income-tax- Departmental Representative (Ld. CIT-DR) for the Revenue, argued that first of all, the assessee has not claimed any deduction in the profit and loss account for the impugned amount of Rs.20,38,284/-. Hence, there is no question of allowing the deduction u/s 36(1)(viia) of the Act. The ld. DR further stated that there were no rural bank branches, in the assessee`s case under consideration, therefore deduction should not be allowed under section 36(1)(viia) of the Act. Besides, as per the provisions of section 36(1)(viia) of the Act, the assessee is not entitled to claim deduction, under section 36(1)(viia) of the

Act. To support his arguments, Ld. Sr. DR for the Revenue, relied on the following judgements.

- i. *Hon'ble Supreme Court in the case of ACIT Vs. Saurashtra Kutch Stock Exchange Ltd., [2008] 173 Taxman 322(SC)*
- ii. *Co-ordinate Bench of ITAT Cochin in the case of DCIT vs. Catholic Syrian Bank Ltd.*
- iii. *Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. Vs. CIT [2012]18 taxmann.com 282(SC)*

11. We have considered arguments of both sides and we find that the solitary issue in appeal by assessee is, whether the presence of both rural advances and non-rural advances by a bank, is a must in order to be eligible to claim deduction towards provision for bad and doubtful debts, under section 36(1) (viiia) of the Act. We note that section 36(1) (viiia) of the Act, lays down upper limit of the claim to be quantified as a percentage of **total income** of the bank and second limb, as a percentage of **average rural advances amount**. The first limb of the provision calculates the deduction as a percent of income while the second limb does so as a percent of amount of advances. The presence of the word '**and**' between the two limb, clearly means that both the amounts so arrived at, are to be aggregated, in order to quantify the claim for deduction. It also implies that if one limb is zero, in facts of a given case, the other limb can continue to apply due to the use of the 'and', its other limb too cannot become zero too, as in the assessee's case, the assessing officer (A.O.) has done and the CIT-A has confirmed. Therefore, ld Counsel contended that the reliance by lower authorities, on decision of Supreme Court, on ***Catholic Syrian Bank Ltd. vs CIT [2012] 343 ITR 270 (SC)*** is misplaced for the following reasons:

(i) The Court was primarily concerned with the scope and ambit of the proviso to section 36(1)(vii) of the Act and not with the computation of deduction u/s 36(1)(viia) of the Act.

(ii) The Court considered the import of provision for non-rural and rural advances for the limited purpose of interpreting section 36(1)(vii), proviso for applying and not for any other purpose.

(iii) The judgement cannot be read and applied conversely to mean that section 36(1)(viia), deduction, mandates existence of both rural and non-rural advances, such cannot be read into it; as this is not the 'ratio decidendi' of the judgement.

12. Based on the above facts, Id Counsel for the assessee, argued that if the provision of section 36(1)(viia) of the Act, is to be read, as read by the assessing officer and the Ld. CIT(A), then, in that situation, no bank would be eligible for deduction thereunder because not all banks would have rural advances. As per Supreme Court decisions in Catholic Syrian Bank Ltd (supra); the segregation is required, if so maintained and only to apply proviso to section 36(1)(vii) to obviate double deduction; not otherwise in all cases. Therefore, in assessee's case, the deduction should be allowed, even in absence of rural branches.

13. Therefore, we find that the deduction u/s 36(1)(viia) of the Act, cannot be denied on the ground that there were no rural bank branches; this position is contrary to law, as borne out from decisions directly on the issue, which have already been considered by the judgement of Hon'ble Supreme Court, which were relied upon by the assessing officer. During the course of hearing,

the ld D.R. for the revenue, argued that no provision in profit and loss account for the year was made and hence on this ground, the impugned deduction should not be allowed and hence the matter may be remitted back to the file of the assessing officer.

14. However, we find that the assessing officer, nowhere stated that no provision in profit and loss account was claimed by the assessee, in fact, the assessing officer held that assessee has claimed the deduction, u/s 36(1)(viiia) of the Act, even, ld. CIT held that assessee has claimed the deduction, u/s 36(1)(viiia) of the Act. At this juncture, the ld Counsel for the assessee, argued that the ground for the disallowance made by the assessing officer could not be changed at the stage of second appeal; the assessee is in appeal on subject-matter, as per memo of appeal; the scope of appeal before the Tribunal is limited to the subject-matter of appeal only; therefore, Ld. Sr. DR for the revenue, cannot set up an altogether new case as held by Special Bench in *Mahindra & Mahindra Ltd. vs DCIT, 122 TTJ 577 (SB) (2009)*). We also find that from the extract from bank's annual report for F.Y. 2013-14 which shows appropriation of Rs. 20,62,563.96 for bad debts (it is 7.5% of total income before the said claim); hence the argument of ld DR on this issue is hereby rejected.

15. On identical facts, the Co-ordinate Bench of ITAT Bangalore, in the case of *ING Vysya Bank Ltd, [2014] 42 taxmann.com 303 (Bangalore - Trib.)*, held that in order to allow assessee's claim under section 36(1)(viiia) of the Act, what has to be seen by Assessing Officer, is as to whether provision for bad and doubtful debts (PBDD) is created, irrespective of whether it is in respect of rural or non-rural advances by debiting profit and loss account and,

to extent of provision for bad and doubtful debts (PBDD) is so created, assessee is entitled to deduction subject to upper limit of deduction laid down in said section. The detailed findings of the Coordinate Bench are reproduced below:

"24. We have considered the rival submissions. To appreciate the contention put forth by the learned counsel for the Assessee, we need to look into the history of Sec.36(1)(viiia) as it exists in the present form.

