



आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।  
IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

&

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No.196/RJT/2024

(निर्धारण वर्ष / Assessment Year: (2011-12))

Shri Rajkot District Co-operative Bank Ltd., Jilla Bank Bhavan, Kasturba Road, Opp. Chaudhary High School, Rajkot-360001	Vs.	The Deputy Commissioner of Income-tax, circle-1(1), Aayakar Bhavan, Race Course Ring Road, Rajkot-360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AFUPS2094H		
(Appellant)		(Respondent)

Appellant by : Shri D.M. Rindani, Ld. AR

Respondent by : Smt. Pallavi, Ld. CIT(DR)

Date of Hearing : 06/08/2025

Date of Pronouncement : 04/11/2025

**आदेश / ORDER**

**Per, Dinesh Mohan Sinha, JM:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY)-2018-19, is directed against the order passed by the Commissioner of Income Tax Office [(in short "Ld.CIT(A)"] vide order dated 29.12.2023, which in turn assessment order passed by Income Tax Department / Assessing Officer under section 144C(1) of the Income Tax Act, 1961 (in short "the Act"), vide order dated 30.03.2023

2. Grounds of appeal raised by the assessee, are as follows:

1. The learned CIT(A) erred in upholding action of assessing officer in disallowing provision of Rs. 60,00,000/- made for standard asset contingency fund by the Appellant.



*2. The Learned CIT(A) erred in treating the amount of Rs. 25,00,00,000/- transferred from bad and doubtful debts provision for rural advances to general reserve during the year, as income for the year.*

*3. The appellant craves leave to add, amend, alter or withdraw all or any ground of appeal at any time upto the date of hearing of the appeal.*

At the outset, Ld. Counsel for the assessee informs the Bench that assessee does not wish to press ground No.1, therefore we dismiss ground No.1, as not pressed.

3. Brief facts of the case that he appellant, Shri Rajkot District Co-operative Bank Limited, is a Cooperative Bank engaged in the business of banking and operates in the districts of Rajkot (Gujarat). The Appellant is assessed to income tax at ACIT, Circle-1(2), Rajkot. The Return of Income for the year relevant to A.Y. 2011-12 was filed on 13.09.2011 showing a net total income of Rs, 11,78,98,647/-. The original assessment order was passed u/s 143(3) by ACIT, Circle-1(2), Rajkot on 04.03.2014 making a disallowance of Rs. 60,00,000 for Provision for Bad & doubtful Debt ('PBDD' for short) claimed on standard assets and assessing the total income at Rs 12,38,98,647/-.

4. During the year relevant to A.Y. 2011-12, the appellant has claimed a deduction of Rs. 60,00,000 u/s 36(1)(viiia) as PBDD on Standard Assets and as per regulatory requirement of RBI under IRAC norms it was shown in the books as 'Standard Assets Contingency fund'. The learned Assessing Officer has, without properly appreciating the facts and legislative intent, disallowed the lawful claim for deduction. Transferred a sum of Rs. 25,00,00,000 from accumulated PBDD to SR purely on temporary basis which were reinstated to the source account on 10.02.2015. It was simply a book entry, no real income has accrued or arisen or received by the bank and transfer under consideration is not made exigible to tax under any of the provision of the Income Tax Act.



Further the PBDD created u/s 36(1) (viiia) being in the nature of Reserve, such accounting treatment as given in the books was permissible. The learned AO has, without properly appreciating the facts, submission made and legal position, added the same to the returned income stating that "the amount transferred from PBDD to reserve should be first transferred to P&L Account in order to arrive at correct taxable income. The details of claim for PBDD on standard assets as also transfer from PBDD to SR were disclosed in the return of income filed and further submission made during proceeding u/s 143(3) which were not found to be inaccurate by the AO. In light of this facts, there was no case for the AO to allege or to hold the entries under dispute as "furnishing inaccurate particulars of income" so as to invoke provision of Section 271(1)(c).

6. Subsequently, in pursuance of the order u/s 263 dated 21.03.2016 passed by the Principal CIT, Rajkot-1, a fresh order u/s 143(3) r.w.s. 263 was passed on 29.04.2016 assessing the taxable income at Rs. 37,38,98,650 after disallowing Rs. 60,00,000 claimed as PBDD on standard assets and adding Rs. 25,00,00,000 to returned income for amount transferred from PBDD to Statutory Reserve ('SR' for short). The learned AO's action is erroneous and based on wrongful assumption as well as contrary to the established principles of accounting and law.

7. The assessee filed the appeal against the order dated 29.04.2016 of before the Ld.CIT(A), who was dismissed the appeal of the assessee with following remarks:

*"6.4 Thereafter, after considering both the procedural and the legal aspects of the case the Hon'ble ITAT in para 13 on page 14 of its order has held that:*

*"13. We have heard both the parties and have gone through order of the Ld. Pr. CIT. We are not impressed nor convinced with the contention of the Ld. counsel for the assessee on the merits of the case that the write back of provision for bad*



*and doubtful debts on rural advances was not taxable as income. Considered from all, any and every aspect, as per law read along with accounting principles in this regard, the write back, we hold, is to be treated as income and subjected to tax, as rightly held by the Ld. PCIT".*

*Thus, while adjudicating the above appeal, the Hon'ble ITAT has given its findings on merit that the write back of Rs. 25,00,00,000/- is taxable as income of the appellant for the year under consideration. The same are binding on me and are thus relied upon in toto. In view of the same, it is hereby held that the addition of Rs. 25,00,00,000/- has been correctly made and ground no. 3 is dismissed.*

*In the result, the appeal is hereby dismissed."*

8. That the assessee has challenge the legality and validity of impugned order of the Ld.CIT(A) by filing the appeal before us.

9. During the course of hearing, Ld. AR for the assessee submitted "Note" during the course of hearing, which are reproduced as under;

*The first ground of appeal is not pressed because it was not a subject matter of the proceedings leading to the second appeal. It was a subject matter of separate proceedings arising out of the original assessment order.*

*The second ground of appeal arises as a result of transfer of ₹25,00,00,000 from the bad and doubtful debts rural provision account to the account of statutory reserve during the year by way of a transfer from one account to another. In the course of a challenge to the order under section 263, the Hon'ble Tribunal (paper-book page 104) has considered the said transfer entry as an income for the year. Based on it, the order giving effect to the 263 order was passed against which there was an appeal, and the first appellate authority has also upheld the addition by relying upon the order of the tribunal and hence this appeal on merits of the issue.*

*The Appellant contends as under:*

*1. A mere transfer of the amount from one account to another in the same year by way of a book entry does not give rise to income which can be computed under any of the specific provisions of the Act.*

*2. There is no specific provision in section 36(1)(via) that the provision for bad and doubtful debts cannot be disturbed or that it should be maintained always. Contrary to this, in case of several provisions under the Act, there is such an explicit requirement, as illustrated below:*

*(i) Sec. 36(1)(viii): for the deduction by way of a special reserve, there is a specific provision stating that the Reserve must be created and maintained;*



*(ii) Sec. 33AC provides that a reserve created for the purpose of deduction claim must be used for that purpose and if not used, it becomes part of profits and gains;*

*(iii) Sec. 80HHC(4) provides that the reserve created, if utilized to distribute dividend and not for business purpose, it becomes taxable;*

*(iv) Sec. 80HHD(5A) and Sec. 10AA(3) contain similar provisions for taxing unused reserves or wrongful use of reserve.*

*3. There is no corresponding provision such as above in sec. 36(1)(via): Hence, it is clearly implied that if the legislature wanted a particular reserve to be continued and maintained, it has so provided, but in case of a provision for bad and doubtful debts, there is no such explicit power under which it can be said that a transfer to another account means that there arises an income for the year, more so when no dividend was declared and there is no non-business use to the amount attributed by the AO. In other words, the purpose of creation of the provision in past has not been defeated.*

*4. What can be charged as income for the year under consideration must form part of the definition of 'total income' for the year with the computation and the charging provisions of the Act. A book entry does not give rise to income. A reversal of an amount of provision is not a taxable event as laid down in Kedarnath Jute 82 ITR 363 (SC) and Tuticorin alkali Chemicals 93 taxmann 502 (SC).*

*5. As per the real income theory which has been well propounded by the Supreme Court (Excel Industries 38 taxmann.com 100 (SC)), it is only the income earned by way of profits and gains or other specified heads of income that can be computed as part of the total income and brought to a charge of tax. No real income in this sense has accrued to the appellant by means of a transfer entry from one account to another account.*

*6. Even Sec. 41 is not attracted because there is no remission of a liability or a benefit derived.*

*7. Provision amount of Rs. 25 crores is reinstated in original account:*

*Apart from the above arguments, it is most pertinent to note that the action of transferring the same amount from provision account to a reserve account has been reversed in the year 2015 and that the provision account has been reinstated by the same amount. This would mean clearly that the original intended purpose of the amount has been restored. And in the intervening years, it has not been used for non-business purpose or for dividend because the total reserve amount continues to be much more all throughout. It goes to prove that the provision account has continued to be maintained also, and the act of reversal would show that there was no real income that accrued to the appellant and the original requirement is met with. This particular is not a subject matter in the order of the tribunal while upholding the action under section 263, and therefore this particular aspect of the matter needs to be now considered in the right perspective during the present appeal. Hence, the very basis of making the addition does not survive.*



8. *The order of the tribunal referred to above was mainly in context of Sec. 263 and the observations therein on other aspects of the amount of Rs. 25 crores need to be revisited now in this principal appeal on merits.*

9. *Alternatively, if at all, the amount is held to be taxable for the year, as it has been reinstated in 2015 by a counter entry in books, it should be directed to be allowed as a deduction in AY 2015-16, otherwise there would be double jeopardy to the appellant.*

