

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

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

I.T.A. No.1023/Ahd/2025
(Assessment Year: 2020-21)

Nutan Nagarik Sahakari Bank Ltd., Opp. Samartheshwar Mahadev, Nr. Law Garden, Ahmedabad-380006	Vs.	Principal Commissioner of Income Tax, Ahmedabad-1
[PAN No.AAALN0005C]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Bandish Soparkar, AR
Respondent by:	Shri Alpesh Parmar, CIT-DR

Date of Hearing	09.10.2025
Date of Pronouncement	27.11.2025

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Principal Commissioner of Income Tax, (in short “Ld. PCIT”), Ahmedabad-1 vide order dated 12.03.2025 passed for A.Y. 2020-21.

2. The Assessee has taken the following grounds of appeal:-

1.1 That the ld. Prin. CIT has erred in holding that the order passed by the assessing officer is erroneous and prejudicial to the interest of revenue.

1.2 That the ld. Prin. CIT has erred in holding that the deduction U/s. 36(1)(viii) is applicable on business income only instead of total income as claimed by the appellant and as mentioned in section itself.

1.3 That the ld. Prin. CIT has erred in holding that provisions of Sec. 14A of the Act are applicable to the appellant when in fact there being surplus of interest income only, provisions of Sec. 14A of the Act are not applicable at all.

1.4 The appellant respectfully submits that the order passed by ld. Assessing Officer is neither erroneous nor prejudicial to the interest of revenue as both the deductions have been rightly claimed as per the provisions of law and therefore the order passed U/s. 263 of the Act should be annulled.

1.5 The appellant therefore submits that the order passed U/s. 263 of the Act be annulled.

1.6 The appellant craves leave to add, alter or amend any of the grounds of appeal before final hearing of the appeal.”

3. The brief facts of the case are that the assessee filed its return of income for AY 2020-21 on 23.12.2020 declaring total income of ₹17,15,35,440/-, and the assessment was completed under section 143(3) read with section 144B of the Act on 29.08.2022 at the same income returned by the assessee. While examining the assessment records, the Principal CIT noticed two major issues. First, the assessee had claimed deduction under section 36(1)(viiia) of the Act on the entire income of ₹17,55,97,752/-, even though this income consisted of capital gains of ₹6,36,76,032/- which does not fall under the head “Profits and Gains of Business or Profession.” The Principal CIT observed that section 36(1)(viiia) is a deduction allowable only while computing income under section 28 of the Act, meaning the deduction can be claimed only against business income and not against capital gains. According to Principal CIT, the Assessing Officer had failed to examine this important statutory requirement and had allowed an excess deduction, causing under-assessment of income. This omission, in his view, made the assessment order erroneous and prejudicial to the interest of the Revenue.

4. The second controversy identified by Principal CIT was that the assessee had earned exempt interest of ₹2,64,40,614/- from tax-free bonds under section 10(15) of the Act. The Principal CIT noted that once exempt income exists, section 14A read with Rule 8D is attracted, and the assessee is required to compute and disallow expenditure relating to such exempt income, even if the assessee claims that no such expenditure was incurred. Here also, the Assessing Officer had completely omitted to apply section 14A and had not made any enquiry, resulting again in under-assessment. The assessee’s contention in reply that section 14A did not apply was

rejected, as the Principal CIT held that sub-section (2) and (3) of section 14A clearly mandate disallowance in cases where exempt income is earned.

5. The Principal CIT examined the assessee's submissions which argued that the assessment order was neither erroneous nor prejudicial and that deduction under section 36(1)(viia) was allowable on total income; however, he held that the statute is clear that deductions under section 36(1)(va) of the Act fall under Chapter IV-D and therefore apply only to business income under section 28 of the Act. He also held that the judicial precedents relied on by the assessee did not apply to the facts of the case. Accordingly, the Principal CIT set aside the assessment order with a direction to the Assessing Officer to recompute the deduction under section 36(1)(viia) of the Act restricting it to business income only, thereby allowing deduction of ₹94,96,346/- as against ₹1,59,95,136/- originally claimed. He also directed the Assessing Officer to apply section 14A read with Rule 8D and make appropriate disallowance in respect of the exempt interest income. Since the Assessing Officer had failed to make necessary enquiries and had allowed incorrect claims resulting in short levy of tax, the Principal CIT held that the order was erroneous and prejudicial and therefore required fresh assessment under section 263.