Stage-I:

Sec.36(1)(viiia) was inserted by the Finance Act, 1979 w.e.f. 1st April, 1980 and at the time of its insertion, this clause read as under :

'(viiia) in respect of any provision for bad and doubtful debts made by a scheduled bank in relation to the advances made by its rural branches, an amount not exceeding one and a half per cent of the aggregate average advances made by such branches, computed in the prescribed manner. Explanation : For the purposes of this clause,—

- (i) "rural branch" means a branch of a 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" has the same meaning as in the Explanation at the end of cl. (b) of sub section (2) of section 11, but does not include a co-operative bank.'*

This clause, as explained in para 13 of the CBDT Circular No. 258, dt. 14th June, 1979, was inserted to promote rural banking and to assist the scheduled commercial banks in making adequate provisions in relation to their rural advances. The Circular reads thus:—

'Deduction in respect of provisions made for bad and doubtful debts relating to rural branches of scheduled commercial banks - Sec. 36(1)(viiia)

13.1 Under s. 36(1)(viiia) of the IT Act, a taxpayer carrying on business or profession is entitled to a deduction, in the computation of the taxable profits, of the amount of any debt which is established to have become bad during the previous year, subject to certain conditions. However, a mere provision for bad and doubtful debts is not allowed as a deduction in the computation of the taxable profits.

13.2 In order to promote rural banking and assist the scheduled commercial banks in making adequate provisions from their current profits to provide for

risks in relation to their rural advances, the Finance Act has inserted a new cl. (viia) in sub-s. (1) of s. 36 of the IT Act to provide for a deduction, the computation of the taxable profits of all scheduled commercial banks, in respect of provisions made by them for bad and doubtful debts relating to advances made by the rural branches. The deduction will be limited to 1-1/2 per cent of the aggregate average advances made by the rural branches computed in the manner to be prescribed by rules in the IT Rules, 1962. For this purpose, a "rural branch" means a branch of a scheduled bank situated in a place with a population not exceeding 10,000 according to the last preceding census of which the relevant figures have been published before the first day of the previous year. The expression "scheduled bank" has the same meaning as in the Explanation below s. 11(2)(b) of the IT Act but does not include a co-operative bank. The expression "scheduled bank" would, therefore, cover the State Bank of India constituted under the State Bank of India Act, 1955, any subsidiary bank of the State Bank of India as defined in the State Bank of India (Subsidiary Banks) Act, 1959, a nationalised bank as specified in s. 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or any other bank included in the Second Schedule to the Reserve Bank of India Act, 1934. It may be mentioned that all co-operative banks have been excluded from the purview of this provision in view of the position that under s. 80P(2)(a)(i) of the IT Act, the profits and gains of a co-operative society engaged in the business of banking or providing credit facilities to its members are completely exempt from income-tax.

13.3 It may be relevant to mention that the provisions of new cl. (viia) of s. 36(1) relating to the deduction on account of provisions for bad and doubtful debts is distinct and independent of the provisions of s. 36(1)(vii) relating to allowance of the bad debts. In other words, the scheduled commercial banks would continue to get the full benefit of the write off of the irrecoverable debts under s. 36(1)(vii) in addition to the benefit of deduction of the provision for bad and doubtful debts under s. 36(1)(viia). 13.4 This provision will take effect from 1st April, 1980 and will accordingly apply in relation to the asst. yr. 1980-81 and subsequent years.'

25. By section 10(a) of the Finance Act, 1982 in the opening portion of the word (scheduled bank" was substituted with the words "scheduled bank or a non-scheduled bank." Further in the Explanation to this clause, the existing cl. (i) was renumbered as cl. (ia) and the following clause was inserted as cl(i): 'Non-scheduled bank" means a banking company as defined in cl. (c) of section 5 of the Banking Regulation Act, 1945 (10 of 1949) which is not a scheduled bank'.

26. As explained in para 17 of the CBDT **Circular No. 346, dt. 30th June, 1982**, the object of the amendment was to extend the benefit of the deduction to advances by rural branches of non-scheduled commercial banks as well.

Stage-II

Deduction enhanced - Amendment by the Finance Act, 1985

27. For the portion beginning with the words "in respect of any provision" and ending with the words "in the prescribed manner", the following was substituted w.e.f. 1st April, 1985:

"in respect of any provision for bad and doubtful debts made by a scheduled bank [not being a bank approved by the Central Government for the purposes of cl. (viiiia) or a bank incorporated by or under the laws of a country outside India] or a non-scheduled bank, an amount not exceeding ten per cent of the total income (computed before making any deduction under this clause and Chapter VI-A) or an amount not exceeding two per cent of the aggregate average advances made by the rural branches of such banks, computed in the prescribed manner, whichever is higher."

28. Proviso to Sec.36(1)(vii) of the Act, was introduced by the Finance Act, 1985 and it reads thus:

"Provided that in the case of an assessee to which cl. (viiia) 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."

29. Simultaneously, Sec.36(2)(v) was introduced by the Finance Act, 1985 and it reads thus:

"Sec. 36(2) In making any deduction for a bad debt or part thereof, the following provisions shall apply —

(i) to (iv)

(v) where such debt or part of debt relates to advances made by an assessee to which cl. (viiia) of sub-s. (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."

30. As explained in para 17 of the CBDT **Circular No. 421, dt. 12th June, 1985**, the benefit of deduction under this clause was enhanced having regard to the increasing social commitments of banks.

"Deduction in respect of provisions made by banking companies for bad and doubtful debts

17.1 Sec. 36(1)(vii) of the IT Act provides for a deduction in the computation of taxable profits of the amount of any debt or part thereof which is established to

have become a bad debt in the previous year. This allowance is subject to the fulfilment of the conditions specified in sub-s. (2) of s. 36.

17.2 Sec. 36(1)(viia) of the IT Act provides for a deduction in respect of any provision for bad and doubtful debts made by a scheduled bank or a non-scheduled bank in relation to advances made by its rural branches, of any amount not exceeding 1½ per cent of the aggregate average advances made by such branches.

17.3 Having regard to the increasing social commitments of banks, s. 36(1)(viia) has been amended to provide that in respect of any provision for bad and doubtful debts made by a scheduled bank [not being a bank approved by the Central Government for the purposes of s. 36(1)(viiiia) or a bank incorporated by or under the laws of a country outside India] or a non-scheduled bank, an amount not exceeding ten per cent of the total income (computed before making any deduction under the proposed new provision) or two per cent of the aggregate average advances made by rural branches of such banks, whichever is higher, shall be allowed as a deduction in computing the taxable profits.

17.4 Sec. 36(1)(vii) of the Act has also been amended to provide that in the case of a bank to which s. 36(1)(viia) applies, the amount of bad and doubtful debts shall be debited to the provision for bad and doubtful debts account and that the deduction admissible under s. 36(1)(vii) 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.

