आयकर अपीलीय अधिकरण,**'सी'** न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री जगदीश, लेखा सदस्य के समक्ष

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA Nos.: 2789 to 2793/CHNY/2024**

निर्धारणवर्ष/Assessment Years: 2009-10, 2010-11, 2011-12, 2012-13 & 2014-15

The Virudhunagar District Central Co-operative Bank Limited, 104/1, Madurai Road, Post Box No.8, Virudhunagar-626 001. **PAN: AAAAV-0147-N**	Vs.	**Deputy Commissioner of Income Tax,** Virudhunagar Circle, Virudhunagar.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Manoj Menon, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri R.Clement Ramesh Kumar, CIT

सुनवाई की तारीख/Date of Hearing : 18.03.2025

घोषणा की तारीख/Date of Pronouncement : 21.03.2025

आदेश /O R D E R

PER GEORGE GEORGE K, VICE PRESIDENT:

These appeals at the instance of the assessee are directed against five orders of the CIT(A)/NFAC orders dated 24.07.2024 / 25.07.2025 passed u/s.250 of the Income Tax Act, 1961 (hereinafter called as "Act"). The relevant assessment years are 2009-10 to 2012-13 and 2014-15.

2. There is a delay of 37 days in filing these appeals. The assessee has filed petition for condonation of delay supported by affidavit of Joint Registrar / Administrator of the assessee's co-operative bank stating therein reasons for belated filing of the appeals. The reasons stated in the condonation application for belated filing of these appeals is that Joint Registrar of the assessee co-operative bank was not well and undergone medical treatment during the relevant period, hence there was delay in filing these appeals.

3. On perusal of the aforesaid reasons in the condonation applications, we are of the view that there is sufficient cause for belated filing of these appeals and no latches can be attributed to the assessee. Hence, we condone the delay in filing these appeals and proceed to dispose off the appeals on merits.

4. Common issues are raised in these appeals, hence, they were heard together and are being disposed off by this consolidated order. The solitary issue that is raised is whether deduction u/s.36(1)(viia) is to be allowed to the extent of 7.5% of total income and 10% of aggregate average rural advances of assessee bank irrespective of amount of provision debited to profit & loss account as per RBI norms.

5. Brief facts of the case are as follows:-

The assessee is a co-operative bank engaged in the business of banking. For the assessment years 2009-10 to 2012-13 and 2014-15, the assessments were reopened by issuance of notice u/s.148 of the Act. The reason for issuance of notice u/s.148 of the Act was that assessee had claimed deduction u/s.36(1)(viia) of the Act, which is not correct and not as per provision debited for bad and doubtful debts in the profit and loss account. The assessments were completed u/s.143(3) r.w.s 147 of the Act by disallowing claim of the assessee u/s.36(1)(viia) of the Act, for the assessment years 2009-10 to 2012-13 and 2014-15. In the above assessment years, the AO disallowed deduction as it did not represent actual provision for bad and doubtful debts created in the books of accounts of the assessee co-operative bank. Aggrieved, the assessee filed an appeal before the First Appellate Authority. The CIT(A) dismissed the appeals filed by the assessee. Aggrieved, the assessee filed further appeal before the ITAT., Chennai. The Tribunal by consolidated order in ITA Nos.287 to 291/Chny/2018 (order dated 04.07.2018) restored the matter back to the files of AO observing that none of the authorities below have carefully gone through nature of provisions. The Tribunal directed to identity whether "provisions" created by the assessee bank are actual

"provisions" made for bad and doubtful debts or something like creation of reserve. Subsequent to remand by the ITAT, Chennai, assessments were completed by the AO for the assessment years 2009-10 to 2012-13 and 2014-15 by restricting the claim of deduction to the provisions made by the assessee bank in its books of account, as per RBI norms and not to the maximum deduction mentioned u/s.36(1)(viia) of the Act, (i.e. 7.5% of total income and 10% of aggregate of average rural advances of the bank).

6. Aggrieved by the orders of assessments for the assessment years 2009-10 to 2012-13 and 2014-15, (subsequent to the ITAT order) the assessee preferred appeals before First Appellate Authority. The CIT(A) confirmed the view taken by the AO. The CIT(A) distinguished case laws relied on by the assessee and held claim of deduction u/s.36(1)(viia) of the Act, should be limited to actual provision created for bad and doubtful debts made in the books of account, subject to ceiling provided u/s.36(1)(viia) of the Act. The CIT(A) in this context, relied on Mumbai Bench of the Tribunal order in the case of Yes Bank Vs. DCIT in ITA No.3501 & 3239/Mum/2018 (order dated 30.06.2023). The relevant finding of the CIT(A) reads as follows:-

> *"Decision on Ground Nos.1, 2 and 3: These grounds are taken up together as they are related to each other.*

The reliance of the Appellant on Southern Technologies Vs JCIT 228 ITR 440 (Supreme Court) is misplaced. The issue in this case was whether the benefit of section 36(i)(viia) can be extended to NBFCs. The appellant is selectively quoting a paragraph from the order to reinforce its point. The paragraph being relied upon by the Appellant is as follows:

"Lastly, as stated above, even in the case of banks the provision for NPA has to be added back and only after such add back that deduction under Section 36(1)(viia) can be claimed by the banks."

Vide submission dated 03/02/2021 and 03/07/2023 Appellant maintains the fact that the Hon'ble Supreme Court has said that the amount needs to be added back and then deduction u/s 36(1)(viia) claimed. The relevant paragraph of the submission is quoted below

"The point to be highlighted is that in the case of banks, by way of incentive, a provision for bad and doubtful debt is given the benefit of deduction, however, subject to the ceiling prescribed as stated above. Lastly, the provision for NPA created by scheduled bank is added back and only thereafter deduction is made permissible under Section 36(1)(viia) as claimed".

As pointed out above, matter before the Supreme Court in the case of Southern Technologies Vs JCIT was whether in the case of NBFC section36(1)(viia) is applicable. Whereas in the present case the issue to be decided is whether the allowable sum is the actual provision for bad and doubtful debts made in the books of account subject to the ceiling provided u/s 36(1)(viia) or whether the allowable sum is the one determined u/s 36(1)(viia) irrespective of the provision made. AO has relied on a decision of the Hon'ble Punjab and Haryana High Court where the issue was exactly the same and was the subject matter of appeal. In the case of Southern Technologies Vs JCIT it was not the subject matter of appeal and the context in which the above statement was made is also different.

Even in the case of Southern Technologies vs JCIT on which reliance is placed by the Appellant the fact that Hon'ble SC has mentioned that the actual provision be added back before allowing deduction u/s 36(1)(viia) is to ensure that Appellant does not get the benefit of double deduction. Also the amount u/s 36(1)(viia) will vary as the Total Income itself will change depending on whether actual provision is added back or not.

Moreover, the Hon'ble Supreme Court in the same case i.e Southern Technologies Vs JCIT 228 ITR 440(SC) on Page 55 of the order has observed as follows-

"So also, as stated above, Section 36(1) (viia) provides for a deduction not only in respect of written off bad debt but in case of banks it extends the allowance also to any Provision for bad and doubtful debts 'made' by banks which incentive is not given to NBFCs.

Therefore the judgement unequivocally emphasizes that provision for bad and doubtful debts has to be "made" by banks. In the absence of any provision for bad and doubtful debt made there would be no allowance u/s 36(1)(viia).

Going by the appellant's logic even in cases where no provision is made by the banks for bad and doubtful debts allowance u/s 36(i)(viia) will still be available. This is clearly not the case as pointed out above. The appellant has conveniently omitted this part of the judgement.

The appellant vide submission dated 18/07/2024 relied on a decision of Hon'ble ITAT Bangalore in the case of Syndicate Bank Vs Deputy Commissioner of Income tax 78 ITD(BANG). However as quoted above the Hon'ble Punjab and Haryana High Court in the case of State Bank of Patiala vs CIT[2005] 272 ITR 54 has clearly held that

"9. We are, therefore, satisfied that the Tribunal was right in holding that since the assessee had made a provision of Rs. 1,19,36,000 for bad and doubtful debts, its claim for deduction under Section 36(1) (viia) of the Act had to be restricted to that amount only. Since the language of the statute is clear and is not capable of any other interpretation, we are satisfied that no substantial question of law arises in this appeal for consideration by this court."

The Hon'ble ITAT at Mumbai had an occasion to deal with this issue in the case of Yes Bank Vs DCIT for AY 2014-15. The relevant portion of the order dated 30/06/2023 is quoted below

17. The ground Nos. 9 to 14 of the appeal of the assessee and ground No. 3 of the appeal of the Revenue are connected with the issue of deduction u/s 36(1)(1)(viia) of the Act.

17.1 Briefly stated facts qua the issue in dispute are that the ground pertains to disallowance of provision of bad and doubtful

debts claimed by the assessee u/s 36(1)(visa) of Rs. 135,21,64,723/-with respect to non-performing assets (NPA). The Assessing Officer disallowed the same on the premises that the same pertain to Standard Assets and hence should not be allowed. The Ld. CIT(A) remanded the issue back to the file of the AO for examining whether claim pertain to Rural v. non-rural branches. Before us, the Ld. Counsel of the assessee submitted that the claim pertains to only NPA and not standard assets. He submitted that provision for standard advances is a separate line of item in computation of income (COI) and the claim u/s 36(1)(viia) of the assessee purely pertains to NPAs and claim has not been made for standard advances. He further submitted the there is no such requirement that under section 36(1)(viia) of the Act deduction can be claimed only with respect to rural branches. The Ld. Counsel further submitted that the issue in dispute is covered in assessee's own case for AY 2011-12 to 2013-14. The Ld. DR also could not controvert this fact.

18. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The identical issue has been decided by the Tribunal in favour of the assessee for AY 2011-12 to 2013-14. The relevant finding of the Tribunal is reproduced as under:

"085. We have carefully considered the rival contention and perused the orders of the lower authorities. The only reason why the deduction is disallowed to the assessee is that assessee does not have any rural branches, we find that deduction u/s 36 (1) (viia) of the act is not restricted to the banks only having the rural branches. This has been dealt with in 42 taxmann.com 303 as under :-

"34. It can be seen from the history of Sec.36(1)(vita) of the Act that at stage-l the deduction was allowed in respect of any provision for bad and doubtful debts made by a scheduled bank in relation to the advances made by its rural branches. At this stage the PBDD had to be linked to the advances made by Bank's rural branches. At stage-ll of Sec. 36(1) (vita), the deduction while computing the taxable profits was allowed of an amount not exceeding ten per cent of the total income (computed before making any deduction under the proposed new provision) or two per cent of the aggregate average advances made by rural branches of such banks, whichever is higher. At this stage also the PBDD had to be created and debited to the profit and loss account but it was not required to be done in relation to advances made by Bank's rural branches and can be in relation to any debt. PBDD need not be in relation to rural advances but

can be in relation to any advances both rural and non-rural advances. The two percent AAA made by rural branches of such banks had to be computed and the PBDD made in books has to be in relation to rural advances. The other eligible sum which can be considered for deduction u/s.36(1) (viia) of the Act viz., ten per cent of the total income (computed before making any deduction under the proposed new provision) does not require computation in relation to rural advances. Nevertheless the debit of PBDD to Profit and Loss account is necessary of the higher of the two sums to claim deduction u/s.36(1)(viia) of the Act. If the concerned bank does not have rural branches then they could not claim the deduction. Therefore the deduction was confined only to banks that had rural branches.

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

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

37. Though under Stage-II and Stage-III of the provisions of Sec. 36(1)(viia) of the Act, PBDD has to be created by debiting the profit and loss account of the sum claimed as deduction, the condition that the provision should be in respect of rural

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

In view of the above I agree with the decision of the AO that deduction u/s 36(1)(viia) is restricted to the actual provisions created by the assessee for bad & doubtful debts subject to the limit prescribed u/s 36(1) (viia). These grounds are decided against the appellant."

7. Aggrieved by the order of the CIT(A), the assessee has filed present appeals before the Tribunal. The learned AR has filed paper book enclosing therein the memorandum explaining provision of introduction of section 36(1)(viia) of the Act and various amendments made to the said section over the period of time etc. The learned AR reiterated submissions made before the AO and CIT(A).

8. The learned DR, on the other hand, submitted that issue whether deduction u/s.36(1)(viia) of the Act is to be allowed to the extent of 7.5% of the total income and 10% of aggregate of average total advance, irrespective of the amount of provisions debited to the profit & loss account as per RBI norms is no longer *res integra,* as the same is covered in favour of the Revenue by the judgements of the Hon'ble Karnataka High Court in the case of CIT Vs.Syndicate Bank reported in (2020) 422 ITR 460 (Kar), in the case of CIT Vijaya Bank in ITA No.1066 of 2008 (judgement dated 21.10.2024) and judgement of the Hon'ble Punjab & Haryana High Court in the case of State Bank of Patiala Vs.CIT reported in (2005) 272 ITR 54 (P&H).

9. We have heard rival submissions and perused material on record. As mentioned earlier, the solitary issue that has raised for our adjudication is whether deduction u/s.36(1)(viia) of the Act is actual provision for bad and doubtful debts made in the books of account, subject to ceiling provided u/s.36(1)(viia) of the Act, or whether allowable sum is the same as determined u/s.36(1)(viia) of the Act, irrespective of the provision made by the assessee in its books of account. The claim of the assessee before us is that irrespective of quantum of "provision" made, it should be allowed

as deduction based on the maximum amount prescribed u/s.36(1)(viia) of the Act. The case laws relied on by the assessee has been distinguished by the CIT(A) in the impugned orders at page 39 to 44 and we approve the CIT(A) order in distinguishing the same. The Hon'ble Karnataka High Court in the case of CIT Vs Syndicate Bank reported in (2020) 422 ITR 460 (Kar) considered an identical issue and has categorically held that conditions precedent for claiming deduction u/s.36(1)(viia) of the Act is that there should have been "provision" made and if the "provision" so made is excess of prescribed limit made under section, then deduction will be allowed only to the extent of limit so prescribed. However, if the "provision" made is lower than the prescribed limit, then deduction can be only to the extent of "provision" made. It was further held by Hon'ble High Court that language employed in section 36(1)(viia) of the Act is very clear and unambiguous and there is no need to go into intention or object behind said section. It was concluded by the Hon'ble Court that in absence of any "provision" made, deduction u/s.36(1)(viia) of the Act cannot be allowed. The relevant finding of the Hon'ble Karnataka High Court reads as follows:-

> *"8. Thus, a conjoint reading of provision contained in section 36(1)(viia) and explanatory note dated 30-6-1982 it*

is evident that deduction provided in section 36(1)(viia) shall be allowed in respect of the matters dealt therein in computing the income. The condition precedent for elaiming deduction under section 36(1)(viia) of the Act is that a provision for bad and doubtful debt should be made in the accounts of the assessee. The aforesaid section mentions the maximum amount for which such a provision should be made. If a provision is made in excess of the limits prescribed under the section, the assessee would not be entitled to deduction of the excess amount. Once a provision is made and the amount of deduction is within the limit prescribed under the Act, the assessee would be entitled to deduction of the amount for which provision is made in the books of accounts.

9. The language employed in section 36(1)(viia) of the Act is clear and unambiguous. It is well established Rule of interpretation stated by LORD CAIRNS that "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 Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. It is equally well settled legal proposition that "in a taxing act once has to look merely as what is said There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the

language used." [SEE: CIT v. Kasturi & Sons Ltd. [1999] 103 Taxman 342/237 ITR 24 (SC) and Mahim Patram (P.) Ltd. v. Union of India 2008 taxmann.com 1074 (SC)] [See: Principles of statutory interpretation, justice G.P. Singh, 14th edition, page 879). Therefore, the question of going into intention or object behind the provision viz., section 36(1) (viia) of the Act does not arise.

10. The submission that even in the absence of any provision, the assessee is entitled to deduction cannot be accepted. The assessee is entitled to deduction to the extent provision made in the accounts subject to limit mentioned in section 36(viia) of the Act."

