IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND

SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.07/Nag./2019
(Assessment Year : 2014–15)

Vidarbha Konkan Gramin Bank
2nd & 3rd Floor, Chandraprastha
Deendayal Nagar, Nagpur 440 022
PAN – AABVA3583F ……. Appellant

v/s

Income Tax Officer
Ward–1(5), Nagpur ……. Respondent

ITA no.08/Nag./2019
(Assessment Year : 2015–16)

Vidarbha Konkan Gramin Bank
2nd & 3rd Floor, Chandraprastha
Deendayal Nagar, Nagpur 440 022
PAN – AABVA3583F ……. Appellant

v/s

Income Tax Officer
Ward–1(5), Nagpur ……. Respondent

Assessee by : Shri C. Naresh
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 11/11/2024	Date of Order – 28/11/2024

O R D E R

PER K.M. ROY, A.M.

These appeals are filed by the assessee challenging the impugned orders of even date 09/10/2018, passed by the learned Commissioner of Income Tax (Appeals)–1, Nagpur, [*"learned CIT(A)"*], for the assessment year 2014–15 and 2015–16 respectively.

ITA no.7/Nag./2019
Assessee's Appeal – A.Y. 2014–15

2. In its appeal, the assessee has raised following grounds:–

"1.1 The CIT(A) failed to note that appellant a Regional Rural Bank being deemed to be a cooperative society as per section 22 rws 32 of Regional Rural Bank Act for the purpose of Income-tax Act, is entitled to benefit of deduction u/s 80P (2)(a)(i) as held by Hon'ble ITAT Allahabad in the case of Baroda Uttar Pradesh Gramin Bank (ITA 403 to 405/Alld./2014 and accordingly deduction under the said section should be allowed in computing the total income.

2.1 The CIT(A) failed to appreciate that deduction u/s 36(1) (viia) is to be allowed based on total income and rural advances in respect of "any" provision made and hence the eligible deduction as per said section should be allowed if the appellant had made any provision towards bad and doubtful debts and not necessarily equivalent to the provision made as held by Hon'ble ITAT Delhi in case of Pratima Bank (58 ITR (Trib) 1).

2.2 Without prejudice to the above, the CIT(A) should have allowed the alternate claim of the appellant that the deduction should be based on the provision held in the accounts as held by Hon'ble ITAT Ahmedabad in the case of DCIT V Sarvodhaya Sahakari Bank Ltd (2014 48 Taxman.Com 82) and should not have dismissed the claim by stating that the Act requires provision to be made in previous year even when there are no such words in the Act.

2.3 Without prejudice to the above, the CIT (A) ought to have atleast allowed the claim of the appellant that the deduction should be based on gross provision made and not the net provision made. Reliance is placed on decision of Hon'ble ITAT Cochin in the case of Kannur District Cooperative Bank (136 ITD 102).

3. The Ld.CIT (A) erred in confirming the disallowance of deduction u/s 36(1)(viii) of the Income Tax Act on the ground that no special reserve had been created even when in financial year 2014-15 following the current financial year 2013-14 the appellant had created the requisite Special Reserve from profits chargeable to tax for that year and hence based on the decision of ITAT Delhi in the case of Power Finance Corporation Ltd (2008-TIOL-475-ITAT-DEL) the claim of the appellant should have been allowed. The CIT(A) erred in relying on decision of Sharda Sahakari Bank where the issue was allowability of deduction u/s 36(1)(viii) without transferring any amount to special reserve.

4. The CIT(A) erred in confirming order of AO to tax the recovery in respect of bad debts written off even when the bad debts written off was never allowed as deduction in any earlier year on the ground that deduction is allowed u/s 36(1)(viia) without appreciating that the provision allowed is already reduced by the amount of bad debts written

off. The appellant submits when bad debts written off is not allowed as deduction, the recovery cannot be taxed.

Your appellant craves leave to add, to amend and or vary the grounds of appeal before or at the time of hearing."

3. At the very outset, the learned A.R., Shri C. Naresh, appearing for the assessee candidly submitted that if the first ground is decided in favour of the assessee, the other issues need not be delved into. Since the facts are identical for both the years, we take up the appeal for adjudication being ITA no.7/Nag./2019, for the assessment year 2014–15, as a lead case and both the learned A.R. appearing for the parties are in agreement with us that the decision so arrived will mutatis mutandis apply to the appeal for the assessment year 2015–16 also, as the grounds of appeal being identical on similar facts and circumstances.

4. The factual matrix of the case are that the assessee is a Regional Rural Bank carrying on the business of Banking with a status of AOP (Association of Persons) in the name and style *"Vidarbha Konkan Gramin Bank"*. During the relevant assessment year, the assessee Bank filed its return of income on 07/11/2015, declaring a loss of ₹ 1,19,40,81,781, which was processed under section 143(1) of the Income Tax Act, 1961 (*"the Act"*) and selected for scrutiny under CASS. The Assessing Officer made assessment on total income of ₹ 50,81,436, by making addition of ₹ 97,06,79,200, as disallowance under the provisions for bad and doubtful debt under section 36(1)(viia) of the Act, ₹ 17,39,54,837, as addition on account of interest accrued but not due on Government and other securities, ₹ 2,68,07,020, as disallowance on account of deduction under section 36(1)(viii) of the Act and addition of ₹ 2,77,22,160

on account of bad debts written–off under section 41(4) of the Act claimed by the assessee Bank. The assessee being not satisfied with the order passed by the Assessing Officer, filed appeal before the first appellate authority.

3. Aggrieved, the assessee carried the matter in appeal before the learned CIT(A), but without complete success. The learned CIT(A) partly allowed the assessee's appeal based on the following ground–wise decisions:–

> "*Decision:*
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> *6.0 Ground No. 1: Allowing deduction u/s 36(1)(viia) at Rs.7,00,00,000/- instead of the eligible amount at 7.5% of total income and 10% of aggregate average advances of rural branches.*
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> *6.1 I have carefully considered the submission of the appellant and the sessment order of the AO. The AO disallowed deduction claimed in excess of the provision made in the books of accounts by the appellant for provision for Bad and Doubtful Debts u/s.36(1) (viia). As per the AO, the provision for bad and doubtful debts on account of 7.5% of total income and 10% of rural advances is to be allowed only if the assessee had made the provision for the same in the profit and loss account as per section 36(1) (viia) read with section 36(2)(v) of the Income Tax Act, 1961. The assessee calculated the 7.5% of total income at Rs. (-) 15,34,02,581/- and 10% of rural advances at Rs. 1,04,67,92,000/- and claimed the deduction of Rs. 1,04,06,79,200/- in its Return of Income. In this regard, the provision was made in books of accounts at Rs.7,00,00,000/- only. Hence the AO held that the appellant has claimed an excess deduction of Rs. 97,06,79,200/-_u/s. 36(1)(viia) than the provision made in the books of account. Therefore the claim of the appellant was not acceptable to the AO. In this regards, the provisions of section 36(1)(viia), reads as under:*
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> *"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 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 percent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner. "shall be allowed as deduction.*
>
> *It may be seen that in respect of "any provision" for bad and doubtful debts made by a scheduled bank, deduction of a sum not exceeding*

7.5% of total income and 10% of rural advances is allowed as deduction.