17.5 Sec. 36(2) has been amended by insertion of a new cl. (v) to provide that where a debt or a part of a debt considered bad or doubtful relates to advances made by a bank to which s. 36(1)(viia) applies, no such deduction shall be allowed unless the bank has debited the amount of such debt or part of debt in that previous year to the provision for bad and doubtful debt account made under cl. (viia) of s. 36(1)."

Stage-III: 31.

The IT (Amendment) Act, 1986 substituted the present cl. (viia) for the one as substituted by the Finance Act, 1985. These provisions came into effect from 1.4.1987.

'SECTION 36 - OTHER DEDUCTIONS

The section reads as under:

Other deductions.- (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 —

(viia) in respect of any provision for bad and doubtful debts made by —

a scheduled bank not being a bank incorporated by or under the laws of a country outside India] or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, an amount not exceeding seven and one-half per cent of the total income (computed before making any deduction under this clause and Chapter VI-A) and an amount not exceeding 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 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. (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).

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 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, a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959, a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 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.'

32. The object of the substitution, as explained in para 5 of the CBDT Circular No. 464, dt. 18th July, 1986, was to give the separate deduction, viz., one in respect of rural advances and the other for provision for bad and doubtful debts in general and also to extend the benefit of deduction to all banks including foreign banks.

"Modification in respect of deduction on provision for bad and doubtful debts made by the banks.

5.1 Under the existing provisions of cl. (viiia) of sub-s. (1) of s. 36 of the IT Act inserted by the Finance Act, 1979, provisions for bad and doubtful debts made by a scheduled or a non-scheduled Indian bank is allowed as deduction within prescribed limits. The limit prescribed is 10% of the total income or 2% of the aggregate average advances made by the rural branches of such banks, whichever is higher. It had been represented to the Government that the foreign banks were not entitled to any deduction under this provision and to that extent they were being discriminated against. Further, it was felt that the existing ceiling in this regard i.e. 10% of the total income or 2% of the aggregate average advances made by the rural branches of Indian banks, whichever is higher, should be modified. Accordingly, by the Amending Act, the deduction presently available under cl. (viiia) of sub-s. (1) of s. 36 of the IT Act has been split into two separate provisions. One of these limits the deduction to an amount not exceeding 2% of the aggregate average advances made by rural branches of the banks concerned. It may be clarified that foreign banks do not have rural branches and hence this amendment will not be relevant in the case of the foreign banks. The other provision secures that a further deduction shall be allowed in respect of the provision for bad and doubtful debts made by all banks not just the banks incorporated in India, limited to 5% of the total income (computed before making any deduction under this clause and Chapter VI-A). This will imply that all scheduled or non-scheduled banks having rural branches would be allowed the deduction upto 2% of the aggregate average advances made by such branches and a further deduction upto 5% of their total income in respect of provision for bad and doubtful debts."

33. To complete the sequence of amendments, we may also make a reference to the Amendment to sec.36(1) (viiia) of the Act by the Finance Act, 2013. By the Finance Act, 2013, in section 36 of the Income-tax Act, in sub-section (1), with effect from the 1st day of April, 2014, in clause (vii), the Explanation was numbered as Explanation 1 thereof and after Explanation 1 as so numbered, the following Explanation was inserted, namely:—

"Explanation 2.—For the removal of doubts, it is hereby clarified that for the purposes of the proviso to clause (vii) of this sub-section and clause (v) of sub-section (2), the account referred to therein shall be only one account in respect of provision for bad and doubtful debts under clause (viiia) and such account shall relate to all types of advances, including advances made by rural branches;"

34. It can be seen from the history of Sec.36(1)(viiia) of the Act that at stage-I the deduction was allowed in respect of any provision for bad and doubtful debts made by a scheduled bank in relation to the advances made by its rural branches. At this stage the PBDD had to be linked to the advances made by Bank's rural branches. At stage-II of Sec.36(1)(viiia), the deduction while computing the taxable profits was allowed of an amount not exceeding ten per cent of the total income (computed

before making any deduction under the proposed new provision) or two per cent of the aggregate average advances made by rural branches of such banks, whichever is higher. At this stage also the PBDD had to be created and debited to the profit and loss account but it was not required to be done in relation to advances made by Bank's rural branches and can be in relation to any debt. PBDD need not be in relation to rural advances but can be in relation to any advances both rural and non-rural advances. The two percent AAA made by rural branches of such banks had to be computed and the PBDD made in books has to be in relation to rural advances. The other eligible sum which can be considered for deduction u/s.36(1)(viiia) of the Act viz., ten per cent of the total income (computed before making any deduction under the proposed new provision) does not require computation in relation to rural advances. Nevertheless the debit of PBDD to Profit and Loss account is necessary of the higher of the two sums to claim deduction u/s.36(1)(viiia) of the Act. If the concerned bank does not have rural branches then they could not claim the deduction. Therefore the deduction was confined only to banks that had rural branches.

35. At Stage-III of the provisions of Sec.36(1)(viiia) of the Act, the deduction allowed earlier was enhanced. The enhancement of the deduction was consequent to representation to the Government that the existing ceiling in this regard i.e. 10% of the total income or 2% of the aggregate average advances made by the rural branches of Indian banks, whichever is higher, should be modified. Accordingly, by the Amending Act, the deduction presently available under cl. (viiia) of sub-s. (1) of s. 36 of the IT Act has been split into two separate provisions. One of these limits the deduction to an amount not exceeding 2% (as it existed originally, now it is 10%) of the aggregate average advances made by rural branches of the banks concerned. This will imply that all scheduled or non-scheduled banks having rural branches would be allowed the deduction (a) upto 2% (now 10%) of the aggregate average advances made by such branches and (b) a further deduction upto 5% of their total income in respect of provision for bad and doubtful debts. The further deduction of 5% of total income was available to banks which did not have rural branches.

36. Therefore after 1.4.1987, scheduled or non-scheduled banks having rural branches were allowed deduction., (a) upto 2% (now 10%) of the aggregate average advances made by such branches and (b) Schedule or non-scheduled banks whether it had rural branches or not a deduction upto 5% of their total income in respect of provision for bad and doubtful debts. Even under the new provisions creating a PBDD in the books of accounts is necessary.

