

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
& SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER**

I.T.A. No.693/Ahd/2024
(Assessment Year: 2015-16)

Assistant Commissioner of Income Tax, Circle-2(1)(1), Vadodara	Vs.	The Bharuch Dist. Central Co-op. Bank Ltd., First Floor, Jawahar Bhavan, Behind-Hotel Corona, Opp. Railway Station, Bharuch-392001
[PAN No.AAABT0073E]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Rignesh K Das, Sr. DR
Respondent by:	Shri Manish J. Shah & Shri Rushin Patel, A.Rs.

Date of Hearing	12.09.2024
Date of Pronouncement	23.09.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

The appeal filed by the Revenue is against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 14.02.2024 passed for Assessment Year 2015-16.

2. The Revenue has taken the following grounds of appeal:

“1. Whether on facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) is justified in deleting the addition of Rs. 1,88,40,841/- made on account of disallowance of deduction u/s 36(1)(viia) of the Act, without appreciating the fact that appropriation from profit at 15% as statutory bad and doubtful debts Reserve was not part of Bad and doubtful debts in the books of accounts?

2. Whether on facts and in the circumstances of the case and in law, the Ld.CIT(Appeals) is justified in holding that the assessee co-operative bank falls under the category of non-scheduled bank and thus eligible for deduction of 10% of

aggregate advances made by rural branches without appreciating the Explanation (ia) below section 36(1)(viiia) of the Act?

3. *Whether on facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) is justified in directing the assessing officer to allow deduction of Rs.45,00,000/- u/s 36(1)(viiia) of the Act claimed by the assessee during the assessment proceedings without appreciating the fact that no such claim was made in the return of income and in view of Hon'ble Supreme Court decision dt. 24-3-2006 in the case of M/s. Goetze (India) Ltd. V. CIT, the A.O was right in rejecting the claim?*

4. *The appellant craves leave to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal."*

3. The brief facts of the case are that the assessee filed its income tax return on September 23, 2015, declaring a total income of Rs. 16,56,42,050/-. The assessee, a co-operative bank registered with relevant authorities, claimed a deduction of Rs. 2,88,40,841/- under section 36(1)(viiia) of the Income Tax Act for bad and doubtful debts. In response to inquiries about this deduction, the assessee submitted that as a co-operative bank, it qualified for specific deductions under the mentioned section, which permits deductions based on a percentage of total income and rural advances. The calculations showed that while 7.5% of gross total income equated to Rs. 1,45,80,501/- and 10% of rural advances amounted to Rs. 32,50,81,700/-, the total eligible amount was Rs. 33,96,62,201/-. The assessee had accounted for Rs. 2,88,40,841/- as provisions for bad debts, including direct provisions to the profit and loss account and an appropriation for a bad debt reserve. However, the assessing officer found the justification for the above deduction claimed by the assessee unsatisfactory, particularly the submission that co-operative banks' branches qualified as rural branches. The Assessing Officer emphasized that the legislation distinguishes between scheduled banks, non-scheduled banks, and co-operative banks, clarifying that only scheduled or non-scheduled banks could claim deductions based on rural advances. Consequently, the Assessing Officer limited the allowable deduction to Rs. 1,00,00,000/-, the actual provision made in the

profit and loss account, as opposed to the higher claim made by the assessee. Following this assessment, the total income was reassessed at Rs. 18,44,82,886/- after disallowing the excess deduction of Rs. 1,88,40,841/-. Additionally, penalty proceedings were initiated for providing inaccurate particulars of income, and interest charges were levied under the Income Tax Act.

4. In appeal, Ld. CIT(Appeals) observed that the Assessing Officer (AO) had disallowed the claim on the grounds that the 15% appropriation from profit, categorized as statutory Bad and Doubtful Debts Reserves, did not qualify as such in the assessee's books. The AO was of the view that the reserves debited to the Profit and Loss account exceeded the allowable provisions under Section 36(1)(viii), and referenced previous rulings by the CIT(A) that upheld similar disallowances. However, the assessee pointed out a recent ruling from the Honorable ITAT - Surat, dated June 23, 2022 in assessee's own case, which had resolved similar issues in favor of the assessee, allowing deductions for earlier years. The assessee submitted that they were entitled to the full deduction as claimed and submitted that the 15% appropriation constituted a valid provision for bad and doubtful debts. Ld. CIT(Appeals) agreed with the assessee assertion, in light of the ITAT's prior decision in the assessee's own case. Ld. CIT(Appeals) noted that the AO's disallowance was in view of misinterpretation of cooperative bank provisions and that the assessee's claim was valid under the statutory framework. Ld. CIT(Appeals) held that the treatment of these reserves in financial statements should not preclude entitlement to deductions allowed by law. Thus, Ld. CIT(Appeals) directed the Assessing Officer to delete the disallowance, and

the appellant's claim for deduction under Section 36(1)(viia) was upheld.