6.2 The submission of the appellant and the argument of the AR on the reading and interpretation are duly considered. The appellant submitted that, the words "any provision" used in the section 36(1)(viia) makes it an inclusive provision and not the exhaustive one. The Act does not provide for restricting the deduction to the extent of provision made in books. Therefore, the provision made by the appellant is included and absorbed in the allowances made by the said section. Therefore once a provision is made by the scheduled bank, it is entitled to a deduction which is quantified not with reference to the provision made in the accounts but with difference to a certain percentage of total income and a certain percentage of the aggregate average advances of rural branches. Similar view is found in the decision of ITAT Delhi in the case of Prathma Bank Vs DCIT (78 ITD 103).

6.3 This issue is decided by various courts of laws through several interpretations. In order to decide the issue, it is necessary to understand the intention of the legislature for enacting this provision. Originally the provision of section 36(1)(viia) was inserted by Finance Act, 1979, so as to allow the deduction of provision made towards bad and doubtful debts in the rural branches of the scheduled banks. The original provision reads in Finance Act 1979 reads as under:

Finance Act, 1979
Deduction in respect of provisions made for bad and doubtful debts relating to rural branches of scheduled commercial banks - Section 36(1)(viia).

13.1 Under section 36(1)(viia), 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, 1979 has inserted a new clause (vila) in sub-section (1) of section 36 to provide for a deduction, in 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 their rural branches. The deduction will be limited to 1.5 per cent of the aggregate average advances made by the rural branches computed in the manner to be prescribed by rules in the Income-tax 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 section 11(2)(b) 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 section 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 cooperative banks have been excluded from the purview of this provision in view of the position that under section 80P(2)(a)(i), 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 clause (vila) of section 36(1) relating to the deduction on account of provisions for bad and doubtful debts is distinct and independent of the provisions of section 36(1) (vii) relating to allowance of 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 section 36(1)(vii) in addition to the benefit of deduction of the provision for bad and doubtful debts under section 36(1)(viia).

13.4 This provision will take effect from 1-4-1980 and will, accordingly, apply in relation to the assessment year 1980-81 and subsequent years.

The said section was enacted in the income tax act being inserted by the Finance Act, 1979, w.e.f. 1-4-1980 which reads as under.

Sec. 36
[(viia) in respect of any provision for bad and doubtful debts made by a scheduled bank in relation to 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,-

(1) "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 clause (b) of sub-section (2) of section 11, but does not include a co-operative bank;]

The provision inserted for the first time clearly shows that the intention of the legislature was to assist the scheduled banks in making adequate provisions out of the current profit to provide for risk in relation to their rural advances. Therefore what is significant is the primary condition of this section- that is to make adequate provision out of the current profits. In continuation with above, the provision of section 36(1)(viia) relevant to the assessment year under appeal is reproduced here and is read as under:

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

(a) a scheduled bank [not being[*] a bank incorporated by or under the laws of a country outside India] or a non–schedule bank [or a co–operative bank other than a primary agricultural credit society or a primary co-operative and one-half per cent] of the total income (computed before making any deduction under this clause and Chapter VIA) and an amount not exceeding [ten] per cent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner:

6.4 A reading of above section in the year of its introduction and in the year under the appeal, makes it evident that the provisions of sec.36(1)(viia) at the time of introduction of the section in the year 1979 and in the assessment year under considerations continue to have the same wordings and therefore, have no changes in interpretation of the Act. The only difference observed is the specified percentage of the deduction allowed. As there is no change in the words and phrases of the provision, the intention of the legislature has not changed up to the year under consideration and therefore the rational provided by the Punjab and Haryana High Court in the case of State Bank of Patiala (2005) 272 ITR 0054 (P&H-HC) still prevails, which is relied upon, and wherein it was held that:

"A bare perusal of the above shows that the deduction allowable under the above provisions is in respect of the provision made. Therefore, making of a provision for bad and doubtful debt equal to the amount mentioned in this section is a must for claiming such deduction. The Tribunal has rightly pointed out that this issue stands further clarified from the proviso to sub- clause (a) of clause (vii) of section 36 (1) of the Act, which reads as under:"

"Provided that in the case of an assessee to which clause (viia) applies, the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts accounts made under that clause."

It is rightly pointed by the Punjab & Haryana High Court that, the deduction is available only to the extent of the provisions made in the books of accounts. The proviso to section 36(1)(vii) for the year under consideration i.e. AY 2014-15 is no different, and hence, the judgment of the Hon'ble Court still applies. Therefore, mere claim of deduction u/s 36(1)(viia) in the computation of income shall not be allowed unless the same is accounted for and claimed in the books of accounts. Therefore it is mandatory for the appellant to make provision of the bad and doubtful debts, in whatsoever name, in the books of account and accordingly the deduction shall be allowed of the amount provided in the books of accounts, subject to the maximum limits specified in the section.

6.5 The other contention of the appellant that even if the quantum of deduction allowable is restricted to the amount of provision for bad and doubtful debts made, it is not the provision made during the year, but based on the quantum of provision for bad and doubtful debts held as at

the date of the balance sheet viz 31.03.2014. The appellant contended that the provision held by the bank towards bad and doubtful debts as on 31.03.2014 amounted to Rs.3877.05 lacs, and at least the claim to that extent should have been allowed as deduction. However as discussed in the above para, the provision clearly mentions that the deduction will be allowed to the extent of the provision made in the books of account during the year. The provision made in earlier years, is duly claimed by the appellant in respective earlier years. Therefore, to claim the deduction in previous year, the appellant has to make provision in the previous year itself. Therefore, the disallowance made by the AO is justified and lawful and upheld.

6.6 Further, the following decisions wherein the interpretation of the provision of section 36(1)(vila) has been discussed and the same rational is applied relied upon:

a. Sharada Sahakari Bank Ltd. v. ITO[2015 TaxPub(DT) 2460 (Pune-Trib)];

b. Solapur District Central Co. Op. Bank Ltd. v. ITO [2015 TaxPub(DT) 5153 (Pune-Trib)];

c. Kannur Distt. Co-op Bank Ltd. v. Asstt. CIT [2012 TaxPub (DT) 2205 (Coch-Trib.);

d. Youth Development Co-Op. Bank Ltd. v. Asstt. CIT[2015 TaxPub (DT) 3360 (Pune-Trib)]

In all the aforesaid decisions, it is decided by the said appellate authorities that the deduction u/s.36(1)(viia) is allowed only to the extent of the provision is made in the books of account. Moreover, the judgments of Sharada Sahakari Bank Ltd., Youth Development Co-operative Bank Ltd. and Solapur DCCB have been decided by the ITAT, Pune, which is one of the jurisdictional Appellate Tribunal and their ratio decidendi is followed. The addition of Rs 97,06,79,200 under section 36(1)(viia) is therefore upheld and confirmed. Ground no. 1 is dismissed.