37. Though under Stage-II and Stage-III of the provisions of Sec.36(1)(viiia) of the Act, PBDD has to be created by debiting the profit and loss account of the sum claimed as deduction, the condition that the provision should be in respect of rural advances is not necessary. At stage-II of the provisions of Sec.36(1) (viiia) of the Act, this condition was done away with and it was only necessary to create PBDD in the books of accounts and debit to profit and loss account. The quantification of

the maximum deduction permissible u/s.36(1)(viiia) of the Act had to be done. Firstly it has to be ascertained as to what is 10% of the aggregate average advances made by rural branches, if the Bank has rural branches, otherwise that part of the deduction u/s.36(1)(viiia) of the Act will not be available to the bank. The second part of the deduction u/s.36(1)(viiia) has to be ascertained viz., 7.5% seven and one-half per cent of the total income (computed before making any deduction under this clause and Chapter VI-A). The above are the permissible upper limits of deductions u/s.36(1)(viiia) of the Act. The actual provision made in the books by the Assessee on account of PBDD (irrespective of whether it is rural or non-rural) has to be seen. To the extent PBDD is so created, then subject to the permissible upper limits referred to above, the deduction has to be allowed to the Assessee. The question of bifurcating the PBDD as one relating to rural advances and other advances (Non-rural advances) does not arise for consideration.

38. In the present case as far AY 03-04 is concerned, the Assessee debited in the Profit and Loss A/C. on account of PBDD in respect of rural and non-rural advances of Rs.88,30,47,000 (Rs.88,20,47,000 for non-rural advances and Rs.10,00,000 for rural advances). A sum of Rs.4,36,165 was actually written off out of the PBDD of rural advances. The Assessee wrote off a sum of Rs.88,26,10,825 as bad debts on account of non-rural advances and claimed the same as deduction u/s.36(1)(vii) of the Act. The said claim for deduction was allowed by the AO. The Assessee made a claim for deduction u/s.36(1)(viiia)(a) of the Act of Rs.23,80,55,247. This was rejected by the AO for the reason that the deduction u/s.36(1)(viiia) of the Act is allowed only to the extent PBDD in respect of rural advances is created in the books of accounts. As we have already explained above, this is not a relevant consideration. What has to be seen by the AO is as to whether PBDD is created (irrespective of whether it is in respect of rural or non-rural advances) by debiting the Profit & Loss A/C. To the extent PBDD is so created, the Assessee is entitled to deduction subject to the upper limit of deduction laid down in Sec.36(1)(viiia) of the Act. To avoid possible claim for double deduction in respect of one and the same debt first as PBDD and thereafter as Bad Debts, the legislature has already provided in Sec.36(2)(v) of the Act that where such debt or part of debt relates to advances made by an assessee to which cl. (viiia) of sub-s. (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. Further the proviso also limits the claim for deduction u/s.36(1)(vii) of the Act to an Assessee to which Sec.36(1)(viiia) of the Act applies to the amount by which such debt or part thereof (written off as Bad debts) exceeds the credit balance in the provision for bad and doubtful debts account made under clause(viiia) to Sec.36(1) of the Act. It would be just and fair if the order of CIT(A) is set aside and the AO directed to examine the claim of the Assessee in the light of the discussion made above. Similar order would be just and fair in AY 04-05 also. We hold and direct accordingly by allowing the relevant grounds raised by the Revenue for statistical purpose.

39. We may also clarify that the decision rendered by the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. (supra) has no relevance to the present case. The facts of the case before the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. (supra) was that the Assessee claimed deduction on account of bad debts written off in respect of non-rural branches u/s.36(1)(vii) of the Act. The AO noticed that there was already credit balance in the Provision for Bad and Doubtful Debts Account u/s.36(1)(viia)(a) of the Act, which was in excess of the claim of the assessee for deduction on account of bad debts. The AO after making reference to proviso to Sec.36(1)(vii) of the Act and also Sec.36(2)(v) of the Act was of the view that the Assessee could not be allowed the deduction claimed because (i) the amount claimed as deduction on account of bad debts was not the excess available in the credit of the Provision for Bad and Doubtful Debts Account created u/s.36(1)(viia)(a) of the Act and; (ii) that u/s.36(2)(v) of the Act the amount of bad debts written off should first be debited in the Provision for Bad and Doubtful Debts Account created u/s.36(1)(viia) (a) of the Act. The stand of the Assessee was that since the claim of deduction of Bad debts made by the Assessee was u/s.36(1)(vii) of the Act and pertained to bad debts of non-rural advances, the credit balance in the PBDD account should not be looked into at all. The Hon'ble Supreme Court held:

- (i) The provisions of Section 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.
- (ii) Clear legislative intent of the relevant provisions and unambiguous language of the circulars with reference to the amendments to s. 36 demonstrate that the deduction on account of provisions for bad and doubtful debts under s. 36(1)(viia) is distinct and independent of the provisions of s. 36(1) (vii) relating to allowance of the bad debts.
- (iii) The legislative intent was to encourage rural advances and the making of provisions for bad debts in relation to such rural branches. The language of s. 36(1)(vii) 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 s. 36(2). It is obligatory upon the assessee to prove to the AO that the case satisfies the ingredients of s. 36(1)(vii) on the one hand and that it satisfies the requirements stated in s. 36(2) on the other. The proviso to s. 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 s. 36(1)(viia). The Explanation to s. 36(1) (vii) 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 s. 36(1)(vii) simpliciter.

- (iv) *As per the proviso to cl. (vii) of s. 36(1), the deduction on account of the actual write off of bad debts would be limited to excess of the amount written off over the amount of the provision which had already been allowed under cl. (viiia). The proviso by and large protects the interests of the Revenue. In case of rural advances which are covered by cl. (viiia), there would be no such double deduction. The proviso, in its terms, limits its application to the case of a bank to which cl. (viiia) applies. Indisputably, cl. (viiia)(a) applies only to rural advances."*

40. *Thus, it can be seen that in the case of Catholic Syrian Bank Ltd. (supra), the case made out by the AO was that PBDD is one account and whenever claim for deduction is made u/s.36(1)(vii) the same should be debited to the PBDD account. Further the law laid down by the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. (supra) has to be understood in the context of its assumption that Banks would maintain separate PBDD A/C. in respect of rural branches and non-rural branches and therefore it is possible to discern PBDD as one in respect of rural branches and non-rural branches and therefore there is no basis for the assumption that Bank's would get double benefit of deduction by way of Provision for Bad and Doubtful Debts and also by way of Bad Debts written off. The following observations of the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. (supra) would be relevant in this regard.*

'30. The scope of the proviso to cl. (vii) of s. 36(1) has to be ascertained from a cumulative reading of the provisions of cls. (vii), (viiia) of s. 36(1) and cl. (v) of s. 36(2) and only shows that a double benefit in respect of the same debt is not given to a scheduled bank. A scheduled bank may have both urban and rural branches. It may give advances from both branches with separate provision accounts for each.

31. It was neither in dispute earlier, nor disputed before us, that the assessee bank is maintaining two separate accounts, one being a provision for bad and doubtful debts other than provisions for bad debts in rural branches and another provision account for bad debts in rural branches for which separate accounts are maintained. This fact is evinced by the entries in the P&L a/c, balance sheet and break up details. We need not deliberate this aspect with reference to records at any greater length as this is not a matter in issue before us. It was contended on behalf of the Revenue that the Revenue is only concerned with the assessee as a single unit and not with how many separate accounts are being maintained by the assessee and under what items. The Department, therefore, would assess an assessee with reference to a single account maintained in the head office of the concerned bank. This, according to the learned counsel appearing for the Department, would further substantiate the argument of the Department that the interpretation given by the Full Bench of the High Court is the correct interpretation of s. 36(1)(vii). This argument has to be rejected, being without merit.

32. *In the normal course of its business, an assessee bank is to maintain different accounts for the rural debts for non-rural/urban debts. It is obvious that the branches in the rural areas would primarily be dealing with rural debts while the urban branches would deal with commercial debts. Maintenance of such separate accounts would not only be a matter of mere convenience but would be the requirement of Accounting Standards.*

33. *It is contended, and rightly so, on behalf of the assessee bank that under law, it is obliged to maintain accounts which would correctly depict its statement of affairs. This obligation arises implicitly from the requirements of the Act and certainly under the mandate of Accounting Standards.*

34. *Inter alia, following are the reasons that would fully support the view that a bank should maintain the accounts with separate items for actual bad and irrecoverable debts as well as provision for such debts. It could, for valid reasons, have rural accounts more distinct from the urban, commercial accounts:*

(a) It is obligatory upon each bank to ensure that the accounts represent the correct statement of affairs of the bank.

(b) Maintaining the common account may result in overstating the profits or the profits will shoot up which would result in accruing of liabilities not due.

(c) Accounting Standard (AS) 29, issued in 2003, which concerns treatment of 'provisions, contingent liabilities and contingent assets'. Under the head 'Use of Provisions', cls. 53 and 54 state as under:

"53. A provision should be used only for expenditures for which the provision was originally recognised.

54. Only expenditures that relate to the original provision are adjusted against it. Adjusting expenditures against a provision that was originally recognised for another purpose would conceal the impact of two different events."

35. The above clauses justify maintenance of distinct and different accounts.

*36. Merely because the Department has some apprehension of the possibility of double benefit to the assessee, this would not by itself be a sufficient ground for accepting its interpretation. Furthermore, the provisions of a section have to be interpreted on their plain language and could not be interpreted on the basis of apprehension of the Department. This Court, in the case of *Vijaya Bank v. CIT & [2010] 231 CTR (SC) 209*, held that under the accounting practice, the accounts of the rural branches have to tally with the accounts of the head office. If the repaid amount in subsequent years is not credited to the P&L a/c of the head office, which is what*

ultimately matters, then there would be a mismatch between the rural branch accounts and the head office accounts. Therefore, in order to prevent such mismatch and to be in conformity with the accounting practice, the banks should maintain separate accounts. Of course, all accounts would ultimately get merged into the account of the head office, which will ultimately reflect one account (balance sheet), though containing different items.

37. Another example that would support this view is that, a bank can write off a loan against the account of 'A' alone where it has advanced the loan to party 'A'. It cannot write off such loan against the account of 'B'. Similarly, a loan advanced under the rural schemes cannot be written off against an urban or a commercial loan by the bank in the normal course of its business.'

41. In the present case, according to the AO, the deduction u/s.36(1)(vii)(a) is allowed only to the extent PBDD in respect of rural advances is created in the books of accounts. According to him, the limits upto to which such deduction is allowed alone is laid down in Rule 6ABA of the Rules. According to the Assessee, it is entitled to deduction of the irrespective of considerations whether PBDD created in the books of accounts is in respect of rural advances or non-rural advances, subject to the upper limits laid down in Sec.36(1)(vii)(a) of the Act. Thus the case made out by the AO stands on a totally different footing. Therefore the decision in the case of Catholic Syrian Bank Ltd. (supra), in our view, is not relevant to the issue in the present case.”

16. Our view is fortified by the order of the Coordinate Bench of ITAT Pune, in the case of ***Bhagini Nivedita Sahakari Bank Ltd. vs. DCIT, 100 taxmann.com 375 (Pune - Trib.)*** wherein it was held that a co-operative bank is entitled to claim deduction of bad debts provided in first part of section 36(1)(vii)(a) being 7.5 per cent of total income even in absence of rural branches. The detailed findings of the Coordinate Bench are reproduced below:

“14. We have heard the rival contentions and perused the record. The issue which arises in the present appeal is against claim of deduction under section 36(1)(vii)(a) of the Act. Under the said section, deduction is allowable on account of provision for bad and doubtful debts. In other words, deduction could be claimed in respect of bad and doubtful debts subject to the terms and conditions which are provided in the Act itself. Explanation to section 36 of the Act defines the terms used in sub-clause (a) of clause (vii), wherein it was defined as non-scheduled banks, rural

branches, co-operative banks and scheduled banks. The assessee before us is a co-operative bank. In the initial years, co-operative banks were entitled to the benefit of deduction under section 80P of the Act. However, the said deduction has been withdrawn by the Finance Act, 2007 w.e.f. 01.04.2007. Thereafter, the Legislature has extended the benefit of section 36(1)(viia) of the Act to co-operative banks also. Initially, only scheduled banks were entitled to the aforesaid deduction but w.e.f. 01.04.2007, the benefit has been extended to co-operative banks and they are entitled to claim the deduction on account of provision for bad and doubtful debts, subject to the condition that provision to that extent is made in the books of account. Sub-clause (a) refers to deduction of an amount not exceeding 7.5% of total income, before allowing any deduction under the Chapter VI-A and secondly, it also refers to a deduction of an amount not exceeding 10% of aggregate average advances made by rural branches of such banks, which have been computed in prescribed manner.