While passing the order, Ld. CIT(Appeals) observed as under:

“Similar issue came up adjudication before the Hon'ble ITAT, Surat in appellant's own case in the earlier years. The Hon'ble ITAT decided the issue in favour of the appellant. For the sake of clarity, the relevant paras from the ITAT's common order dated 23-06-2022J regarding this issue are reproduced as under:-

32. We have considered the rival submissions of both the parties and have gone through the orders of the authorities below. The Assessing Officer disallowed the claim of deduction under Section 36(1)(viia) by taking a view that the definition of rural branch in explanation (ia) does not cover cooperative banks. It was recorded by assessing officer while disallowing such claim that the legislature has placed cooperative bank as a different category than non-scheduled bank. Accordingly, deduction of provision for bad and doubtful debts with respect to advance of rural branch is not allowable to the assessee-bank. As recorded in the facts of revenue's appeal the assessing officer disallowed the whole of claim of deduction of section 36(1)(viia). However, on appeal the Id CIT(A) allowed part relief to the assessee to the extent of Rs. 7.500 Crore, and remaining of Rs. 1.067 Crore was upheld by Id CIT(A) by taking view that no such deduction is claimed in the Profit and loss account but it is claimed in the computation of income and further similar issue was decided against the assessee in earlier assessment year i.e. 2008-09.

33. Before us, the Id AR for the assessee made two fold submissions, firstly, the assessee claimed deduction of statutory bad debts reserve created during the year at the rate of 15% of the net profit as per Gujarat State Co-operative Act as provision for bad and doubtful debts and this creation of the reserve is by way of appropriation of net profit. Secondly, the Id. CIT(A) also held that the issues decided against the assessee by Ahmedabad Tribunal in A.Y. 2008-09, which is factually wrong as per the contention of Id AR for the assessee. We shall take second contention first. For appreciation second contention of Id AR of the assessee, we perused the copy of assessment order dated 31.12.2010 passed under section 143(3), order of Id CIT(A) or Tribunal for AY 2008-09, and find that issue of appropriation of 15% of statutory debts was not the subject matter in appeal before Tribunal, rather it was allowed by the assessing officer while passing the assessment order itself, though, the assessment order was subject to appeal before Id CIT(A), and no enhancement was made on this issue. Further the assessment order is neither re-opened nor revised. Hence, we find merit in the submissions of the Id AR for the assessee. 34. Now advertent to the first contention of the Id AR for the assessee that the assessee claimed deduction of statutory bad debts reserve created during the year at the rate of 15% of the net profit as per Section 67A of Gujarat State Co-operative Act as provision for bad and doubtful debts and this creation of the reserve is by way of appropriation of

net profit. And it is the contention of Id. AR. of the assessee that transfer to statutory bad debts reserve were subject to approval in general body meeting of the members and such disclosure and treatment is as per norms and practice followed by all cooperative banks as governed by the State Cooperative Act. We find that-merit in the submissions of the Id AR for the assessee and find that as per section 67A of Gujarat Cooperative Society Act, every society, working in the State of Gujarat, which earned profit from its transactions, shall maintain a bad debts reserve funds. As per subsection (2) of section 67A, every year, the society shall carry at least 15% of the net profit to the debts reserve funds. All such funds shall be certified by the certified auditors and the expenses incurred in recovering the same shall first be written off as per section 67A(3). It is settled position under law that co-operative banks are primarily a co-operative society. We also noted that the financial statement of the assessee is not only subject to the statutory audit but also subject to the approval of the Registrar of Co-operative society. Thus, considering the aforesaid factual and in view of the statutory provision in the State Co-operative Act, the assessee is also allowed deduction of Rs. 1.067 Crore, which in line with the provisions of section 67A of Gujarat Co-operative Society Act.

35. *So far as objection of assessing officer is that in the profit and loss accounts of the year no such provision is made by the assessee, is concerned, we find that Hon'ble Supreme Court in Kedar Nath Jute Manufacturing Company Vs CIT (supra) held that nomenclature or treatment in the books of accounts in not decisive or conclusive for a particular deduction otherwise allowable under the law. In the result, the ground of appeal raised by the assessee is allowed.*

36. *In the result, the appeal of the assessee is allowed.*

*Respectfully following the above findings of the Hon'ble ITAT, the AO is directed to delete the addition on account of disallowance of provision towards bad and doubtful debts u/s. 36(1)(viiia) of the Act. The ground no. 1 raised by the appellant regarding this issue is **allowed.**"*