6. The assessee is in appeal before us against the order passed by CIT(Appeals) dismissing the appeal of the assessee.

7. Before us the Counsel for the assessee submitted that the present revision under section 263 has been wrongly invoked on both issues raised by the Principal CIT. The Counsel for the assessee submitted the chronology of the case by stating that the assessee had filed its return of

income on 29.06.2021 declaring ₹17.15 crores, followed by filing of the tax audit report in Form 3CA and 3CD on 16.07.2021. The assessment was completed under section 143(3) of the Act at the same income, and throughout the assessment proceedings the Assessing Officer had issued notices under sections 143(2) and 142(1), to which detailed replies were filed, all of which are placed in the paper book. The counsel submitted that the first issue relates to the deduction claimed under section 36(1)(viiia) of the Act. He argued that the assessee had correctly worked out the deduction of ₹1,59,95,136/- being 8.5% of the **“total income” of ₹18.81 crores, which included income under both the business head and the capital gains head.** He stated that the term “total income” is defined in section 2(45) and is used in Chapter IV for computing the deduction, and therefore, the assessee’s claim was correctly made. He further pointed out that this very issue was examined during the original assessment, as the computation was disclosed in Schedule BP of the ITR, and the Assessing Officer had specifically issued notices under sections 143(2) and 142(1) asking for justification of the claim. Detailed replies were filed and examined, and therefore, this is not a case of lack of enquiry. In support, the counsel relied on judicial decisions to submit that once an issue has been examined, revision under section 263 cannot be exercised merely because the Principal CIT holds a different view. The Counsel for the assessee also relied on decisions of the Surat and Bangalore Benches of the Tribunal in support of the interpretation that deduction under section 36(1)(viiia) may be computed on total income, including capital gains. The counsel then addressed the second allegation relating to disallowance under section 14A. He submitted that although the assessee had exempt income in the form of interest on tax-free bonds, the investment portfolio clearly showed which investments actually yielded such income, and

therefore only those investments should be considered for any possible disallowance. He stated that as per the assessee's own working, the maximum reasonable disallowance could be around ₹3.55 lakhs, being 1% of the average value of investments that actually earned exempt income. The Counsel for the assessee submitted that the Principal CIT's conclusion that disallowance of ₹35.98 crores was required is completely absurd and contrary to law. He relied on the decisions in *Atul Ltd.* (162 taxmann.com 862), *Reliance Power Ltd.* (159 taxmann.com 1626) and *Cricket Club of India Ltd.* (165 taxmann.com 376), which hold that only income-yielding investments can be considered for Rule 8D(2)(iii) purposes. Finally, the counsel submitted that even if the Tribunal finds some justification for revising the assessment on the second issue regarding section 14A, the revision on the first issue relating to section 36(1)(viia) must be quashed because the Assessing Officer had already examined the deduction during the original assessment.

8. We have heard the rival contentions and perused the material on record. The first issue for consideration before us is whether deduction u/s 36(1)(viia) of the Act is applicable to "total income" including capital gains or whether the deduction is only restricted to "total income" under the head "Profits and Gains of Business or Profession". Section 36(1)(viia) of the Act allows certain banks to claim a deduction for the provision they create for bad and doubtful debts. In simple terms, this section gives specified banks such as scheduled banks, non-scheduled banks (other than foreign banks), and cooperative banks a special benefit by permitting them to set aside a percentage of their business income as a deduction to cover possible future loan losses. The deduction is not linked to actual write-off of loans but is allowed on the basis of a provision created in the books. The section allows a deduction of up to 7.5% of the bank's "total income"

plus an additional deduction of up to 10% of the average rural advances, wherever applicable. The issue before us is whether this deduction applies only to “profit and gains from business and profession” or whether it can be claimed on income under other heads, such as capital gains etc. as well.