15. The CBDT vide Circular No.464, dated 18.07.1986 had clarified the position for bad and doubtful debts made by the banks that under the existing provisions inserted by Finance Act, 1979 provision for bad and doubtful debts made by scheduled or non-scheduled Indian bank was allowed as deduction within prescribed limits. The limit prescribed at the relevant time was 10% of total income or 2% of aggregate average advances made by the rural branches of such banks, whichever was higher. There was representation to the Government that foreign banks were not entitled to any such deduction and further it was also felt that existing ceiling at the relevant time, should be modified. Accordingly, by Amending Act, the deduction presently available under section 36(1)(vii) of the Act was split into two separate provisions. One of these limbs was the deduction to an amount not exceeding 2% of aggregate average advances made to by rural branches of the bank concerned; in this regard, it was clarified that foreign banks do not have rural branches, hence this amendment would not be relevant in the case of foreign banks. The Circular further provided that the other provisions secure that a further deduction shall be allowed in respect of provision for bad and doubtful debts made by all banks, not just the banks incorporated in India, limited to 5% of total income. The Circular then concluded by saying that this will imply that all scheduled or non-scheduled banks having rural branches would be allowed the deduction upto 2 percent of the aggregate average advances made by such branches and a further deduction upto 5 percent of their total income in respect of provision for bad and doubtful debts. In other words, the Circular very clearly provided that two types of deductions have to be allowed to scheduled or non-scheduled banks i.e. in case they had rural branches, then deduction of 2% of aggregate average advances was to be allowed and in addition to that deduction upto 5% of their total income in respect of provision for bad and doubtful debts was to be allowed. The second part of deduction was also made available to foreign banks, which admittedly would never have rural branches in India. In such scenario, the intent of the Legislature was to provide deduction to the scheduled or non-scheduled banks; first on account of rural advances and second on account of total income other than the rural advances and two different types of deductions were provided. It may be clarified

herein itself that the Circular which is dated 18.07.1986 was in respect of scheduled or non-scheduled banks and extending to the foreign banks but the Co-operative banks were not included at that relevant point for the aforesaid deduction. It was only w.e.f. 01.04.2007, amendment was made to section 36(1)(viiia) of the Act in respect of any provision for bad and doubtful debts. It was provided that scheduled banks or non-scheduled banks, all Co-operative banks other than primary agricultural credit society or primary co-operative agricultural and rural development banks, deduction was allowable to the extent of an amount not exceeding 7.5% of total income computed before making any deduction under Chapter VI-A and an amount not exceeding 10% of aggregate average advances made by rural branches of such banks, computed in the prescribed manner. The scope of said section has thus been enlarged w.e.f. 01.04.2007 and deduction is available not only to the scheduled or non-scheduled banks but to the Co-operative banks also i.e. the assessee before us.

16. The issue which arises before us is in relation to co-operative banks which do not have any rural branches. The question which is to be addressed is whether in the absence of any rural branches, can the benefit of deduction be allowed under section 36(1)(viiia) of the Act and that also to the extent of 7.5% of total income.

17. We find that this issue has been elaborately considered and addressed by the Hon'ble High Court of Kerala in The Kodungallur Town Co-Op. Bank Ltd. (supra) and it has been held as under:—

"9. Admittedly, appellants/assesseees are cooperative banks. With introduction of Finance Act of 2007, coming into effect from 01.04.2007, one has to understand what was the position prior to 1.4.2007 and after 1.4.2007. During the relevant assessment year, admittedly the appellants/assesseees were not entitled for any deduction provided under section 80P of the Act. Prior to 1.4.2007, they were enjoying the benefits provided under section 80P. With the introduction of Finance Act 2007 with effect from 1.4.2007, they could claim deductions as provided under section 36(1) of the Act. We are concerned with sub-clause(a) of clause (viiia) to section 36(1). Prior to Finance Act of 2007, cooperative bank was not included in sub-clause (a) so far as provisions for bad and doubtful debts. With effect from 1.4.2007, cooperative bank was included under sub clause (a) of clause (viiia) of section 36(1). It is further clarified that only such cooperative bank other than a primary agriculture credit society, etc., is included in sub clause (a) of clause (viiia). The provision is a beneficial one. No doubt, plain reading of main section 36(1) (viiia)(a) and Explanation under said section present certain difficulties, but situation is not without possibilities. The object and intention of the legislature is to be understood by harmonious construction of the provisions. The policy was to include cooperative banks as well, as they could not take shelter under section 80P of the Income Tax Act any more. By restricting the scope of the provisions, the very purpose of inclusion of cooperative bank would be lost. Sub clause

(a) consists of two types of deduction. One refers to deduction of an amount not exceeding 7.5% of the total income (computed before making any deduction under this clause and chapter VIA). Section one refers to deduction of an amount not exceeding 10% of the aggregate average advances made by rule branches of such bank while computing in the prescribed manner. So far as benefit of 7.5% of the total income, there is no condition that it should be in respect of any rural branch. All types of banks described under sub clause (a) of clause (viiia) are entitled to seek deduction of an amount of exceeding 7.5% of the total income. Only condition is there should be a provision for bad and doubtful debts.....

*10 & 11. ** ** ***

12..... So far as sub-clause (a) of clause (viiia) to Section 36(1), two types of deductions are provided to non-scheduled bank, a scheduled bank and a co-operative bank other than a primary agricultural society, etc. It is to be noted that appellants/assesseees are not primary agricultural credit co-operative society or other kind of bank so as to go out of the definition of co-operative bank under sub-clause (a) to clause (viiia) of Section 36(1). No doubt, Explanation (ia) to Section 36(1)(viiia) defines what is a rural branch. It is with reference to a place and certain number of population. It refers to branch of a scheduled bank or a non-scheduled bank. Apparently, we do not find the term co-operative bank. Section 5(cci) of Banking Regulation Act though has brought in definition of co-operative bank, virtually every bank which is not a scheduled bank would fall under the definition of non-scheduled bank. Reading of definition of non schedule bank along with meaning of rural branch under Explanation to Section 36(1) of the Act, clearly indicate that co-operative bank also falls under the category of non-schedule bank for the purpose of this Section. Therefore, reading of entire Section 36(1)(viiia)(a) along with explanation would mean two kinds of deductions referred to in the section will be allowed to all those banks only if they satisfy the terms and conditions referred to in the provision.