5. Regarding the next issue, regarding denial of additional deduction of 10% on advances made by rural branches under Section 36(1)(viiia) of the Act, Ld. CIT(Appeals) observed that AO disallowed the addition on the ground that since the assessee is a co-operative bank, it does not fall under the definition of a non-scheduled bank eligible for this deduction. Before Ld. CIT(Appeals), the assessee submitted out that the issue of eligibility for the additional deduction had already been decided in their favour of the assessee by the Honorable

ITAT, Surat Bench, in a common order dated June 23, 2022 in the assessee's own case for earlier assessment years. In that order, the ITAT clarified that the amendment to Section 36(1)(viiia) via the Finance Act, 2007, expanded the deduction eligibility to include co-operative banks (excluding primary agricultural credit societies and primary cooperative agriculture and rural development banks) effective from April 1, 2007. The ITAT emphasized that although the benefit of Section 80P had been withdrawn for eligible co-operative banks, the amendment to Section 36(1)(viiia) provided a path for such banks to claim deductions for provisions made for bad and doubtful debts. The ITAT further noted that the objections raised by the CIT-DR regarding the applicability of prior tribunal decisions were not relevant in this context. ITAT held that the findings from the previous decisions did not pertain to the specific circumstances of the appellant's case. Consequently, the appeal filed by the revenue was dismissed. In view of the findings of ITAT, Ld. CIT(Appeals) allowed the appeal of the assessee on this issue with the following observations:

“...The appellant has pointed out that issue whether the appellant is eligible for additional deduction of 10 percentage on advances made by rural branches of the appellant has already been decided by the Hon'ble ITAT, Surat Bench vide its common order dated 23-06-2022 in favour of the appellant. For the sake of clarity, the relevant paras from ITAT's common order dated 23-06-2022 regarding this issue are reproduced as under:-

“28.....

We find merit in the submission of ld. AR of the assessee. We find that Section 36(1)(viiia) was amended vide Finance Act, 2007 and after amendment the benefit of deduction under Section 36(1)(viiia) which was available to a scheduled and non-scheduled bank is sought to be extended to a co-operative banks other than primary agricultural credit society or a primary cooperative agriculture and rural development bank w.e.f. 01/04/2007. Further rest while deduction available to such eligible cooperative banks under Section SOP stood withdrawn by Finance Act, 2006 w.e.f. 01/04/2007. Thus, there was an amendment by way of Finance Act, 2007 to Section 36(1)(viiia) w.e.f 01/04/2007 wherein cooperative bank other than primary

agricultural credit society or a primary cooperative agriculture and rural development bank, were brought under the provision of Section 36(1)(viiia) for claiming deduction in respect of provisions made for bad and doubtful debts. Thus, in view of aforesaid factual discussion and the legal view taken by the Kerala High Court in Kannur District Cooperative Bank (supra), we find that the order of Id. CIT(A) is based on proper appreciation of amended provision of Section 36(1)(viiia) which we affirm. 28. So far as objection of Id. CIT-DR and his reliance on the decision of Indore Bench in Jhabua Dhar Khatriya Gramin bank (supra) is concerned, we find that the ratio of finding of Tribunal is not applicable on the facts of the present case. In the said case the Tribunal relied on the earlier case law in Narmada Malwa Gramin Bank Vs ACIT (ITA No. 162/Ind/2011 dated 16.04.2013), wherein the issue was restored to the file of assessing officer to re-computing the claim of deduction to the extent of amount written off in the books of accounts. Thus, the finding in the said decision is not at all applicable on the facts of his case. In the result, the ground No. 2 of appeal raised by the Revenue is dismissed.

29. *In the result, the appeal of the revenue is dismissed.””*

6. The third issue before Ld. CIT(Appeals) was that the AO erred by denying additional deduction under Section 36(1)(viiia) for an amount of Rs.45,00,000/- classified as Standard Assets Contingency Reserve in the Profit and Loss Account. The AO denied the deduction on the basis that this claim was not included in the return of income and could not be considered at the assessment stage. Before Ld. CIT(Appeals), the assessee relied on several judicial precedents, including rulings from the Hon'ble Rajasthan High Court and the Supreme Court on the contention that a taxpayer is permitted to present fresh claims for deductions during appellate proceedings, even if such claims were not made in the original return. Ld. CIT(Appeals) upon reviewing the Profit and Loss Account, observed that the assessee had made provisions for Bad and Doubtful Debts amounting to Rs.1 crore and for Standard Assets Contingency of Rs.45 lakh. The assessee argued that both provisions effectively served the same purpose, merely labeled differently for clarity. The AO did not dispute the nature of the Rs.45 lakh provision but denied the deduction solely because it was not claimed in the return. The assessee had claimed a total deduction of Rs.2,88,40,841/- under Section 36(1)(viiia), with

the AO allowing Rs.1 crore for Bad and Doubtful Debts. The assessee submitted before Ld. CIT(Appeals) that if the AO accepted the deduction for Rs.1 crore, the same logic should apply to the Rs.45 lakh provision, which was also recorded in the Profit and Loss Account but inadvertently omitted from the return. Given that both provisions were added back to the net profit in the income computation, Ld. CIT(Appeals) held that the assessee is entitled to the additional deduction of Rs.45,00,000/- under Section 36(1)(viia) for the Standard Assets Contingency.