10. *A mere transfer of the amount from provision to reserve, though different nomenclature, would not change the nature and the character of the original amount transferred and would not give rise to any income..*

- *Vellore Dist. Central Co-operative Bank Ltd. (2013) 37 taxamann.com 247 (Chennai Trib);*
- *Rural Electrification Corporation Ltd. (2009) 312 ITR 122 (AAR - New Delhi).*

11. *In case of Mahua Nagrik Sahakari bank Ltd. in ITA No. 159/A/2016 dated 15-07-2021 (order enclosed), the Bank had made reversal of amounts in A.Y. 2012-13 which were shown as income in earlier years so as to show correct accounting entries as per generally accepted accounting principles. The said reversal was allowed by the ITAT. In case of Appellant also, the aforesaid reversal was made to show the original intended purpose for creation of reserve.*

7. On the contrary, the Ld. DR for the revenue has drawn our attention that issue of taxability has already been decided by passing an order dated 15-02-2023 while dealing with the same case in appeal u/s. 263 of the Act against the order of assessment.

8. We have heard both the parties and perused the material available on record. We note that the assessee has made provision for Rs. 25Cr. For bad and doubtful debt (PBDD).

- (i) Ground No. 1 related to disallowance of provision Rs. 60 Lakh made for standard assets attendance fund. Since, this ground not pressed during the course of argument. Hence, we do not adjudicate Ground No. 1 the Ground No. 1 has dismissed.
- (ii) Ground No 2 deal with an amount of Rs. 25,00,00,000/- transferred from bad and doubtful debts provision for rural



advances to general reserve during the year, as income for the year.

Since, ground no. 2 has already decided in the case of the assessee in ITA No. 123/Rjt/2016 dated: 15/02/2023 in ground no.3 the decision taken by this bench is reproduce:

13. We have heard both the parties and have gone through order of the Id.Pr.CIT. We are not impressed nor convinced with the contention of the Ld.counsel for the assessee on the merits of the case that the write back of provision for bad and doubtful debts on rural advances was not taxable as income. Considered from all any and every aspect, as per law read along with accounting principles in this regard, the write back, we hold, is to be treated as income and subjected to tax, as rightly held by the Ld.PCIT.

14. to are Before bringing out our reasoning for the same it is pertinent revisit the facts relating to the issue which undisputed. The assessee, during the impugned year, had written back an amount of Rs. 25 Crs from the provision created for bad and doubtful debts relating to rural advances of Rs.27,98,75,203/-. This provision had been allowed to be deducted for the purposes of computing the taxable income of the assessee in the earlier years as and when created, as per the provisions of section 36(1)(viiia) of the Act. The details of the said claim have been brought out by the Ld.PCIT in his show cause notice reproduced above.



15. The provisions of section 36(1)(viiia) of the Act are very clear, allowing claim of deduction on account of provision for bad and doubtful debts, to the extent the provisions are made. This is the exact word (made) used in the section along with provision. Which means that when provisions made earlier are reversed, to the extent reversed or written back the provision no longer remains made. There is no question therefore for any deduction being allowed to assesses to the extent provisions made no longer remain on account of write backs. And the deduction earlier allowed therefore needs to be taxed to the said extent.

To put it otherways, Section 36(1)(viiia) of the Act allows claim of deduction of provisions, which otherwise are not allowable as per law, specifically made for bad and doubtful debts of rural advances made by banks. The purpose being to promote rural banking and to assist scheduled commercial banks in making adequate provisions from their current profits to provide for risks in relation to rural advances. The Hon'ble apex courts takes note of the same in its order in the case of Catholic Syrian Bank (supra) at para 42 reproduced above in the earlier part of our order. Clearly the claim of deduction as per section 36(1)(viiia) of the Act, in totality, is allowable only to the extent debts liable to turn bad or are doubtful for recovery are provided for by the assessee. When an amount is reduced from such provisions made earlier, it denotes that debts to the said extent are found to be good and no longer require being provided for, for turning bad or doubtful for recovery. Thus provision to the said extent is



written back as no longer required. There can be no case, in such circumstances, as per law therefore, for allowing claim of deduction for provision to the full extent, even that no longer required. Such write backs, representing excess claims of provision created, necessarily need to be reversed and treated as income for taxation purposes. Such write backs ipso facto have to be treated as taxable, so as to restrict the assesses claim of deduction to the extent of provision created for bad and doubtful debts, as required by section 36(1)(viiia) of the Act. The Ld.PCIT has rightly dealt with the issue accordingly at para 5.1 of his order as under:

*"5.1 Legislative intent for Sec. 36(1)(viiia)*

*Section 36(1)(viiia) of the IT Act is hereby reproduced: Section 36(1)(viiia)(a) of the Act allows deduction in respect of any provision*

*for bad and doubtful debts made by 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 to the following extent:*

*"An amount not exceeding seven and one-half per cent (7.5%) of the total income (computed before making any deduction under this clause and Chapter VIA) and an amount not*



*exceeding 10% of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner."*

*Normally no deduction is allowable in respect of a mere provision of bad and doubtful debts. However in order to promote rural banking and in order to assist banks in making adequate provision from their current profits for risks in relation to their rural advances, section 36(1)(viiia) was inserted on account for provision for bad and doubtful debts for rural advances.*

*In this case, assessee bank has firstly debited Rs.25,15,31,572 as provision for bad and doubtful debts u/s 36(1)(viiia) during relevant AY and has rightfully claimed it as deduction. Over the period this reserve has accumulated to Rs.53,14,06,776. However, during the relevant AY, bank has transferred Rs. 25 crores out of this provision to general reserve. In this case, there is no dispute regarding the eligibility of the bank for claiming deduction u/s 36(1)(viiia), as it was legislative intent and at the same time in order to avoid double deduction u/s 36(1)(vii) and Sec. 36(1)(viiia) of the same amount, proviso to sec. 36(1)(vii) has been inserted, which limits the allowance for actual write offs, to the excess, if any, of the write off over the amount standing to the credit of the account created under clause 36(1)(viiia).*



*As it is evident, Sec 36(1)(viia) is special provision for banks for encouraging them to give more rural advances and to strengthen rural economy. It is different from Sec.36(1)(vii) in the way that in normal business, bad debts will be allowed as deduction only when there are actual bad debts and no provisioning in that regard is allowed but in case of banks, vide sec. 36(1)(via), provisioning is allowed for bad and doubtful debts irrespective of the fact whether there are actual bad debts or not and when actual bad debts happen in case of banks, these provisions provide them necessary cushion, as public money is involved. Main idea behind Sec.36(1)(vii) and Sec. 36(1) (viia) is the stark reality of business that there has to be some bad debts in each business, whether it is trading, manufacturing or banking, and a business should be allowed its deduction to the extent of actual non-recoverables. Thus, it is evident that basics of Sec.36(1)(vii) and sec.36(1)(vii) are same except to the fact that, sec.36(1)(viia) is applicable only for banks and allows, above, ability of provisions irrespective of actual expenditure. In such scenario, when bad debts are recovered, they become taxable as contained in sec. 41(4) of IT Act, 1961, similarly, when bank is of view that, it does not need any provisions for bad debts, as there is going to be no bad debts, then those provisions will be added back to the income of the bank for taxation purpose, as bank had already claimed deductions in respect of these provisions u/s 36(1)(viia).*

16. Though the Ld.PCIT, above, has drawn parity between the provisions of section 36(1)(vii) and section 36(1)(viia) of the



Act, to hold that the principle of taxing bad debts, claimed as deduction u/s 36(1)(vii) of the Act, on being recovered, as per section 41(4) of the Act, would apply to section 36(1)(viia) of the Act also on write back of provisions created, the fundamental reasoning remains the same. Section 36(1) (viia) of the Act allowing deduction of provisions for bad and doubtful debts of rural advances, the deduction cannot exceed the provision created by the assessee for the same and any write back of the provision implying nothing but the provision to that extent no longer required as created by the assessee, has to be therefore subjected to tax.

Thus as per the provisions of section 36(1) (viia) of the Act itself, we hold, this write back of provision is liable to be subjected to tax.

17. This reasoning and interpretation of law as above is strengthened by the Accounting Principles relating to provisions and their write back, delineated by the Institute of Chartered Accountants of India. Provision in accounting refers to an amount or obligation set aside by business for present and future obligations. They are estimates of probable loss related to the future for events undertaken in the past and present. They are created as a charge against profits. Accordingly the guidelines issued by ICAI prescribe the write back from provisions created to be recognized as income and routed through the profit & loss account. The Ld.PCIT has rightly



referred to the Opinion of the ICAI at para 5.5 of his order in this regard as under:

*"Where, in an accounting period, there is any write-back of the earlier recognized provision for a liability and a provision for the same item is also being recognized in that accounting period, the write back should be adjusted in arriving at the amount of that provision, viz., only the net amount after adjustment of the write back should be charged/credited to the statement or profit and loss. However, where in an accounting period, there is only write back of the earlier recognized provision and no provision is being recognized, the write back should be recognized as income in the statement of profit and loss using the same classification as was used previously used.*

Therefore, even as per accepted accounting principles, this write back needed to be treated as income and routed through the P&L account, as rightly held by the Ld.PCIT.

Thus going by law, supported by accounting principles, the write back of provisions for bad and doubtful debts of rural advances was required to be routed through the Profit and Loss account and treated as income for taxation purposes.