13. Therefore, we are of the opinion, authorities below were justified in opining that benefit of deduction of 10% of the aggregate average advances is applicable to co-operative bank also provided their rural branches have advanced such amounts. Such rural branch means a branch as explained under Explanation (ia), as opined in the decision of Lord Krishna Bank's case (supra)." (underline provided by us for emphasis)

18. The Hon'ble High Court of Kerala thus, laid down the proposition that existing co-operative banks which do not enjoy the benefit of deduction provided under section 80P of the Act after 01.04.2007 but would be entitled to the benefit provided under section 36(1)(viiia) of the Act, then the provisions have to be understood taking into consideration the amendment made by the Legislature. The Hon'ble High Court has clearly noted the fact that for availing the benefit of 7.5% of total income, there is no condition that it should be in respect of any rural branches. It

has further observed that all types of banks described under sub-clause (a) of clause (viiia) are entitled to seek deduction of an amount not exceeding 7.5% of total income and only condition is that there should be provision for bad and doubtful debts in the books of account. The second linked issue which was considered was whether co-operative bank in respect of having rural branches was entitled to have the benefit of second part of section 36(1)(viiia)(a) of the Act. The Hon'ble High Court clearly held that reading the definition of non-scheduled bank along with meaning of rural branch under Explanation to section 36(1) of the Act clearly indicate that co-operative bank also falls under the category of non-scheduled bank for the purpose of said section. It further goes on to hold that reading the entire section along with Explanation would mean two kinds of deductions referred to in section would be allowed to all those banks only if they satisfy the terms and conditions referred to in the provision. Since the assessee bank in the said case did not have any rural branches, it was held that the benefit of deduction of 10% of aggregate average advances was not available to them. Hence, appeal of Revenue was decided in their favour i.e. on the second issue of deduction in respect of rural branches.

19. The Cochin Bench of Tribunal in a subsequent decision relating to assessment year 2010-11 in the case of Kodungallur Town Co-Op. Bank Ltd. (supra) again decided the aforesaid issue of claim of deduction under section 36(1)(vii) of the Act, especially in view of the ratio laid down by the Hon'ble Supreme Court in Catholic Syrian Bank Ltd. (supra) relied upon by the Commissioner while invoking revisionary jurisdiction under section 263 of the Act. The Tribunal held that the Hon'ble Supreme Court had considered the issue whether the deduction was allowable to scheduled banks under section 36(1)(vii) of the Act in respect of bad debts written off and had held that the same shall be limited to the extent the said debts credit balance in the provision for bad and doubtful debts account made under clause (viiia). It was further observed by the Tribunal that the assessments in the said case related to assessment year 2002-03 and prior years and the Apex Court had considered the law with reference to the fact situation; whereas the assessee before them was co-operative bank, which was included in the category of beneficiaries under clause (viiia) by the Finance Act, 2007 w.e.f. 01.04.2007. The Tribunal further goes on to hold that the deduction provided in the first part of clause (viiia) (a) of 7.5% of total income, either to enjoyed by the assessee since inclusion of co-operative banks within ambit of clause (viiia)(a) by the Finance Act, 2007 is unconcerned with the advances made by rural branches of banks. Further, referring to para 27 of the judgment of Apex Court, the Tribunal held as under:—

"7.....The deduction provided in the first part of clause (viiia)(a) of 7.5% of the total income, hitherto enjoyed by the assessee since the inclusion of cooperative banks within the ambit of clause (viiia)(a) by Finance Act, 2007, is unconcerned with advances made by the rural branches of the banks. A reading of paragraph 27 of the judgment of the Hon'ble Apex Court would show that while making the observation "indisputably, clause (viiia)(a) applies only to rural advances", the Hon'ble Apex Court was examining the

issue if there would be double deduction of actual bad debts written off under clause (vii) and deduction in respect of rural advances provided under the second part of clause (viii). The Hon'ble Apex Court has not held that the first part of clause (viii) providing for deduction of 7.5% of the total income applies only to rural advances." (underline provided by us for emphasis)

20. Then, reference was made to the decision of jurisdictional High Court i.e. Hon'ble High Court of Kerala in *The Kodungallur Town Co-Op. Bank Ltd. (supra)*, judgment dated 03.04.2014 and it was held that invoking of jurisdiction by the Commissioner was held to be not justified, relying on the ratio laid down by the Apex Court in *Catholic Syrian Bank Ltd.*, which is dated 17.02.2012.

21. The Bangalore Bench of Tribunal in *Dy. CIT v. ING Vysya Bank Ltd. [2014] 149 ITD 611/92 taxmann.com 303* vide its order dated 25.10.2013 had held vide para 32 that the object of substitution of clause (viii) as explained in para 5 of CBDT Circular No.464, dated 18.07.1986 was to give separate deduction. The first was in respect of rural advances and second for provision for bad and doubtful debts in general.

22. Similar proposition has been laid down by the Hyderabad Bench of Tribunal in *State Bank of Hyderabad v. Dy. CIT [2015] 63 taxmann.com 322 (Hyderabad-Trib.)*, order dated 14.08.2015 and also by Visakhapatnam Bench of Tribunal in *Chaitanya Godavari Grameena Bank (supra)*, judgment dated 04.05.2016).

23. The learned Authorized Representative for the assessee has pointed out before us that no other decision of any Hon'ble High Court, whether in favour or contrary, is available. The learned Departmental Representative for the Revenue has not pointed out any contrary decision or any decision of jurisdictional High Court on the issue. The position as settled by the Hon'ble High Court is that deduction under section 36(1)(viii) of the Act is available to non-scheduled bank i.e. co-operative bank @ 7.5% of total income or in case there are rural branches, then further deduction of 10% of aggregate average advances as per prescribed procedure.