7. Accordingly, the appeal of the assessee was allowed by Ld. CIT(Appeals) on all counts.

8. The Department is in appeal before us against the order passed by Ld. CIT(Appeals). Before us, the DR placed reliance on the observations made by the assessing officer in the assessment order. In response, the counsel for the assessee submitted that ground number 1 (deduction under section 36(1)(viia) of the Act in respect of statutory bad debts reserve @15% of net profit) and ground number 2 (allowable limit of deduction under section 36(1)(viia) of the Act to include 15% of aggregate advances made by rural branches) were squarely covered in favour of the assessee by order of the Tribunal in assessee's own case dated 23.06.2022. Accordingly, it was on this basis that Ld. CIT(Appeals) allowed the appeal of the assessee in respect of ground numbers 1 and 2. In response, even the DR admitted that the issue is now decided in favour of the assessee by the Tribunal in assessee's own case for previous assessment years. The relevant extracts of the Tribunal ruling has also been quoted by Ld. CIT(Appeals), while allowing the appeal of the assessee in respect of ground number 1 and 2, mentioned above. Accordingly, respectfully following the decision of Tribunal in assessee's own case for the previous

assessment years in ITA No. 1529 and 1542/Ahd/2016, ITA No. 1530 and 1543 /Ahd/2016 and ITA No. 1531 and 1544 /Ahd/2016 for assessment years 2009-10, 2010-11 and 2011-12 vide order dated 23.06.2022, ground number 1 and 2 of the Department's appeal are hereby dismissed.

9. Regarding the third ground raised by the Department, the counsel for the assessee submitted that Ld. CIT(Appeals) has correctly observed that the only reason why the disallowance was confirmed by the assessing officer was that this claim was not raised by the assessee in the return of income filed for the impugned assessment year. However, the eligibility of the assessee with respect to the scheme has not been disputed by the assessing officer. The Ld. CIT(Appeals) has correctly placed reliance on several decisions which have held that even if an assessee has failed/omitted to make a claim at the time of filing of return of income, still the assessee is permitted to make such claim during the course of appellate proceedings and the appellate authorities are also empowered to allow the claim of the assessee, in accordance with law. The issue of tenability of a claim though not raised in the original return has been examined by the Courts in various decisions. The Gujarat High Court in case of **CIT v. Mitesh Impex [2014] 46taxmann.com 30/225 Taxman 168 (Mag.) (Guj.)** referred to and relied on several judgements of the Supreme Court and High Courts including the judgement of Bombay High Court in case of *Pruthvi Brokers & Shareholders (P.) Ltd. (supra)* and observed as under:

“It thus becomes clear that the decision of the Supreme Court in the case of Goetze (India) Ltd. v. Commissioner of Income-tax (supra) is confined to the powers of the assessing officer and accepting a claim without revised return. This is what Supreme Court observed in the said judgment while distinguishing the judgment in the case of National Thermal Power Co. Ltd. v. Commissioner of Income-tax (supra) and that is how various High Courts have viewed the dictum of the decision in the case of Goetze (India) Ltd. v. Commissioner of Income-tax (supra). When it comes to the power of Appellate Commissioner or the Tribunal, the Courts have recognized their jurisdiction to entertain a new ground or a legal contention. A ground would have a reference to an argument touching a question of fact or a question of

- 10-

law or mixed question of law or facts. A legal contention would ordinarily be a pure question of law without raising any dispute about the facts. Not only such additional ground or contention, the Courts have also, as noted above, recognized the powers of the Appellate Commissioner and the Tribunal to entertain a new claim for the first time though not made before the assessing officer. Income Tax proceedings are not strictly speaking adversarial in nature and the intention of the Revenue would be to tax real income

10. In the case of **Pruthvi Brokers & Shareholders 23 taxmann.com 23 (Bom.)**, the High Court held that an assessee is entitled to raise before appellate authorities additional grounds in terms of additional claims not made in return filed by it.

11. Accordingly, in view of the above facts as highlighted above, we are of the considered view that Ld. CIT(Appeals) has not erred in facts and in law in allowing the claim of the assessee with respect to this ground of appeal.

12. In the result, ground number 3 of Department's appeal is dismissed.

13. In the combined result, the appeal of the Department is dismissed.

This Order pronounced in Open Court on 23/09/2024

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

Ahmedabad; Dated 23/09/2024

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad