

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No.780/SRT/2024**

**Assessment Year: (2016-17)**

**(Hybrid Hearing)**

The ITO, Ward – 1(1)(1), Surat	<b>Vs.</b>	The Sutex Co-operative Bank Ltd., 2 <sup>nd</sup> Floor, Bank Block, Surat Textile Market, Ring Road, Surat - 395002
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAAAT2953Q</b>		
<b>(अपीलार्थी / Appellant)</b>		<b>(प्रत्यर्थी / Respondent)</b>

<b>Appellant by</b>	Shri Mukesh Jain, Sr. DR
<b>Respondent by</b>	Shri Sapnesh Sheth, CA
<b>Date of Hearing</b>	09/04/2025
<b>Date of Pronouncement</b>	05/06/2025

**आदेश / ORDER**

**PER BIJAYANANDA PRUSETH, AM:**

This appeal by the revenue emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), dated 24.05.2024 by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'CIT(A)'] for the Assessment Year (AY) 2016-17.

2. Grounds of appeal raised by the revenue are as under:

*"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition / disallowance u/s 36(1)(via) of the Act of Rs.50,00,000/- made by the AO by observing that the assessee is not eligible to claim deduction for the provisions for bad and doubtful debt as the assessee bank having no rural branches.*

*2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition / disallowance u/s 36(1)(viii) of the Act of Rs.1,75,00,000/- made by the Ao on account of non allowable deduction as the assessee failed to prove with supporting documentary evidences for the advancement of loan given by the assessee during the year under consideration."*

*3. The appellant craves leave to add, amend, alter or delete any or all the above grounds of appeal.”*

3. The facts of the case in brief are that the assessee filed return of income on 12.10.2016, declaring total income of Rs.27,38,18,770/-. The assessee is a co-operative Bank, engaged in the business of banking. The case was selected for complete scrutiny and after hearing the assessee, the Assessing Officer (in short, 'AO') added Rs.50,00,000/- u/s 36(1)(viia) and Rs.1,75,00,000/- u/s 36(1)(viii) of the Act. The AO observed that the legislative intent of section 36(1)(vii) and section 36(1)(viia) was to encourage rural advances and making of provisions for bad debts in relation to such rural branches. He held that deduction u/s 36(1)(viia) of the Act will be limited to bad debts arising out of the rural advances of a bank. Since, there was no rural branches of the appellant, deduction cannot be allowed u/s 36(1)(viia) of the Act and hence, he disallowed Rs.50,00,000/-. The AO also found that assessee has claimed deduction of Rs.1,75,00,000/- u/s 36(1)(viii) of the Act, being the amount transferred to the special reserve for long-term finance. He observed that both creation and maintenance of the special reserve is required. The assessee has simply transferred the reserve of FY.2013-14 and has not created any reserve during the year. The non-creation of a special reserve cannot be made good by creating any reserve on a later date. The AO also observed that the assessee failed to furnish all necessary documents to justify the claim of deduction/s 36(1)(viii) of the Act; hence, he disallowed the deduction claimed u/s 36(1)(viii) of the Act.

4. Aggrieved by the order of AO, the revenue filed appeal before the CIT(A). The CIT(A) has reproduced the submission of the appellant, which is at pages 3 to 10 of the appellate order. Before the CIT(A), the appellant relied on the decision of Hon'ble Supreme Court in case of Catholic Syrian Bank Limited vs. CIT, 343 ITR 270 (SC) and submitted that provisions of section 36(1)(vii) and 36(1)(viii) are distinct and independent of each other. The CIT(A) held that the appellant being co-operative bank, is duly entitled for deduction u/s 36(1)(viii) of the Act on account of provisions for bad and doubtful debts. He also referred to the decision of ITAT, Cochin in case of Kodungallur Town Co-op. Bank Ltd. vs. ACIT, in ITA No.408/Coch/2015, dated 18.07.2015 and the decision of ITAT, Mumbai in case of DCIT vs. Yes Bank Ltd., in ITA No.3239/Mum/2018, dated 30.06.2023 and held that assessee is entitled for claiming deduction u/s 36(1)(viii) of the Act on account of provisions for bad and doubtful debts.

4.1 Regarding the next ground of disallowance of Rs.1,75,00,000/- u/s 36(1)(viii) of the Act, he observed that the AO has referred to facts of AY.2014-15 wherein the appellant had not properly created and maintained special reserve funds as per the provisions of section 36(1)(viii) of the Act. He observed that each assessment year is distinct and separate and has separate set of factual matrix. The appellant has fulfilled all four conditions required for claiming deduction u/s 36(1)(viii) of the Act. Accordingly, he allowed deduction claimed by the assessee. Thus, the appeal of the assessee is allowed by the CIT(A).

5. Aggrieved by the order of CIT(A), the revenue filed appeal before the Tribunal. The learned Senior Departmental Representative (Id. Sr. DR) for the revenue relied on the order of AO. He submitted that there are no rural branches and, hence, deduction u/s 36(1)(vii) of the Act, amounting to Rs.50,00,000/- is not eligible.

6. On the other hand, the learned Authorized Representative (Id. AR) of the assessee supported the order of CIT(A). He submitted that provisions of section 36(1)(vii) and 36(1)(vii) of the Act, pertain to independent items of deductions.

7. We have heard both the parties and perused the materials available on record. We have also deliberated upon the decisions relied upon by both sides. The deduction/s 36(1)(vii) pertains to provisions for bad and doubtful debts made by a scheduled bank or a non-scheduled bank or a co-operative bank, other than the primary agricultural credit society or a primary co-operative agricultural and rural development bank. An amount not exceeding 7<sup>1/2</sup> % of the total income computed before making any deduction under the above Clause and Chapter VI A, and an amount not exceeding 10% of the aggregate average advances made by the rural branches of the bank are allowed under Clause (vii) of sub-section (1) of section (36) of the Act. The Hon'ble Supreme Court in cases of Catholic Syrian Bank Ltd. (supra) and DCIT vs. Karnataka Bank Ltd., 349 ITR 705 (SC) has held that provisions of section 36(1)(vii) and 36(1)(vii) of the Act are distinct and independent items of deduction and operate in their respective fields. The banks would continue to get the benefit of write off of

irrecoverable debts u/s 36(1)(vii) of the Act in addition to benefit of deduction of the provisions for bad and doubtful debts u/s 36(1)(viia) of the Act. A reading of Clause (viia) of section 36(1) of the Act makes it clear that provisions for bad and doubtful debt made by the eligible banks has two components; (i) amount not exceeding 7.5% of the total income computed before any deduction under the clause (viia) and Chapter VIA and (ii) an amount not exceeding 10% of aggregate average advances made by the rural branches of such bank. It is, therefore, clear that the first component of the deduction of 7.5% is independently available to the eligible bank and is not dependent on having any rural branches. In view of the clear statutory provisions, the appellant-bank was eligible for the first component of the deduction of 7.5% of the total income. The deduction u/s 36(1)(viia) of the Act may be calculated as under:

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount (Rs.)</b>
A	<b><u>Deduction u/s 36(1)(viia):-</u></b>	
1	Gross Total Income	27,38,18,770
2.	Add:- Provisions for BDDR	50,00,000
	Total Income For Claiming deduction u/s 36(1)(viia) (1 + 2)	27,88,18,770
3.	<b><u>Deduction Allowance to assessee u/s 36(1)(viia)</u></b>	
	(a) 7.5% of Total Income	2,09,11,408
	<b><u>Add:</u></b> (b) 10% of avg rural advance	0
4.	Amt eligible for deduction u/s 36(1)(viia) (a +b)	2,09,11,408
5.	Deduction claimed by assessee u/s 36(1)(viia)	50,00,000

7.1 Thus, even after ignoring the 10% of average rural advance, the assessee was still eligible for deduction of Rs.2,09,11,408/-. As against the above sum, it has claimed deduction of Rs.50,00,000/- u/s 36(1)(viia) of the Act. Hence, the

CIT(A) has rightly allowed the claim of the assessee and the same is upheld. Accordingly, ground no.1 raised by the revenue is dismissed.

8. The next ground is disallowance of deduction u/s 36(1)(viii) of the Act. The appellant had claimed deduction of Rs.1,75,00,000/-. The Id. Sr. DR supported the order of AO and submitted that the CIT(A) was not correct in deleting the addition in absence of any supporting evidence by the assessee.

9. On the other hand, Id. AR of the assessee supported the order of CIT(A).

10. We have heard both parties and perused the materials available on record. As per provisions of Clause (viii) of sub-section (1) of section 36 of the Act, the assessee is eligible for an amount not exceeding 20% of the profit derived from eligible business under the head profits and gains of the business before making any deduction under this clause, i.e., 36(1)(viii) of the Act, which is carried to a reserve account created and maintained by the specific entity. Therefore, what is necessary to claim the deduction under the aforesaid provisions are; (i) that the impugned transfer to the special reserve should not exceed 20% of the profit, (ii) the assessee should be a specific entity under Explanation (a) below section 36(1)(viii) of the Act, which includes a co-operative bank, (iii) the assessee should be engaged in the business of banking and (iv) the assessee is engaged in providing the long-term finance. We find that the assessee fulfils all four conditions required for claiming deduction u/s 36(1)(viii) of the Act. Accordingly, the assessee is eligible for 20% deduction of business profit without any deduction u/s 36(1)(viii), which is as under:

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount (Rs.)</b>
A	<b><u>Deduction u/s 36(1)(viii):-</u></b>	
1	Gross Total Income	27,38,18,770
2.	Add: - Provisions For Long Term Finance	1,75,00,000
3.	Profits under the head "Profit and gains of business or profession" for claiming deduction u/s 36(1)(viii) (1 + 2)	29,13,18,770
4.	<u>Deduction Allowable to assessee u/s 36(1)(viii) (20% of Profit i.e. No.7)</u>	5,82,63,754
5.	Deduction claimed by assessee u/s 36(1)(viii)	1,75,00,000

10.1 It is, therefore, clear that assessee was eligible for deduction of Rs.3,82,63,754/- against which the deduction claimed by the assessee is only Rs.1,75,00,000/-. Therefore, we do not find any infirmity in the order of CIT(A). Accordingly, this ground of appeal raised by the revenue is also dismissed.

11. In the result, the appeal of the revenue is dismissed.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 05/06/2025.

**Sd/-**  
**(SANJAY GARG)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

Surat

दिनांक/ Date: 05/06/2025

SAMANTA

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

**// TRUE COPY //**

Assistant Registrar/Sr. PS/PS  
ITAT, Surat