24. The issue before us is similar to the issue before the Hon'ble High Court of Kerala and though the decision is by non-jurisdictional High Court but in the absence of any decision to the contrary by the jurisdictional High Court, the decision of High Court is binding upon the Tribunal. In any case, no other decision of any High Court has been brought to our knowledge contradicting or favouring the view taken by the Hon'ble High Court of Kerala. In such circumstances, we are guided by the proposition laid down by the Hon'ble Bombay High Court in *Smt. Godavaridevi Saraf (supra)*, wherein it was held that until a contrary decision is given by any other Competent High Court, which is binding on Tribunal in the State of Bombay, it has to proceed on the footing with the law declared by the High Court, though of another State, is the final law of the land. In the facts before the Hon'ble Bombay High Court, the Tribunal had decided the issue relying on the

ratio laid down by the Hon'ble High Court of Madras, which was not jurisdictional High Court. However, dismissing the appeal filed by Revenue, the Hon'ble Bombay High Court found favour with the view taken by Tribunal relying on the law declared by the Hon'ble High Court though of another State, which was final law of the land.

25. *The Pune Bench of Tribunal in Aurangabad Holiday Resorts (P) Ltd. (supra) has referred to the aforesaid ratio laid down by the jurisdictional High Court in the case of Smt. Godavaridevi Saraf (supra) and held as under:—*

'11. Let us now take a look at the Hon'ble jurisdictional High Court's judgment in the case of Godavari Devi Saraf (supra). In this case, question before. Their Lordships was as follows:

"Whether, an the facts and circumstances of the case, and in view of decision in the case of A.M. Sali Maricar 90 ITR 116, the penalty imposed on the assessee under Section 140A(3) was legal?"

12. The specific question before. Their Lordships was whether the Tribunal, while sitting in Bombay, was justified in following the Madras High Court decision holding the relevant section as unconstitutional Hon'ble High Court concluded as follows:

"It should not be overlooked that Income Tax Act is an all India statute, and if a Tribunal in Madras has to proceed on the footing that Section 140A(3) was non existent, the order of penalty under that section cannot be imposed by any authority under the Act. Until a contrary decision is given by any other competent High Court, which is binding on the Tribunal in the State of Bombay (as it then was), it has to proceed on the footing that the law declared by the High Court, though of another State, is the final law of the land...an authority like Tribunal has to respect the law laid down by the High Court, though of a different State, so long as there is no contrary decision on that issue by any other High Court..."

26. *The Tribunal had also referred to the decision of Hon'ble Bombay High Court in CIT v. Thana Electricity Supply Ltd. [1994] 206 ITR 727, wherein the limited question was whether or not the decision of one of the High Court was binding on another High Court. The Tribunal in this regard observed as under:—*

"10. In this light, and bearing in mind the fact that limited question before. Their Lordships was whether or not decision of one of the High Court's is binding on another High Court, it would appear to us that ratio decidendi in Thana Electricity Co. Ltd. (supra), is on the non binding nature of a High Court's judgment on another High Court. In any case, this Division Bench did not, and as stated in this judgment itself, could not have differed with another Division Bench of the some strength in the case of Godavari Devi

Saraf (supra). Therefore, it cannot be open to a subordinate Tribunal like us to disregard any of the judgments of the Hon'ble Bombay High Court, whether in the case of Thana Electricity Co. Ltd. (supra) or in the case of Godavari Devi Saraf. It is indeed our duty to loyally extend utmost respect and reverence to the Hon'ble High Court, and to read these two judgments by the Division Benches of equal strength of the Hon'ble jurisdiction High Court, i.e. in the case of Thana Electricity Co. Ltd. (supra) and Godavari Devi Saraf (supra), in a harmonious manner."

27. Then, analyzing the two decisions of Hon'ble Bombay High Court, it was held that where two interpretations are possible; one in favour of assessee must be adopted, in turn, relying on the decision of the Hon'ble Supreme Court in Vegetable Products Ltd. (supra). It was also noted that there were various other High Courts which were not in favour of view taken in Smt. Godavaridevi Saraf (supra). The Tribunal decided the issue in turn, relying on the ratio laid down by the Hon'ble High Court of Gauhati in Smt. Bandana Gogoi v. CIT [2007] 289 ITR 28/[2008] 171 Taxman 1 in the absence of any other decision of any High Court in other State. In view of the above said position of law, we are departing from the view taken by Pune Bench of Tribunal in assessee's own case relating to assessment year 2010-11, wherein the order is dated 29.05.2015 but decision of the Hon'ble High Court of Kerala on the issue is dated 03.04.2014 was neither relied upon nor brought to the knowledge of Tribunal and the issue was decided against assessee. The issue raised in the present appeal stands fully covered by the decision of the Hon'ble High Court of Kerala (supra) though not the jurisdictional High Court, but the only decision available on the said issue squarely binds the Tribunal and hence, applying the said ratio, we hold that the assessee is entitled to the claim of deduction under section 36(1)(viiia) of the Act to the extent of 7.5% of total income. The assessee co-operative bank do not have any rural branches, hence is not entitled to the second part claim of 10% of advances made by rural branches. The deduction is allowable with a rider to satisfy the provisions of said section i.e. making a provision to that extent in the books of account. The first issue which is raised in the case of different co-operative banks stands decided in favour of assessee."

17. From the above judgments, it is vivid that actual provision made in the books by the Assessee on account of provision for bad and doubtful debts (PBDD) (irrespective of whether it is rural or non-rural) has to be seen. To the extent PBDD is so created, then subject to the permissible upper limits referred in section 36(1)(viiia) (a), the deduction has to be allowed to the Assessee. For availing the benefit of 7.5% (present limit 8.5%) of total income, there is no condition that it should be in respect of any rural branches.

All types of banks described under sub-clause (a) of clause (viia) are entitled to seek deduction of an amount not exceeding 7.5% (present limit 8.5%) of total income and only condition is that there should be provision for bad and doubtful debts in the books of account. Based on these facts and circumstances, we delete the addition made by the assessing officer and allow the appeal of the assessee.

18. In the result, appeal filed by the assessee, is allowed.

Order pronounced in the open court on 30-08-2024

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(DR. A. L. SAINI)
ACCOUNTANT MEMBER

Rajkot;

Dated: 30/08/2024

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

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

By order/आदेश से,

// TRUE COPY //

Assistant Registrar/Sr. P.S./P.S.
ITAT, Rajkot