7.0 Ground No.2: Addition of the interest accrued but not due on securities amounting to Rs.17,39,54,837/-. The appellant had claimed deduction in respect of the interest accrued but not due on the Government and other approved securities. It is argued that the interest on these securities are payable only on respective due dates and therefore they accrue only on the said due dates. The appellant contended that it does not have a right to claim the interest before the due dates specified in the bonds and hence the interest on these securities become income only on the said due dates. Therefore, the interest accrued but not due cannot be or of axed.

7.1 The AO had disallowed the claim on the basis that since the appellant is following accrual basis, the interest accrued is chargeable to tax. Further this issue has been decided by the various High Courts and Income Tax Appellate Tribunals in a number of cases. It is also noted that SLP filed by the department on this issue has been rejected by the

Hon'ble Supreme Court. Therefore, the action of the AO to rely on mercantile system of accounting for making the addition is unsustainable and liable to be deleted.

7.2 In E.D. Sassoon & Co. Ltd. v. Commr. of Inc.-Tax (1954) 26 ITR 27, the Supreme Court held at page 51 that income can be said to accrue or arise when there is a right to receive the same. At page 52, the Supreme Court held:

> *"……. A debt must have come into existence and he must have acquired a right to receive the payment. Unless and until his contribution or parenthood is effective In bringing into existence a debt or a right to receive the payment or in other words a debitum in prasenti, solvendum in futuro it cannot be said that any income has accrued to him. The more expression "carnod" in the sense of rendering the services etc. by itself is of no avail."*
>
> *The Supreme Court further held at page 55".*
>
> *What has however got to be determined is whether the income, profits or gains accrued to the assessee and in order that the same may accrue to him it is necessary that he must have acquired a right to receive the same or that a right to the income, profits or gains has become vested in him though its valuation may be postponed or though its materialisation may depend on the contingency that the making up of the accounts would show income, profits or gains."*

7.3 The question, therefore, is whether interest accrues to the holder of a security on a date other than the one stipulated in the instrument to be the date on which interest is payable. The answer to the question would be the same in respect of any transaction where interest is payable only on a particular date. It is not disputed that the securities in this case expressly provided for payment of interest in respect thereof only on the dates specified therein at three/six monthly intervals. It is also admitted that such dates did not fall on the last date of the appellant's financial year viz.31st March.

7.4 The judgment in the E.D. Sassoon's case was confirmed by the Supreme Court again in Vijaya Bank Limited v. Additional Commissioner of Income Tax 1991 Supp. (2) SCC 147;1987 ITR 541 as it held:

> *"In the instant case, the assessee purchased securities. It is contended that the price paid for the securities was determined with reference to their actual value as well as the interest which had accrued on them till the date of purchase. But the fact is whatever was the consideration which prompted the assessee to purchase the Securities, the price paid for them was in the nature of a capital outlay and no part of it can be set off as expenditure against income accruing on those securities. Subsequently, when these securities yielded income by way of interest, such income attracted Section 18." (emphasis supplied).*

7.5 In the nutshell, the right to receive interest on the Government securities vested in the appellant only on the due date mentioned in the securities. Consequently, interest accrued on the securities is only on the due dates and cannot be said to have accrued to the appellant on any date other than the date stipulated therein. The contention of the AO that interest accrues for broken periods between two consecutive dates stipulated in the agreement/instrument for payment of interest is without any basis in law. Following the Apex Court's decision on this issue, the addition made by the AO is deleted. Ground no 2 is allowed.

8.0 In the 3rd Ground of Appeal, the AO has rejected the claim of the appellant for Rs.2,68,07,020/- as deduction of 20% of profit on creation of special reserve u/s 36(1) (viii). The appellant has to create a special reserve equivalent to the deduction allowable as per the said section. The appellant had created the requisite reserve in the subsequent year out of the profits of the current assessment year. A copy of the profit and loss account for the year ended 31/03/2015 and the movement of reserves as on 31/03/2015 was placed before the AO. However, the AO had not allowed relief on the ground that the appellant had not created the requisite reserve during this year as required under the Act.

8.1 Further the appellant submitted that, Section 36(1)(viii) does not indicate any time limit for creation of special reserve for claiming the deduction u/s. 36(1)(viii) of the Act. Accordingly, a reserve created in subsequent year out of the profit/ general reserve of respective assessment year, but before finalization of grant of such deduction under this section is required to be considered while allowing appellant's claim of deduction made under section 36(1)(viii) of the IT Act, 1961. Similar issue is already decided by the Hon'ble ITAT Delhi in the case of Power Finance Corporation Ltd. vs. JCIT (2008) 16 DTR (Del) (Trib) 519, and Hon'ble ITAT Mumbai in the case of bank of Baroda (ITA 4619/Mum/12-Asst Year 2008-09).

8.2 The said issue is also considered and decided in the case of M/s Sharda Sahakari Bank Ltd., ITAT Pune bench. The same is reproduced as under.

10. Section 36(1) (viii) of the Act provides as under :-

"36(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28-

(1) ** ** **

(viii) in respect of any special reserve created and maintained by a specified entity, an amount not exceeding twenty per cent of the profits derived from eligible business computed under the head "Profits and gains of business or profession" (before making any deduction under this clause) carried to such reserve account:

Provided that where the aggregate of the amounts carried to such reserve account from time to time exceeds twice the amount of the paid

up share capital and of the general reserves of the specified entity, no allowance under this clause shall be made in respect of such excess."

> *11. For computing the income under the head 'business income certain deductions are allowed from such business income and one such deduction is laid down in section 36(1) (vii) of the Act. The said section provides a deduction not exceeding 20% of the profits derived from eligible business computed under the head 'Profits and gains of business or profession', in respect of any special reserve created and maintained by a specified entity and the said amount having been carried to such reserve account. The condition of maintaining the special reserve was incorporated with effect from 1-4-1998 by the Finance Act, 1997. The wordings of sub-section are that special reserve should be created and maintained by a specified entity from the profits of the eligible business for the relevant previous year from which deduction is to be claimed. The section further provides that the amount should be carried to such reserve account. In other words, it is specified that entries are to be made in the books of account by way of a creation of a special reserve in order to claim the deduction under section 36(1)(viii) of the Act which, in turn, would not exceed 20% of the profits derived from the eligible business. Further, certain restrictions are provided in the proviso to the said sub- section which is not relevant for deciding the issue before us.*
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> *12. In the facts of the present case, admittedly assessee was a specified entity entitled to the benefit of deduction under section 36(1)(viii) of the Act. Further, in order to get the benefit of the said deduction under section 36(1)(viii) of the Act, the requirement was to create a special reserve in its books of account out of its current income which the assessee has failed to do so. The plea of the learned Authorized Representative for the assessee is that there is no such requirement of creation of special reserve for claiming the deduction under section 36(1)(vii) of the Act. Our attention was drawn to the wording of section 34(3a) of the Act wherein it is provided that the deduction under section 33 of the Act shall not be allowed unless an amount equal to seventy-five per cent of the development rebate to be actually allowed is debited to the Profit & Loss Account and also created to be a reserve account to be utilized by the assessee during the period of eight years next.*

8.3 From the above it is clear that the deduction under section 36(1)(viii) is allowable only when the same is claimed in the books of accounts of the year under consideration and it is created from the income of the current year only. The appellant in the case under consideration has failed to comply with both the requirements and therefore the addition of Rs. 2,68,07,020/- made by the AO is found to be correct and the contention of the appellant in this context is rejected. Ground no. 3 is confirmed.

9.0 In the 4th Ground of appeal, the AO has observed that the appellant has claimed the deduction of Rs.2,77,22,160/- on account of recovery in respect of bad debts written off as 'not taxable', since bad debts written off is not claimed and allowed as deduction. The bad debts written off has never been claimed or allowed as deduction. Accordingly, the recovery made in respect of bad debts written off was claimed as deduction. The same was taxed by the AO on the basis that the appellant is allowed deduction in respect of provision for bad debts u/s 36(1)(viia).

9.1 Appellant further submitted that, as per the provisions of section 41(4) it is only the recovery made out of bad debts written off and allowed u/s 36(1)(vii) that can be taxed. Therefore, when the write off of bad debt has not been claimed as deduction, the recovery out of the said bad debt written off cannot be brought to tax. On the issue of deduction being allowed u/s 36(1) (viia) the provisions of section 41(4) can be invoked only if deduction has been allowed u/s 36(1)(vit) and hence the deduction allowed u/s does not result in the recovery being taxed u/s 36(1) (viia) or 41(4).

9.2 It is necessary therefore to verify the reason why in the first place, recovery of bad debts is being credited to profit and loss account, instead of simply verifying the applicability of the section 36(1)(vii) or 36(1)(vviia)or 41(4). As per accounting principles, for the purpose of recovery in bad debts account, such recovery should have been credited to the loan account of the borrower only. There also cannot be a situation of excess recovery of loan if the outstanding balance loan is the only recoverable amount of loan. An excess recovery can only be of any other charges received and such excess recovery are revenue / income only. The other reason for such excess recovery in loan account is that the bank may have reduced the loan account outstanding by either Write-off of loan, or by making a provision for bad debts in the earlier years. In both the situations, the same is debited to profit and loss account in the respective year of the provision so made or the amount written-off. The recovery in these loan accounts after this adjustment can be an amount recovered in excess of the balance outstanding in these account as these are receivable by bank from the borrower, but the bank has internally in their books of accounts made a provision or written–off these loans.

9.3 In the case under consideration, the appellant was asked vide letter dated 19.09.2018 to submit the details of the loan accounts of all those borrowers whose accounts were credited in profit and loss account for which the appellant has claimed deduction as non taxable. Even after several opportunities, the appellant failed to submit the said ledger copies of the borrowers and the other details called for to justify its claim.

9.4 In preceding paras of this order, it is already decided that the deduction u/s 36(1)(vil) is available as per the proviso narrated earlier, and netting of with the deduction u/s 36(1)(viia). Therefore, the credit in profit and loss of Rs. 2,77,22,160/- towards old recovery account clearly indicates that the same was already claimed as deduction u/s 36(1) (vii) and 36(1)(viia) and thereafter, the excess amount is credited to profit and loss account for the year under consideration.

9.5 The appellant has not famished the documents /details requested to justify and substantiate the afore-mentioned claims which goes to show that the appellant's claim of deduction of Rs.2,77,22,160/- is not correct and valid. Without having written off the balances earlier in the books of account, the excess recovery cannot possibly be entered in the profit and loss account. Considering the facts in totality, I am of the opinion that the appellant mis-construed the provision of section 36(1)(viia)

read with 36(2)(v) and provision of section 36(1)(viii). Hence the disallowance is rightly made by the AO and is upheld. The deduction claimed is thus not found proper, or even properly explained, and the action of the AO is not faulted. Hence the addition made by the AO of Rs2,77,22,160/- is held as justified and legally valid. Ground no. 4 is dismissed.

10.0 Ground no.6 pertains to non-granting of credit towards advance tax and other taxes. The appellant has not pressed the ground in its submission even though it is a legal ground, and accordingly the AO is directed to allow credit of income tax paid if any, as legally allowable to the appellant. This ground is allowed for statistical purpose.

11.0 Additional Ground no 1: The appellant has raised an additional ground of appeal for deduction u/s.80P of the Income Tax Act, 1961. As per appellant, it is a Regional Rural Bank established as a corporate body with perpetual succession.

The relevant Section 22 of Regional Rural Bank Act, reads as under.

"22. Regional Rural Bank to be deemed to be a co-operative society for purpose of the Income-tax Act, 1961

> *For the purpose of the Income-tax Act, 1961(43 of 1961), or any other enactment for the time being in force relating to any tax on income, profits or gains, a Regional Rural Bank shall be deemed to be a co-operative society."*

11.1 However, in this regards, the CBDT has specifically issued a circular No.06/2010 dated 20/09/2010 clarifying not to consider the Regional Rural Banks as co-operative societies. The said circular is reproduced hereunder:

Section 80P of the Income-tax Act, 1961-Deduction in respect of income of co- operative societies -

Clarification regarding eligibility of deduction under section 80P to Regional Rural Banks

CIRCULAR NO, 6/2010 [F.NO. 173(3)/44/2009-IT (A-I)] DATED 20-9-2010

Section 80P of the Income-tax Act, 1961 provides for a deduction from the income of cooperative societies referred to in that section.

2. As Regional Rural Banks (RRB) are basically corporate entities (and not cooperative societies), they were considered to be not eligible for deduction under section 80P when the section was originally introduced. However, as section 22 of the Regional Rural Bank Act provides that a RRB shall be deemed to be cooperative society for the purposes of the Income-tax Act, 1961, in order to make such banks eligible for deduction under section 80P, CBDT issued a beneficial Circular No. 319 dated 11-1-1982, which stated that for the purpose of section 80P, a Regional Rural Bank shall be deemed to be a cooperative society.

3. Section 80P was amended by the Finance Act, 2006, with effect from 1-4-2007 introducing subsection(4), which laid down specifically that the provisions of section 80P will not apply to any cooperative bank other than a Primary Agricultural Credit Society or a Primary Cooperative Agricultural and Rural Development Bank. Accordingly, deduction under section 80P was no more available to any Regional Rural Bank from assessment year 2007-08 onwards. An OM dated 25-8-2006 addressed to RBI was issued by the Board clarifying that Regional Rural Banks would not be eligible for deduction under section 80P of the Income-tax Act, 1961 from the assessment year 2007-08 onwards.

4. It has been bought to the notice of the Board that despite the amended provisions, some Regional Rural Banks continue to claim deduction under section 80P on the ground that they are cooperative societies covered by section 80P(1) read with Boards Circular No. 319 dated 11-1-1982.

It is, therefore, reiterated that Regional Rural Banks are not eligible for deduction under section 80P of the Income-tax Act, 1961 from the assessment year 2007-08 onwards. Furthermore, the Circular No. 319 dated 11-1-1982 deeming any Regional Rural Bank to be cooperative society stands withdrawn for application with effect from assessment year 2007-08.

The field officers may take note of this position and take remedial action, if required.

11.2 It is well settled law that the circulars issued by the Board are statute in nature and hence will prevail over the Act. Since the circular 06/2010 has clarified that the Regional Rural Banks are not to be treated as co-operative societies for the purpose of section 80P, hence no deduction is allowed under the said section. Therefore, the request of appellant to allow deduction u/s. 80P is rejected.

11.3 Moreover, the AO has in his remand report on the allowability of deduction U/s.80P informed that in appellant's own case for A.Y. 2011-12 i.e. "Wainganga Krishan Gramin Bank Ltd. which is subsequently amalgamated with Vidharbha Konkan Gramin Bank w.e.f. 28-2-2013, the Ld. CIT(A)-7, Pune while deciding the appeal of the assessee has observed as under:

> *"The appellant has contended that, appellant is not co-operative bank and therefore provision of section 80P(4) does not apply. The appellant is Regional Rural Bank and claimed that, it is Primary Agriculture Credit Society or Primary Agriculture and Rural Development Bank. CBDT Circular No. 6/2010 specifically denies deduction/s 80P to Regional Rural Bank. Regional Rural Bank's are not eligible for deduction/s 80P from the A.Y. 2007-08 onwards. Furthermore, the circular number 319 dated 11-1-1982 deeming any Regional Rural Bank to be co-operative society stands withdrawn for application with effect from A.Y. 2007-08. Therefore, appellant is not eligible for deduction u/s 80P being Regional Rural Bank."*

11.4 The appellant has preferred an appeal with ITAT, Pune against the order of CIT(A)-7, Pune, which is yet to be decided. Hence, the decision of the CIT(A)-7 Pune will prevail in this case as well.

12.0 in the result, the appeal is partly allowed."

5. The assessee is in further appeal before the Tribunal with the issues which has been by the learned CIT(A) against the assessee.

6. We have heard the arguments of both the learned Representatives appearing for the parties, perused the material available on record and gone through the orders of the authorities below. Before us, during the course of hearing, the learned A.R. drew our attention to the order dated 16/03/2022, passed by the Hon'ble High Court of Allahabad in PCIT v/s Baroda Uttar Pradesh Gramin Bank, reported as [2022] 138 taxmann.com 449 (All.) wherein similar issue has been decided in favour of the assessee and against the Revenue. The operative part of the judgment cited above is reproduced herein below:–

"3. It has been admitted before us that the respondent-assessee is a Primary Cooperative Agricultural and Rural Development Bank. It has also been admitted before us that the respondent/assessee is a Bank, established under section 3 of the Regional Rural Banks Act 1976. The respondent/assessee claimed deduction under section 80P of the Income- tax Act, 1961(hereinafter referred to as the Act, 1961') on the ground that it is a Cooperative Society and, therefore, in terms of the provision of Section 22 of the Regional Rural Development Banks Act, 1976 (hereinafter referred to as the R.R.B Act, 1976'), it is entitled for deduction under section 80P of the Act.

4. The assessing authority has not accepted the claim of the deduction on the ground that the respondent/assessee is not a Cooperative Society registered under the U.P. Cooperative Societies Act, 1912 and, therefore, it is not entitled for deduction under section 80P of the Act, 1961. It was further held by the Assessing Authority in paragraph 2.5 of the Assessment Order that the Regional Rural Banks are not eligible for deduction under section 80P of the Act, 1961 from the Assessment Year 2007-08, as by Circular No. 319 dated 11-1-1982 issued by the Central

Board of Direct Taxes, deeming status of the Regional Rural Banks as Cooperative Society stands withdrawn w.e.f. Assessment Year 2007-08.

5. In the assessment order, the assessing authority has held in para no. 4 and 5, as under:-

4. The stand taken by assessee on this issue is not correct due to following reason:-

a. Regional Rural Bank Act, 1976 has not overriding power over Income- tax Act, 1961 Circular No. 319 dated 11-1-1982 allowing deeming provision of cooperative society has been withdrawn by Board CIRCULAR NO. 6/2010 (F. No. 173 (3)/44/2009-IT (A-1) DATED 20/9/2010 w.e.f. assessment year 2007-08, And a clarification has been also given in this circular that Regional Rural Bank are not entitled for deduction u/s 80P of I.T. Act Circular has been typed in paragraph 3.1 (B) of assessment order.

b. A sub-section 80P(4) was introduced by Finance Act, 2006 w.e.f. 1-4-2007 withdrawing deduction u/s 80P in relation to any cooperative bank. The explanatory note to Finance Act with regard to this section is noted below:-

"Withdrawl of tax benefits available to certain cooperative banks:-

Section 80P, inter alia, provides for a deduction from the total income of the Co-operative societies engaged in the business of banking or providing credit facilities to its members, or business of a cottage

industry, or of marketing of agricultural produce of its member, or processing, without the aid of power, of the agricultural produce of its members, etc.

The cooperative banks are functioning at per with other commercial banks, which do not enjoy any tax benefit. It is, therefore, proposed to amend section 80P by inserting a new sub-section (4) so as provide that the provisions of the said section shall not apply in relation to any cooperative bank other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank. It is also proposed the expressions "cooperative bank", "primary agricultural credit society" and "primary cooperative agricultural and rural development bank".

It is also proposed to insert a new sub-clause (viia) in section 2 (24) so as to provide that the profits and grains of any business of banking (including credit facilities) carried on by a cooperative society with its members shall be included in the definition of 'income'.

This amendment takes effect from 1st April, 2007 and apply in relation to the assessment year 2007-08 and subsequent years. (Clauses 3 and 19)"

From aforesaid facts, intension of Parliament is very much clear and deduction under section 80P is not allowable to Regional Rural Bank and any cooperative bank.

5. However, it should be kept in mind that 80P (1) and 80P (2) (1) shall never be read in isolation rather it should always be read in association with 80P (4). The selection 80P (4) is introduced by Finance Act, 2006 w.e.f 1-4-2007 to clear any doubt while claiming deduction under section 80P (1) and 80P (2) (II) FURTHR CBDT ISSUED "circular no. 6/2010 (F. NO. 173 (3)/44/2009-IT (A-1) DATED 20-9-2010 C to give more and more clarity on 80P deduction. Therefore, the assessee is assessed as status of AOP.

From aforesaid discussion it is held that assessee is not entitled for deduction u/s 80P (1) of I.T. Act and claiming disallowed and added back to the total income. Penalty notice u/s 271(1) (c) is being issued separately.

6. Sections 22 and 32 of the Regional Rural Banks Act, 1976 provides as under:-

22. Regional Rural Bank to be deemed to be a cooperative society for purpose of the Income-tax Act, 1961.- For the purpose of the Income-tax Act, 1961 (43 of 1961), or any other enactment for the time being in force relating to any tax on income, profits or gains, a Regional Rural Bank shall be deemed to be a cooperative society.

32. Act to override the provisions of other laws. The provisions of this Act shall have effect notwithstanding anything to the contrary in any other law for the time being in force or in any contract, express or implied, or in any instrument having effect by virtue of any law other than this Act, and notwithstanding any custom or usage to the contrary.

7. Sub-section (4) of section 80P of the Act. 1961 (incorporated by Finance Act. 2006 w.e.f. 1-4-2007 provides as under.

Para 1.644

(4) The provisions of this section shall not apply in relation to any cooperative bank other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank:

Explanation-For the purposes of this sub-section-

(a)"cooperative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) primary cooperative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.

8. The Tribunal has passed impugned two common orders, firstly in matters arising out of the assessment orders, and secondly order in matters arising from the penalty orders.

9. In the Income-tax Appeals arising from the assessment order, the Income-tax Appellate Tribunal Allahabad Bench, Allahabad has recorded the following findings of the fact (paragraphs 38, 39, 41, 42, 50, 51, 54, 55, 56, 57, 58, 61):-

38. We have heard the contentions, put forth by the rival parties, perused the Paper Books in three volumes as had been uploaded by the appellant RRB. The central issue involved in all these appeals is whether 'appellant RRB is entitled to claim exemption under section 80P(2)(a)(i) of the Act, on the ground that Regional Rural Banks in general had been notified as "Cooperative Society" by virtue of insertion of section 22 read with section 32 of Regional Rural Bank Act 1976. Further, whether such a claim is adversely affected by insertion of sub- section (4) below section 80P, by the Finance Act 2006. To find out answer for such issues, it would be useful to trace the history of section 80P as well as of Banking Regulation Act, 1949 and Part-V thereof as had been inserted to the main statute, i.e., Banking Regulation Act 1949, in the year 1965.

39. The section 80P of the Act' had been inserted, in substitution of section 8l of the Income-tax Act 1961, by the Finance Act (No.2) of 1967, (20 of 1967), w.e.f. 1-4-1968. The purpose behind such a substitution, was to enlarge the scope of deduction as used to be permissible under erstwhile section 81 (the then) of the Act. In terms of section 81, rebate on certain types of income had been provided, whereas in terms of section 80P, full and outright deduction of income earned from the 'business of Banking' or 'providing credit facilities to its members, to various types of Cooperative Societies as mentioned in sub-clauses (i) to (vii) of clause (a) of sub section 2 of 80P had been given. It clearly meant that, while enacting sections 22 r.ws. 32 of Regional Rural Bank Act, 1976, the Parliament was fully aware of the provisions contained in the newly substituted section 80P, in place of erstwhile regime of granting rebate as had been provided under section 81 of the Act. Yet the said RRB Act had granted 'Regional Rural Banks' 1961, the status of "cooperative society", for the purposes of "taxation of its income or any other enactment for the time being in force, related to any tax on its income, profits or gain as derived by specified categories of co operative societies, from Banking Business". The term Banking Business' itself is a connotation of very wide import. The said statute, namely RRB Act 1976, as a whole had been given the status of 'overriding nature, as per section 32 thereof. Therefore, as per simple rule of interpretation, the Regional Rural Bank Act, 1976, overrides the substituted section 80P of the Act. Such an analogy is applicable to sub-section (4) also of section 80P also, for the reason that the said sub-section (4) had been inserted by the Finance Act, 2006 without there being any corresponding amendment in the RRB Act 1976 particularly in section 22 of Regional Rural Bank Act 1976.

41. In short, the effect of over-riding provisions as contained in section 22 read with section 32 of Regional Rural Bank Act 1976, had not/could

not have been taken away or whittle down their true effect, as the said provisions remain intact. Accordingly, all the Regional Rural Banks as have been constituted and incorporated under the Regional Rural Bank Act 1976, as the appellant RRB is, continue to be "cooperative society" and thereby continue to enjoy exemption under section 80P (2)(a)(i). The "appellant RRB", is no exception. Meaning thereby, that the appellant RRB', in spite of insertion of bar by virtue of sub-section (4) below section 80P, by the Finance Act 2006 effective from 1-4-2007, continues to be enjoying exemption under section 80P(2)(a)(1).

42. Here itself, it would not be out of place to mention that status of "cooperative society" had been conferred on Regional Rural Banks, as the "appellant RRB" is, by virtue of section 22 read with section 32 of Regional Rural Bank Act 1976, and not by circular no. 319 dated 11-1-1982 as had been issued by CBDT, as had been opined, by the Authorities below. Therefore, insertion of sub-section (4) below section 80P, and/or withdrawal of the said Circular no. 319 dated 11-1-1982 in the wake of insertion of bar by virtue of sub section (4) had not gone to adversely affect 'claim for exemption' from income tax as had been put forth by the "appellant RRB". The "appellant RRB" continues to be having the status of a "cooperative society" enjoying the benefit of exemption.

50. For taking such a view, about interpretation of Regional Rural Bank Act, vis-à-vis sub-section (4) of Income-tax Act, 1961, we are fortified by the decision rendered by Hon'ble Supreme Court in the case of Reserve Bank of India vs. Peerless General Finance and Investment Co. Ltd. reported in (1987) 1 SCC 424 wherein it has been held that:

"interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither Can be Ignored. Both are important. That interpretation is best which makes the textual interpretation match the Contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at in the context of its enactment, with the glasses of the statute maker provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With those glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the court construed in the expression 'Prize Chit' in Srinivasa and we find no reason to depart from the Court's construction".

51. Speaking further, even if it is held that the term 'Regional Rural Bank' has a different meaning in its purport, than that given in the Regional Rural Bank Act 1976, this would be the case of ambiguity in

the statute. It is a law well settled that benefit of such an ambiguity has to be given to the 'subject', as the appellant RRB is. It is a trite law that provisions contained in the fiscal statutes, have to be read word by word and nothing is to be subtracted therefrom and nothing is to be intended therein. Such a rule of interpretation had been laid down by the Hon'ble Jurisdictional High Court in the case of CTT v. Sahara India Savings and Investment Corpe. Lad reported in 120031 264 ITR page 646, wherein their lordships have observed and held as under:

"We do not agree. It is a well settled principle of interpretation of taxing statues that while interpreting a having statue we have only to see the words used in the statue and mot the intention or the spirit of the statutory provision. In a taxing statue the liberal rule of interpretation applies, and it is well settled that if at transaction comes within the letter of the law it has to be saved, however great the hardship, but if it does not, it cannot be taxed, however great the less may be to the public exchequer. The view was best expressed by Lord Cairns in Partington v. Attorney General [1889] 4 LR 100 (HL) as follows (at page 122):

If the person sought to be taxed, comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand if the Court seeking to recover the tax, cannot bring the subject within the letter of law, the subject is free. however apparently within the spirit of the law the case might otherwise appear to be.

The principle of strict interpretation of taxing statutes was best enunciated by Rowlatt J. in his classic statement:

In a taxing statute one has to book merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One must only look fairly at the language used. In A.V. Fernandez v. Sune off Kerala (1957 8 STC 561; AIR 1957 SC 657, the Supreme Court of bullin stared the principle as follows (page 661 of AIR 1957 SC): "If the Revenue satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If on the other hand, the case is met covered within the four corners of the provisions of the taxing statue no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the Legislature and by considering what was the substance of the matter.

Where the language of a provision is plain, Courts cannot ordinarily concern themselves with the policy behind the provision, or the intention off the Legislature. As Land Watson said in A. Salomon V. A. Salomon and Co. (1897) AC 22, 38 (HL) "intention of the Legislature is a common but slippery phrase". In ITO v. TS Devastha Nadar [1968] 68 (TR 252: AIR 1968 SC 623, the Supreme Court of India observed that the rule that (page 257):

"we must look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, and what it was that the Legislature contemplated' was

made while construing a non-taxing statute. The said rule had only a limited application in interpreting a taxing statute. It follows from this decision that the mischief rule laid down in Heydon's case (1584) 3 Co. Rep 7a has only a limited application to taxing statutes.

Hence there is no question of looking into the legislative intent or spirit of the law in a taxing statute. We have only to see the actual words used. In other words, in a taxing statute we have to go by the letter of the law, and not its spirit or intent."

The new definition of the word "interest" in section 2(7) is in two parts.

Firstly, it says that "interest" means interest on loans and advances. Secondly, it includes two other items in the definition of the word "interest".

In our opinion, the only correct interpretation of this provision can be that firstly nothing is interest except interest on loans and advances. Secondly, two other categories are also included in the definition of the word "interest" as specified in clauses (a) and (b) of section 2(7). In our opinion, the word "means can only have one meaning, that is, it is CIT v. Sahara India Savings and Investment Corporation Ltd. reported in [2010] 321 ITR 371 an exclusive definition vide P. Kasilingam v. P.S. G. College of Technology (1995/supp 2 SCC 348. When we say that a word has a certain meaning then by implication we mean that it has no other meaning vde a Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer, Labour Court/1990] 77 FJR 17: 11990) 3 SCC 682. However, when certain other categories are added then it means that only those additional categories will be included within the definition and none others, Vide Mahalakshmi Oil Mills v. State of A.P 1989 1 SCC 164; 1988) 71 STC 285 (SC)"

The aforesaid judgment had received affirmation also, from the Hon'ble Supreme Court in the case of CIT v. Sahara India Savings and Investment Corporation Ltd. reported in [2010] 321 ITR 371."

54. So far as claim of exemption of its income is concerned, we have noted the decision of Hon'ble Supreme Court in the case of Citizen Coopèrative Society Ltd. v. Asstt. CIT [2017] 397 ITR 1, dated 8-1-2017. wherein denial of the appellant's claim for exemption, by the authorities below had been upheld, owing mainly 'to the bar contained in sub- section (4) of section 80P of the Act. The facts of the said case were, that it was a "cooperative society" registered under the Andhra Pradesh Mutually Aided Cooperative Societies Act 1955. In that case, the said cooperative society had violated the provisions of Andhra Pradesh Mutually Aided Cooperative Societies Act 1955. It was under these circumstances, that the Hon'ble Supreme Court had approved the judgment, adverse to the assessee, as had earlier been delivered by Hon'ble Andhra Pradesh High Court. As against this, it is stated that this is not even the case of the revenue that the appellant had carried on the banking business, in violation of any of the provisions of Regional Rural Bank Act 1976. On the other hand, the revenue's case, had been that the appellant carried on the "business of banking", like that of any other bank which did not enjoy the benefit of exemption under section

80P(2)(a)(i). Succinctly speaking, present is the case where the appellant RRB had been carrying on the 'business of Banking' as per enabling provisions, as contained in section 18 of Regional Rural Bank Act, 1976 and it had been specifically given the status of a 'Cooperative Society' by virtue of section 22 of RRB Act 1976 looking to the preamble of the statute namely Regional Rural Bank Act 1976.

55. It is worthwhile to mention here that in the case of Citizen Cooperative Society Ltd., as has been referred to by the Id. CIT DR, the Hon'ble Supreme Court had also, referred to its earlier decision in the case of CIT v. Nawanshahar Central Co-op Bank Ltd. reported in [2007] 289 ITR 6 wherein it has been held that if a cooperative bank was carrying on business of banking, which required it to place a part of its funds in approved securities, the income attributable thereto, is deductible under section 80P(2)(a)(i) of the Act.

56. Further, in other case of CIT v. Nawanshahar Central Co-op Bank Lid. reported in [2012] 349 ITR 689, the Hon'ble Supreme Court has also held that "the assessee cooperative society was entitled for deduction under section 80P(2)(a) (i) of Income Tax Act 961, in respect of underwriting commission and interest on PSEB Bonds and IDBI Bonds, as such is an income, attributable to the business of banking. It is not the case of revenue that any part of its income had been earned by the "appellant RRB", which is different from "Business of Banking" as defined in section 18 of Regional Rural Bank 1976.

57. From the discussion made in the foregoing paragraphs, it is abundantly clear that the Assessing Officer and so also the Id. CIT (A), had gone off the tangent, while deciding/adjudicating the appellant's claim for exemption under section 80P(2)(a)(i), owing mainly to the reason that they have failed to interpret the provision contained in section 22 of RRB Act 1976 and also the significance of section 32 of the said statute, which had the effect of making the overall statute i.e. Regional Rural Bank Act 1976, of over-riding nature. Both these sections have been reproduced by us earlier in this order. A perusal of the said sections would clearly mean that the "appellant RRB" is a "cooperative society" and accordingly sub-section (4) below section 80P of the Income-tax Act would not operate as a bar to its claim for exemption and accordingly, we set aside the findings given in the related assessment orders as well as appellate orders so far as appellant's claim for exemption under section 80P(2)(a)(i) is concerned. The Assessing Officer would recompute the income after allowing deduction under section 80P(2)(a)(i), as per our findings given hereinfore.

58. Before parting with the issue of appellant's claim case for exemption under section SOP(2)(a) (i), we also hold that the case laws referred to and relied upon by the ld. "CIT(A), while upholding the denial of claim for exemption of income derived from "banking business", she has referred to and relied upon various case laws, as have been discussed by us in para 47 hereinfore. Such case laws are not applicable on the facts of the present case. Surprisingly enough, the underlying principle in all such case laws support the appellant's claim for exemption as it had achieved the objective for which it had come into existence in the

year 1976. As stated above, the "appellant RRB had come into existence for development and growth of agricultural sector which had always been on the priority list of the Government of India. In such a situation, the claim for exemption from income-tax, gets fully fortified.

61. Thus, we fully concur with the view expressed by the Coordinate Bench at Allahabad in the case of 'appellant RRB' in order dated 8-1-2018 and reverse the orders passed by the authorities below, in relation to the appellant's claim for exemption under section 80P(2)(a)(i). With such an elaboration as has been given by us, we uphold the appellant's claim for exemption under section 80P(2)(a)(i).

10. Income Tax Appellate Tribunal has recorded a clear finding of the fact in the afore-noted order that the appellant had come into existence for development and growth of agricultural sector. This finding of fact has not been disputed in the present appeals.

11. Assessing authority, in para no. 2 of the assessment order itself has recorded a finding that the respondent-assessee came into existence w.e.f. 31-3-2008, after amalgamation of the two Regional Rural Banks (RRB) i.e. Baroda Eastern U.P. Gramin Bank and Baroda Western Gramin Bank. It has not been disputed that by virtue of deeming provision under section 22 of the Regional Rural Banks Act, 1976, the respondent/assessee is deemed cooperative society.

12. We have perused the impugned common order of the Tribunal arising from the assessment order and we do not find any legal infirmity in it."

7. In the said case, Their Lordships have held in unequivocal terms that Regional Rural Bank is entitled to benefit under section 80P(2)(a)(i) of the Act. The learned Departmental Representative could hardly controvert the position and fairly submitted that the order of the non–jurisdictional High Court has only a persuasive value and it has no binding force which need not be followed. He pointed out that the assessee has taken addable stand to claim tax benefit, which is impermissible. Their Lordships have held that the assessee is entitled to the benefit of section 80P(2)(a)(i) of the Act per supra. We set aside the findings given in the relevant assessment orders as well as appellate orders insofar as assessee's claim for exemption under section

80P(2)(a)(i) of the Act is concerned. The Assessing Officer would re–compute the income in the lines enunciated above. The assessee in its financial statements and computation of income has claimed certain deductions which are applicable to Co–operative Banks. Further, the learned Authorised Representative miserably failed to convince about why other grounds were pressed by him which were dealing with deduction available to Banks. He submitted that those are alternate grounds. But, without any specific mentioning in grounds of appeal, his argument is baseless. We find that this is a peculiar case where the Bank never claimed to be a Co–operative Society even before the Assessing Officer, but just because loss is converted to a positive income during the assessment, the provisions of The Regional Rural Bank Act, 1976, was being pressed before the appellate forum. The learned Authorised Representative even did not bring the financial statements before us to buttress his conclusions. In view of the nebulous facts, we leave the matter wide open and direct the Assessing Officer to re–adjudicate the issue afresh and to take a considered call in this matter after considering tax treatment of similar Regional Rural Development Banks.

8. Insofar as the other grounds of appeal are concerned, in this regard, it may be mentioned here that the learned CIT(A) did not have the benefit of the aforesaid judgment of the Hon'ble Allahabad High Court in Hon'ble High Court of Allahabad in Baroda Uttar Pradesh Gramin Bank (supra) when the first appellate order was passed and, therefore, the matter is set aside to the file of the Assessing Officer to review and re–consider the order of the Hon'ble High Court of Allahabad cited supra, if necessary, in the light of the directions

given by us and thereafter examine the allowability of claims. Hence, it is not deemed necessary to delve at this stage.

9. In the result, appeal filed by the assessee for A.Y. 2014–15 is partly allowed for statistical purposes.

ITA no.8/Nag./2019
Assessee's Appeal – A.Y. 2015–16

10. In its appeal, the assessee has raised following grounds:–

"1.1 The CIT(A) failed to note that appellant a Regional Rural Bank being deemed to be a cooperative society as per section 22 rws 32 of Regional Rural Bank Act for the purpose of Income-tax Act, is entitled to benefit of deduction u/s 80P (2)(a)(i) as held by Hon'ble ITAT Allahabad in the case of Baroda Uttar Pradesh Gramin Bank (ITA 403 to 405/Alld./2014) and accordingly deduction under the said section should be allowed in computing the total income.

2.1 The CIT(A) failed to appreciate that deduction u/s 36(1)(viia) is to be allowed based on total income and rural advances in respect of "any" provision made and hence the eligible deduction as per said section should be allowed if the appellant had made any provision towards bad and doubtful debts and not necessarily equivalent to the provision made as held by Hon'ble ITAT Delhi in case of Pratima Bank (58 ITR (Trib) 1).

2.2 Without prejudice to the above, the CIT(A) should have allowed the alternate claim of the appellant that the deduction should be based on the provision held in the accounts as held by Hon'ble ITAT Ahmedabad in the case of DCIT V Sarvodhaya Sahakari Bank Ltd (2014 48 Taxman.Com 82) and should not have dismissed the claim by stating that the Act requires provision to be made in previous year even when there are no such words in the Act.

2.3 Without prejudice to the above, the CIT (A) ought to have atleast allowed the claim of the appellant that the deduction should be based on gross provision made and not the net provision made. Reliance is placed on decision of Hon'ble ITAT Cochin in the case of Kannur District Cooperative Bank (136 ITD 102).

3. The Ld.CIT (A) erred in confirming the disallowance of deduction u/s 36(1) (viii) of the Income Tax Act on the ground that no special reserve had been created even when the appellant in subsequent years will create the requisite Special Reserve from profits chargeable to tax for that year and hence based on the decision of ITAT Delhi in the case of Power Finance Corporation Ltd (2008-TIOL-475-ITAT-DEL) the claim of the appellant should have been allowed. The CIT(A) erred in relying on

decision of Sharda Sahakari Bank where the issue was allowability of deduction u/s 36(1)(viii) without transferring any amount to special reserve.

4. The CIT(A) erred in confirming order of AO to tax the recovery in respect of bad debts written off even when the bad debts written off was never allowed as deduction in any earlier year on the ground that deduction is allowed u/s 36(1)(viia) without appreciating that the provision allowed is already reduced by the amount of bad debts written off. The appellant submits when bad debts written off is not allowed as deduction, the recovery cannot be taxed.

5. The CIT(A) erred in confirming the disallowance of interest u/s 201(1A) without appreciating that it is in the nature of compensatory payment and as held by Hon'ble ITAT Kolkatta in the case of Narayani Ispat (P) Ltd (ITA 2127/Kol/2014), the same should have been allowed.

Your appellant craves leave to add, to amend and or vary the grounds of appeal before or at the time of hearing."

11. The grounds raised are exactly identical to the issues raised in the appeal being ITA no.7/Nag./2019, for the assessment year 2014–15, with variation in numerical figures, except ground no.5.

12. The directions given in the appeal being ITA no.7/Nag./2019, shall apply mutatis–mutandis here in view of the exactly similar and identical nature of disputes. For the sake of brevity, the same is not reproduced. As regards ground no.5, regarding interest on tax deducted at source is concerned, the same is not allowable since such interest partakes the nature of tax. The assessee's ground is dismissed by relying upon the ratio laid down by the Hon'ble Supreme Court in East India Pharmaceutical Works Ltd. v/s CIT, [1997] 224 ITR 627 (SC), wherein disallowance of interest for payment of income tax was confirmed. The reliance on the decision of the Co–ordinate Bench, Kolkata, in Narayani Ispat (P) Ltd. (ITA no.2127/Kol./2014, is misplaced and unfounded.

13. In the result, appeal filed by the assessee for A.Y. 2015–16 is partly allowed for statistical purposes.

14. To sum up, both the appeals for A.Y. 2014–15 and 2015–16 are partly allowed for statistical purposes.

Order pronounced in the open Court on 28/11/2024

Sd/-	**Sd/-**
V. DURGA RAO	**K.M. ROY**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

NAGPUR, DATED: 28/11/2024

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Nagpur; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Sr. Private Secretary
ITAT, Nagpur