18. Even going by the real income theory the Ld.PCIT, we hold, has rightly found the write back taxable, noting that the write back of the no NPA and hence provision to the general reserve indicated realization of income. Meaning thereby that the



provision created earlier, for cushioning against bad debts on account of rural advances turning NPA, being created out of profits, and when not required as written back, it resulted in income to the assessee.. The Ld.PCIT has dealt with this aspect at para 5.3 of his order as under:

*5.3 Taxability of real income Furthermore, Hon'ble Supreme court in case of Excel Industries Ltd fcivil appeal no. 125 of 2013) lays down the key principles 1 income is said to accrue for the purposes of taxability under the Income Tae Act. The ruling reiterates that it is only real income, and not hupothetical for evaluating when income, which can be taxed in India. Further, for real income to acenie under the ITL, the income should be due; there should be a corresponding liability to pay; and practically, there is a plausible realization of such income. In the instant case, these tests are fully satisfied, an assesse bank itself reserv which clearly indicates that there is realization of income as there are no NPA. In this landmark judgement Hon'ble Supreme court held that merely by making accounting entry hypothetical income can't be brought to tax and on same analogy just by making accounting entry, real income should not go out of tax net. What to be taxed should be real income only.*

*It clearly shows the importance of substance over form concept for taxation purpose. Substance over form is an accounting principle used to ensure that financial statements give a complete, relevant, and accurate picture of transactions and*



*events". If an entity practices the 'substance over form' concept, then the financial statements will show the overall financial reality of the entity (economic substance), rather than the legal form of transactions (form). In accounting for business transactions and other events, the measurement and reporting is for the economic impact of an event, instead of its legal form. Substance over form is critical for reliable financial reporting. It is particularly relevant in cases of revenue recognition, sale and purchase agreements, etc. The key point of the concept is that a transaction should not be recorded in such a manner as to hide the true intent of the transaction, which would mislead the readers of a company's financial statements."*

19. The Id.Pr.CIT, we hold, has also dealt correctly with the contention of the Ld.Counsel for the assessee that the write back was a mere book entry resulting in no taxable event, dismissing the same at para 4.2 of his order stating that it is not case of mere book entry but transfer of Rs.25 crores from provision, which provision when created was allowed as deduction in the earlier years as per section 36(1)(viiia) of the Act. This amount was therefore taxable being write back of an amount earlier allowed as deduction and therefore not a mere book entry. His finding at para 4.2 of the order is as under:

*"4.2. In para 1 of the further submission dated 16.03.2016, the assessee has contended that the exercise of initiating the proceedings u/s. 263 of the Act in its case was unwarranted as the issue involved is a book entry which has no relevance with*



*the chargeability of a particular item which is otherwise taxable under the Act. The assessee's contention is not tenable because the issue involved in this case is with regard to transfer of amount of Rs.25 Crore which has been claimed and allowed in earlier years according to provisions of section 36(1)(vii) of the Act. This amount has been put in another Reserve instead of bringing it to the Pad, account."*

20. Every case law relied upon by the ld.counsel for the assessee for the proposition that it was a mere book entry warranting no taxable event has been distinguished by the ld.Pr.CIT at para 4.5 of his order as under:

*4.5. In Para no. 2 of the submission dated 16.02.2016, with regard to book entry, the assessee has relied on the following decisions:*

- i. CIT v. Hiralal Mittal & Sons, (1972) 86 ITR 463(AII)*
- ii. CIT v. Chunilal V. Mehta & Sons P. Ltd. (1971) 82 ITR 54(SC)*
- iii. CIT v. Mogul Line Ltd. (1963)46 ITR 590,600(Bom)*
- iv. State Bank of India Vs. CIT(1996) 157 ITR 67 (SC)*

*The issue involved in the above decisions is summarized hereunder.*

- (i) CIT v. Hiralal Mittal & Sons, (1972) 86 ITR 463(AII)*



*The issue in the cited case was whether the assessee was entitled to the deduction of the interest claimed even though it had not made the necessary entries in its account books.*

*(ii) CIT v. Chunilal V. Mehta & Sons P. Ltd. (1971) 82 ITR 54(SC)*

*The issue in the cited case relate to the taxability under section 10(5A) of Act of a certain amount received by the assessee-firm as compensation on the termination of its managing agency.*

*(iii) CIT v. Mogul Line Ltd. (1963)46 ITR 590,600(Bom)*

*The issue in the cited case was with regard to an amount debited to foreign exchange suspense account.*

*(iv) State Bank of India Vs. CIT(1996) 157 ITR 67 (SC)*

*In issue in this case is with regard to increase in amounts credited due to devaluation and it was held that the increased amount has been utilised by repatriation, it was incidental to the banking business.*

*The issues involved in the decisions relied upon by the assessee differ from the facts of this case and from issues mentioned in the show cause notice u/s. 263. In none of the cases cited above, the issue is with regard to an amount already debited in the profit and loss account and claimed and allowed as deduction in earlier assessment years. As already discussed, in this case, the issue is with regard to reversal of Provision for bad and*



*doubtful debts which was claimed earlier and allowed as deduction and also transferring the same to another reserve without routing the same through profit and loss account, in contravention to the Accounting Standards prescribed by ICAI and approved by the Income Tax Department.*

21. Considered from all aspects of the issue, on the merits of the case, this provision for bad and doubtful debts relating to the rural advance, having been allowed as claim for deduction in earlier years, any write back from the same, logically needed to be subjected to tax, since clearly the claim allowed in earlier years was excessive to the extent of the write back done by the assessee. Even on the accounting principles as prescribed by the ICAI the write back from the provision needed to be routed through profit & loss account. Therefore, for all purposes, we find that there is no merit in the claim made by the Id.counsel for the assessee that this write back could not be subjected to tax.

22. The argument of the Ld.Counsel for the assessee that in the absence of any specific provision taxing write backs of provisions made u/s 36(1) (viiia) of the Act the same was not liable to be taxed, accordingly is rejected as meriting no consideration. Even otherwise most of the provisions referred to by the Ld.Counsel for the assessee are in relation to deductions allowed for profits earned in specific circumstances / businesses, on the condition of creation of reserves to be utilized for specified business purposes such as purchase of plant and machinery for the said business. That when these



reserves are not utilised for the purpose created or to the said extent, the reserves to the extent remaining unutilized are to be subjected to tax. For clarity the provisions of section 10AA in this regard are reproduced and the rest of the sections, ie 33AC, 80HHB, 80HHD are all identically worded.

*10AA. (1) Subject to the provisions of this section, in computing the total income of an assessee, being an entrepreneur as referred to in clause() of section 2 of the Special Economic Zones Act, 2005, from his Unit, who begins to manufacture or produce articles or things or provide any services during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2006, but before the first day of April, 2021, the following deduction shall be allowed-*

*(i) hundred per cent of profits and gains derived from the export, of such articles or things or from services for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the Unit begins to manufacture or produce such articles or things or provide services, as the case may be, and fifty per cent of such profits and gains for further five assessment years and thereafter,*

*(ii) for the next five consecutive assessment years, so much of the amount not exceeding fifty per cent of the profit as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve*



*account (to be called the "Special Economic Zone Re-investment Reserve Account") to be created and utilized for the purposes of the business of the assessee in the manner laid down in sub-section (2).*

*Explanation. For the removal of doubts, it is hereby declared that the amount of deduction under this section shall be allowed from the total income of the assessee computed in accordance with the provisions of this Act, before giving effect to the provisions of this section and the deduction under this section shall not exceed such total income of the assessee.*

*(2) The deduction under clause (ii) of sub-section (1) shall be allowed only if the following conditions are fulfilled, namely:-*

*(a) the amount credited to the Special Economic Zone Re-investment Reserve Account is to be utilised-*

*(i) for the purposes of acquiring machinery or plant which is first put to use before the expiry of a period of three years following the previous year in which the reserve was created;  
and*

*(ii) until the acquisition of the machinery or plant as aforesaid, for the purposes of the business of the undertaking other than for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India;*



*(b) the particulars, as may be specified by the Central Board of Direct Taxes in this behalf, under clause (b) of sub-section (1B) of section 10A have been furnished by the assessee in respect of machinery or plant along with the return of income<sup>61</sup> for the assessment year relevant to the previous year in which such plant or machinery was first put to use.*

*(3) Where any amount credited to the Special Economic Zone Re-investment Reserve Account under clause (ii) of sub-section (1),-*

*(a) has been utilised for any purpose other than those referred to in sub section (2), the amount so utilised; or*

*(b) has not been utilised before the expiry of the period specified in sub-clause (i) of clause (a) of sub-section (2), the amount not so utilised, shall be deemed to be the profits,-*

*(i) in a case referred to in clause (a), in the year in which the amount was so utilised; or*

*(i) in a case referred to in clause (b), in the year immediately following the period of three years specified in sub-clause (i) of clause (a) of sub-section (2),*

*and shall be charged to tax accordingly:*



*Provided that where in computing the total income of the Unit for any assessment year, its profits and gains had not been included by application of the provisions of sub-section (7B) of section 10A, the undertaking, being the Unit shall be entitled to deduction referred to in this sub-section only for the unexpired period of ten consecutive assessment years and thereafter it shall be eligible for deduction from income as provided in clause (ii) of sub-section (1).*

23. Therefore the event for claiming deduction as per the said section is earning of profits from specified businesses and not creation of Reserves, which is only a condition put in place for claiming deduction of profits so as to ensure utilization of profits for investment in plant and machinery of the said business. Non utilization for the specified purpose, tantamounting to failure to fulfil the condition prescribed for claiming deduction of profits, accordingly results in subjecting the reserves, representing profits, to the extent not so utilized, to tax. These sections therefore cannot be read as specifically providing for taxing of reserves to the extent unutilized, in the circumstance of deduction being provided for on account of creation of Reserves. No parity therefore can be drawn between these sections and section 36(1) (viiia) applicable in the present case where the event for claiming deduction in the first place is the creation of provision for bad and doubtful debts. And therefore the contention of the Ld.Counsel for the assessee that the legislature has specifically provided for taxing withdrawals where required, needs to be dismissed.



24. All other arguments relating to real income theory and mere book entry not resulting in taxable event, have also been adequately dealt with by the Ld.PCIT as noted above by us.

25. The contentions of the Ld.Counsel for the assessee on the merits of the issue, of the withdrawal/reduction from provisions for bad and doubtful debts earlier allowed as deduction, not being taxable, is accordingly rejected.

26. Taking up the next argument of the ld.counsel for the assessee that the Explanation-2 to section 263 was not invoked by the ld.Pr.CIT and not confronted to the assessee in the show causenotice. This argument has already been dealt with by the ITAT and rejected in the case of Nilaykumar & Bros. Jewellers in ITA No.146/Ahd/2022 order dated 11.1.2023. The findings of the ITAT rejecting the argument are as under:

*33. To understand the import of the argument that the invocation of Explanation 2 to section 263 was to be confronted before being applied, it is necessary to see what Explantion-2 to section 263 is all about. For this purpose, provision of section 263(1) of the Act along with the Explanation2 to the same are reproduced hereunder:*

*263. (1) The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may call for and examine the record of any proceeding under*



*this Act, and if he considers that any order passed therein by the Assessing Officer for the Transfer Pricing Officer, as the case may be, is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, [including,-*

*(i) an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment; or*

*(ii) an order modifying the order under section 92CA; or*

*(iii) an order cancelling the order under section 92CA and directing a fresh order under the said section).*

*Explanation 1. For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,*

*Explanation 2-For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer for the Transfer Pricing Officer, as the case may be shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,-*

*(a) the order is passed without making inquiries or verification which should have been made;*



*(b) the order is passed allowing any relief without inquiring into the claim;*

*(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119;  
or*

*(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person."*

*34. As is evident from the above, section 263 empowers Commissioners/ Pr.Commissioners to exercise revisionary power where they find any order passed by the AO to be erroneous so as to cause prejudice to the interest of the Revenue. Explanation 2 to the section lists circumstances in which the assessment order passed will be deemed to be erroneous, which amongst other, includes an order passed without making inquiries or verification which should have been made as per clause (a) of the Explanation, which clause has been invoked by the Id.Pr.CIT in the present case.*

*35. Having said so, it is but obvious that what Explanation 2 does is only clarify and enlist the circumstances specifically where an assessment order will be deemed to be erroneous. It*



*only explains the scope of the section and clearly by no stretch expands its scope.*

*The import or object of an Explanation was explained by the Hon'ble apex court in the case of Sundaram Pillai v Pattabiraman AIR 1985 SC 582,593 as:*

*The object of an Explanation has been explained in an earlier case as follows:-*

*(a) to explain the meaning and intendment of the Act itself,*

*(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,*

*(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful, (d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and*

*(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the*



*working of an Act by becoming an hindrance in the interpretation of the same.*

*Explanations are not substantive provisions and are inserted to clear up any ambiguity in the section. They only clarify an existing law. Normally Explanations do not enlarge the scope of the section but only explain the scope.*

*Explanation 2 to section 263, clearly provides additional support to the dominant object of section 263, specifically pointing out situations where assessment orders will be deemed to be erroneous.*

*The main provision of the section and its import has not been altered by the explanation. Therefore where section 263 itself has been invoked and the reason for finding the assessment order erroneous clearly pointed out to the assessee during revisionary proceedings to the effect that adequate inquiries were not conducted by the AO on the issue in question, Explanation 2 to section 263 (a) also being to the same effect of assessment orders being deemed to be erroneous on account of lack of adequate inquiry, we see no reason why pointedly the Explanation also needs to be brought to the notice of the assessee while applying it to the case.*

*36 Once the ld.Pr.CIT brings to the notice of the assessee the reason why he finds the assessment order to be erroneous, which in the present case was inadequate inquiries conducted*



*by the AO on the nature of disclosure made by the assessee during the survey in excess stock found, he need not specifically point out that he has invoked Explanation-2 to sub-clause (a) to the section which is to the same effect of inadequate inquiries conducted qualifying as error in assessment order. The fact that he clearly brings out the reason why he found assessment order erroneous, is sufficient in itself and self-explanatory. It need not to be technically qualified by pointing out the specific clause in respect to which the reason pertained. The entire objectives of confronting anything to the assessee in the process of rendering justice is to offer an opportunity to other party to come up with his/her arguments or contentions in defense. In the present case, it is not disputed that the assessee had been specifically pointed out the error in the order of the AO of non-conducting inquiry relating to the particular issue. The assessee was required to respond to the same, which he did by pointing out that due inquiry was conducted. The fact of mentioning Explanation 2 sub-clause (a) in the notice by the Id.Pr.CIT which dealt with this specific reason or error in the order of the AO of non-conducting of inquiry, therefore, is of no consequence or relevance, since the assessee in very simple words has been confronted with the error. Mentioning of Explanation 2 to sub-clause (a) is therefore only technical addendum to the same. As we mentioned above, the Explanation did not expand the scope of section but only explained the scope of section, and therefore, once the specific section has been invoked, it is not necessary to mention any specific Explanation thereto which has been invoked. Therefore, this contention of the Id.counsel for the*