10. The aforesaid judgement of the Hon'ble Karnataka High Court refers to its earlier judgement in the case of CIT Vs. Vijaya Bank in ITA No.1066 of 2008 (judgement dated 21.10.2014), wherein it was held that when quantum of "provision" made for bad and doubtful debts is less than the limit prescribed under the said section, then deduction can be allowed only to the extent of "provision" so made and not to the extent of amount prescribed under the said section. The relevant finding of the Hon'ble Karnataka High Court in the case of Vijaya Bank cited supra reads as follows:-

"10. Therefore, it is clear that to claim deduction under Section 36(1)(viia), the condition precedent is a provision

for bad and doubtful debts should have been made in the accounts of the assessee. The Section speaks about the maximum amount under which such a provision should be made. If a provision is made in excess of the limits prescribed under the section, the assessee would not be entitled to deduction of the excess amount. At the same time, when the section speaks about the deductions in respect of any provision for bad and doubtful debts made unless such a provision is made, the assessee would not be entitled to the deduction. Once such a provision is made and the said amount is within the limit prescribed under statute, the assessee would be entitled to the amount that is provided for in the accounts. The argument is that when the provision made is less than the amount prescribed under the law, the assessee is entitled to the maximum as prescribed cannot be accepted. The language employed is clear and unambiguous. This is a provision in any fiscal legislation. Therefore, the question of going into the intention or object behind the provision in the light of those clear words would not arise. Therefore, when once a provision is made for bad and doubtful debts and such a provision is less than the limit prescribed under the section what the assessee would be entitled to deduct would be the amount mentioned in the said provision and not the amount prescribed in the section. In that view of the matter, the orders passed by the authorities are not in accordance with law and the judgment of the Tribunal rendered in Syndicate Bank's case on which reliance is placed runs counter to the

statutory provision and therefore, the said order passed by the Tribunal does not lay down the correct law."

11. Similar view was also taken by the Hon'ble Punjab & Haryana High Court in the case of State Bank of Patiala Vs.CIT reported in (2005) 272 ITR 54 (P&H). The Hon'ble Punjab & Haryana High Court had held that making of "provision" for bad and doubtful debts is a condition precedent for claiming deduction u/s.36(1)(viia) of the Act and in absence of any "provision" made, deduction cannot be allowed. It was further held by the Hon'ble High Court that language of section 36(1)(viia) of the Act is very clear and it is not capable of any other interpretation to allow deduction in absence of provision. The relevant finding of the Hon'ble Punjab & Haryana High Court reads as follows:-

"6. 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 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 account made under that clause."

7. This also clearly shows that making of provision equal to the amount claimed as deduction in the account books is necessary for claiming deduction under section 36(1)(viia) of the Act. The Tribunal has distinguished various authorities relied upon by the assessee wherein deductions had been allowed under various provisions which also required creation of reserve after the assessee had created such reserve in the account books before the completion of the assessment. It has been correctly pointed out that in all those cases, reserves/provisions had been made in the books of account of the same assessment year and not of the subsequent assessment year.

8. In the present case, the assessee has not made any provision in the books of account for the assessment year under consideration, Le., 1985-86, by making supplementary entries and by revising its balance-sheet. The provision has been made in the books of account of the subsequent year.

9. We are, therefore, satisfied that the Tribunal was right in holding that since the assessee had made a provision of Rs. 1,19,36,000 for bad and doubtful debts, its claim for deduction under section 36(1) (viia) of the Act had to be restricted to that amount only. Since the language of the statute is clear and is not capable of any other interpretation, we are satisfied that no substantial question of law arises in this appeal for consideration by this court."

12. Therefore, relying on judicial pronouncements cited supra, we hold that allowable sum u/s.36(1)(viia) of the Act is actual "provision" for bad and doubtful debts made in the books of account

of the assessee as per RBI norms, subject to the ceiling provided u/s.36(1)(viia) of the Act. It is ordered accordingly.

13. In the result, the appeals filed by the assessee are dismissed.

Order pronounced in the open court on 21st March, 2025.

Sd/-	Sd/-
(जगदीश)	(जॉर्ज जॉर्ज के)
(JAGADISH)	**(GEORGE GEORGE K)**
लेखा सदस्य/ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Date:21.03.2025
DS
आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Madurai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.