9. We note that section 36(1)(viia) of the Act reads as under:

Other deductions.

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-

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 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....

Section 2(45) of the Act defines total income as the total amount of income referred to in section 5 computed in the manner laid down in the Income Tax Act. **Section 5 of the Act states:** (1) **Subject to the provisions of this Act**, the total income of any previous year of a resident includes all income from whatever source derived which-

(a)	is received or is deemed to be received in India in such year by or on behalf of such person ; or
(b)	accrues or arises or is to accrue or arise to him in India during such year ; or
(c)	accrues or arises to him outside India during such year

10. On careful consideration of the rival submissions and the material available on record, we find that the controversy raised in revision under section 263 primarily relates to the interpretation of section 36(1)(viia) of the Act and the question whether the deduction allowable thereunder is to be computed with reference to the “total income” of the assessee as

defined in section 2(45) of the Act, or whether the deduction is restricted only to income under the head “Profits and Gains of Business or Profession.” The language of section 36(1)(viii) is explicit and unambiguous, as it permits a deduction “not exceeding seven and one-half per cent of the **total income** (computed before making any deduction under this clause and Chapter VIA).” The phrase “total income,” when read with section 2(45) and section 5, refers to the total amount of income from whatever source derived, computed in accordance with the provisions of the Act. The Statute does not carve out any exception excluding capital gains or income under any other head for the limited purpose of computing this deduction. Therefore, when the law itself employs the expression “total income” without qualification, it is impermissible to read into the statute any limitation that the Legislature has consciously omitted.

11. It is well settled that when the language of the statute is clear, plain, and unambiguous, it must be applied as it stands, and no interpretation can be imported to give it a meaning different from what is expressed. The Hon’ble Supreme Court in **CIT v. Tara Agencies (292 ITR 444)** has held that where the words of a statute are clear, they must be given effect to regardless of consequences. Similarly, in **Orissa State Warehousing Corporation v. CIT (237 ITR 589)**, the Court held that the language employed by the Legislature must be given its plain meaning and that courts cannot read something into the provision which is not there. The same principle was reiterated in **Ajmera Housing Corporation v. CIT (326 ITR 642)**, in which the Supreme Court held that in tax statutes particularly, there is no room for intendment when the provision contains clear and unambiguous language. Further, the decision of the Constitution Bench in **CIT v. Anjum M.H. Ghaswala (252 ITR 1)** reinforces the

principle that where the statute contains mandatory language, neither the tax authorities nor appellate forums can dilute or modify the statutory prescription. These judicial precedents make it abundantly clear that plain statutory language must prevail over any interpretative attempt.

12. Applying these principles to the present case, we find that the Assessing Officer had allowed the deduction by computing the eligible amount with reference to the assessee's total income including capital gains, which is in strict conformity with the express language of section 36(1)(viiia). The Principal CIT's conclusion that the deduction must be restricted only to business income is based on an interpretation that finds no support in the Statute. The section does not state that the deduction is to be computed with reference only to income assessable under the head "Profits and Gains of Business or Profession," and importing such a limitation is not permissible. Once the statute prescribes computation with reference to "**total income**" before deductions under this clause and **Chapter VI-A**, the computation must necessarily be made on that basis alone. We therefore hold that there was no error in the assessment order on this issue, and the Assessing Officer had taken a plausible and legally sustainable view after due enquiry. Accordingly, the revisionary order passed by the Principal CIT under section 263, insofar as it relates to the direction to recompute the deduction under section 36(1)(viiia) by restricting it only to business income, cannot be sustained in law. The assessee's appeal on this issue is allowed and the order of the Principal CIT to that extent is set aside.

13. On the second issue, from the case records, it is evident that the issue regarding claim of deduction section 14A of the Act was not examined by the Assessing Officer during the course of assessment

proceedings. Therefore, on this issue we find no infirmity in the order of Principal CIT so as to call for any interference.

14. In the result, the appeal of the assessee is partly allowed.

This Order pronounced in Open Court on 27/11/2025

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

Ahmedabad; Dated 27/11/2025

TANMAY, Sr. PS

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

आदेशानुसार/ BY ORDER,

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