*assessee is rejected outrightly that the order needs to be set aside for the reason that Id.Pr.CIT did not confront the assessee before invoking Explanation 2 to sub-clause (a) to section 263 of the Act.*

*37. As for the decision of the jurisdictional High Court in the case of Shreeji Prints (supra), relied upon by the ld.counsel for the assessee in support of this contention, the assessee, we hold, cannot derive any benefit from the same.*

*38. On going through the decision of the Hon'ble High Court, we find that the decision is not on the question framed before it whether Explanation to section 263 of the Act can be said to be validly invoked without first confronting it to the assessee.*

*In the case before Hon'ble High Court in the decision relied upon by the Ld.AR, the Revenue had proposed the following questions as substantial question of law before the Hon'ble High Court:*

*"(a) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is correct in holding that the PCIT was not empowered and entitled to revise assessment order u/s. 263 of the Act r/w Explanation 2 thereto by ignoring that the order passed by the AO is erroneous in so far as it is prejudicial to the interest of revenue in as much as the Assessing Officer has passed the assessment order without making inquires/verification in the light of the unsecured loans of Rs.*



*2.49 Crores received from M/s. Georgette Tradecom Pvt. Ltd (GTPL) and M/s. PurbaAgro Food Pvt. Ltd (PAFPL)?*

*(b) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is correct in cancelling the impugned order u/s. 263 of the I.T. Act and allowing all the grounds of the Assessee?"*

*40. The Revenue had challenged the order of the ITAT setting aside the order passed by the ld.Pr.CIT under section 263 of the Act on account of inadequate inquiry made by the AO on unsecured loans received by it from two parties. The question framed before the Hon'ble High Court was therefore whether the ITAT order was correct when adequate inquiries were not made by the AO. The Hon'ble High Court answered the question against the Revenue, noting that the ITAT had given a finding of fact that the AO had made full inquiries in detail and accepted the genuineness of the loans received by the assessee, and such view of the AO was plausible view, and therefore the assessment cannot be said to be erroneous or prejudicial to the interest of the Revenue. Hon'ble High Court held that in view of such finding of the fact arrived at by the Tribunal, no question of law arose and the appeal of the Revenue was accordingly dismissed.*

*41. At para-5 of the judgment, Hon'ble Court has noted that the Tribunal observed that the Ld.Pr.CIT had not mentioned in the show cause notice the invocation of Explanation 2 to section*



*263 of the Act, though it passed the order invoking the said section and the Tribunal found the order to be not appropriate and sustainable in law.*

*Para-5, as above, is just a noting by the Hon'ble High Court of the findings of the ITAT while allowing the assesses appeal. We find that it is only on the facts of the case as found by the ITAT that the issues were all duly examined by the AO and the AO had taken plausible view, that Hon'ble Court had upheld order of the Tribunal dismissing the appeal of the Revenue.*

*42. Thus it is apparent from the above that the decision of the Hon'ble High Court was not to the effect that Expl 2 to section 263 not being confronted to the assessee its invocation was invalid. Neither was the decision rendered in the backdrop of this question before the Hon'ble High Court, nor does the Hon'ble High Court hold so in its order. What is noted in the order to this effect is only its noting of the findings of the ITAT while setting aside the order passed u/s 263 of the Act. Therefore the decision of the Hon'ble jurisdictional High Court cannot be read as holding that order passed u/s 263 of the Act is invalid when Expl to section 263 is invoked without confronting it to the assessee.*

*43. It is settled law that a precedent is an authority only for what it actually decides and a decision on a question that has not been argued cannot be treated as a precedent. Judgments must be read as a whole and observations in judgements should be*



*considered in the context in which they are made and in the light of the questions that were before the court. The Hon'ble apex court has held so in the case of CIT vs Sun Engineering Works Pvt. Ltd. 198 ITR 297 (SC). In the case of Padma Sundra Rao v State of TN 255 ITR 147(SC) the Hon'ble Apex Court had laid down that a ratio laid down by the Court have to be read in the context of the entire facts leading to the said ratio. 44. In view of our elaborate discussion as above, we hold that the assessee cannot derive any benefit from the judgment of Hon'ble High Court in the case of Shreeji Prints P. Ld. (supra), to the effect that non-mentioning of Explanation 2 to section 263 in the show cause notice will render entire revisionary order as non-est in the eyes of law. This contention raised by the ld.counsel for the assessee, is therefore, rejected."*

We have gone through the order dated: 15.02.2023 carefully, we relied our own order. We find no merit in the case of the assessee since, this bench has already decided that the amount is taxable in nature.

Therefore, we find no merit in this case. In view of the above the appeal is dismissed.

**Order pronounced in the open court on 04/11/2025.**

Sd/-

**(Dr. Arjun Lal Saini)**  
**Accountant Member**

Sd/-

**(Dinesh Mohan Sinha)**  
**Judicial Member**

Rajkot  
दिनांक/ Date: 04/11/2025



**Copy of the Order forwarded to**

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

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot