IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

ITA No.565/PUN/2024
Assessment year : 2019-20

Bajaj Finance Limited 3rd Floor, Panchshil Tech Park, Viman Nagar, Pune – 411014	**Vs.**	PCIT-3, Pune
PAN: AABCB1518L		
(Appellant)		**(Respondent)**

Assessee by	**:**	Shri Percy Pardiwalla
Department by	**:**	Shri Amol Khairnar, CIT-DR
Date of hearing	**:**	06-01-2026
Date of pronouncement	**:**	29-01-2026

O R D E R

PER R.K. PANDA, V.P:

This appeal filed by the assessee is directed against the order dated 30.01.2024 passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the Ld. PCIT, Pune-3 relating to assessment year 2019-20.

2. Facts of the case, in brief, are that the assesse is a Non-Banking Financial Company (NBFC) registered under the Companies Act, 1956 and engaged in the business of providing loans and advances. It filed its return of income on 30.10.2019 declaring total income of Rs.5345,39,24,170/-. The assessee subsequently revised the return on 30.11.2020 declaring total income of Rs.5301,77,46,430/-. The case was selected for scrutiny under CASS on the following issues:

S.No.	*Issues*
i.	*Claim of Any Other Amount Allowable as Deduction in Schedule BP*
ii	*Increase in TDS in Revised Return*
iii.	*High Creditors/liabilities*
iv.	*Reduction of Income in Revised Return & Claim of Refund*
v.	*Refund Claim*
vi.	*Unsecured Loans*
vii.	*Expenses Incurred for Earning Exempt Income*
viii.	*Taxability of business liability written off u/s 41 or any other section*
ix.	*Foreign Outward Remittance*
x.	*Capital Gains/Income on Sale of Property*
xi.	*Deduction from Total Income under Chapter VI-A*
xii.	*Expenditure by Way of Penalty or Fine for Violation of any Law*
xiii.	*Securities Transaction*

3. The Assessing Officer completed the assessment u/s 143(3) r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 29.09.2021 determining the total income of the assessee at Rs.5732,80,60,408/- by making the following additions:

i)	*Addition on account of ESOP*	*Rs.344,66,78,035/-*
ii)	*Addition on account of Education cess*	*Rs.71,25,58,512/-*
iii)	*Disallowance of deduction u/s 80JJAA*	*Rs.10,50,75,400/-*
iv)	*Addition on account of Fee for Technical service*	*Rs.24,30,603/-*
v)	*Addition on account of Fee for Technical service*	*Rs.58,788/-*
vi)	*Addition on the basis of Form No.15CA*	*Rs.4,35,12,640/-*

4. Subsequently the Ld. PCIT examined the record and upon verification found that certain issues on which *prima facie* disallowance should have been made, were not examined by the Assessing Officer and the expenditure claimed thereon were also without verifying its admissibility under the relevant provisions of law. Hence, he was of the opinion that the order passed by the Assessing Officer is erroneous and prejudicial to the interests of the Revenue. He, therefore, issued a show cause notice asking the assessee to explain as to why the provisions of section 263 of the Act should not be invoked. The contents of the relevant notice, copy of which is placed at pages 147 to 151 of the paper book, read as under:

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX
PCIT, Pune-3

To,	
BAJAJ FINANCE LIMITED BAJAJ AUTO LIMITED COMPLEX , MUMBAI PUNE ROAD, AKURDI AKURDI PUNE 411035 , Maharashtra India	

PAN/TAN:	AY:	DIN & Notice No :	Dated:
AABCB1518L	**2019-20**	**ITBA/REV/F/REV1/2023-24/1058513776(1)**	**06/12/2023**

NOTICE FOR THE HEARING

M/s/Mr/Ms

Subject: Notice for Hearing in respect of Revision proceedings u/s **263** of the **THE INCOME TAX ACT, 1961** – Assessment Year **2019-20**.

In this regard, a hearing in the matter is fixed on **21/12/2023** at **11:30 AM**. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: **incometaxindiaefiling.gov.in**

Sub:- Show cause notice u/s 263 of I.T. Act, 1961 for A.Y. 2019-20 –

Opportunity of being heard - reg.

Kindly refer to the above.

2. The assessee company has filed its return of income for A.Y.2019-20 on 30.10.2019 declaring total income of Rs. Rs.5345,39,24,170/-. The ITR was revised on 30.11.2020 declaring total income at Rs.5301,77,46,430/-. The case was selected for scrutiny under CASS, on following issues:-

S. No.	Issues
i.	Claim of Any Other Amount Allowable as Deduction in Schedule BP
ii.	Increase in TDS in Revised Return
iii.	High Creditors/ liabilities

iv. Reduction of Income in Revised Return & Claim of Refund

v. Refund Claim

vi. Unsecured Loans

vii. Expenses Incurred for Earning Exempt Income

viii. Taxability of business liability written off u/s 41 or any other section

ix. Foreign Outward Remittance

x. Capital Gains/Income on Sale of Property

xi. Deduction from Total Income under Chapter VI-A

xii. Expenditure by Way of Penalty or Fine for Violation of any Law

xiii. Securities Transaction

The assessment was completed u/s.143(3) r.w.s 144B of the I.T. Act on 29/09/2021 determining the total income at Rs.5732,80,60,408/-.

3. Excess allowance of deduction of provision for bad and doubtful debts u/s.36(1)(viia):-

3.1 On perusal of the Schedule 11- "Provisions and contingencies" of the Annexure-III (Disclosure as required by the NBFC Master Direction issued by the RBI) forming part of the financial statements for the year 2018-19, it is seen that the provision for bad and doubtful debts of Rs. 502.26crs comprised of provision for NPA of Rs.263.07 crs and provision for standard assets of Rs.239.18 crs. Thus, the assessee was eligible for a deduction only to the extent it was debited to the P&L account i.e., of Rs. 263.07 crs (considered as debited in P&L a/c) as against the deduction of Rs.283.10 Crs claimed by the assessee and allowed as such by the Assessing Officer in assessment.

3.2. Section 36(1)(viia) of the Income Tax Act provides that against any provision for bad and doubtful debts made by a non-banking financial company, an amount not exceeding 5% of the total income (computed before making any deduction under the relevant clauses of this section and Chapter VIA) shall be allowed as deduction. Further, Section 36(2)(v) provides that no such deduction shall be allowed unless the assessee has debited the amount of such debt or part of debt in that previous year to the provision for bad and doubtful debts account made thereunder. However, the

provisions of bad and doubtful debts for the purpose of Sec,36(1)(viia) does not include provision for standard assets.

3.3 As per para 13 of the Master Direction - Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016, updated as on February 17, 2020, on provisioning requirements in respect of loans, advances and other credit facilities including bills purchased and discounted, provision needs to be made for loss of assets, doubtful assets and substandard assets. As per the said direction, provision for standard assets is not to be considered as part of such provisioning. Careful reading of the said direction reveals that provision for bad and doubtful debts account for the purpose of section 36(1)(viia) does not include the provision for standard assets. Therefore, assessee was not entitled to claim deduction claimed u/s 36(1)(viia) to the extent of provisions made in respect of standard assets. The AO has, however, allowed such deduction claimed by the assessee in the assessment order without making proper enquiries as to the nature of such provision and the assets in respect of which it was claimed.

3.4 The above position implies that a deduction of Rs. 20.03 crs has been allowed as provision for standard assets, which is otherwise not allowable in view of the provisions of relevant clauses of section 36(1) (viia) read with para 13 on provisioning requirements of the RBI Master Direction. However, this excess deduction claimed by the assessee has been allowed by the Assessing Officer during the assessment, without conducting proper enquiry and verifying the relevant facts.

4. Applicability of the provisions of Sec.40A(2)(b) in respect of payments mad to related to parties:-

4.1 Further, it is observed that a comparison of payments made to related parties specified u/s 40A(2)(b) as per clause 23 of Tax Audit Reports in form 3CD vis-à-vis notes to financial statements regarding disclosure of related party transactions during the year under consideration revealed variations, as under:-

				(Rs. In crores)
Related Party	Nature of Transactions (As per item 23 of	Payments as per books of the assessee	Receipts as per books of the related	Difference

	TAR)		party	
1. Bajaj Alliance General Insurance Company Ltd. (PAN: AABCB5730G)	Payment to Isurance premium on Asset/Vehicles/ Travel	18.06	17.48	0.58
2. Bajaj Alliance Life insurance Company Ltd. (PAN: AADCA1701E)	Payment of Group insurance premium	3.68	191.04	-187.36
	Payment of interest on NCD	12.16	22.87	-0.71
3. Bajaj Housing Finance Ltd. (PAN: AADCB6018P)	Payment of business support charges	1.13	19.75	-18.62

Prima facie, the above variations have not been verified by the AO during the assessment proceedings and the expenditure claimed by the assessee was allowed.

5. After the introduction of Explanation 2 to Sec. 263, it has been made clear as to what kind of assessment order shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue. The Explanation 2 to Sec. 263 is reproduced below :-

"Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer [or 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."

6. From the above cited Explanation which has come into effect from 01.06.2015, it is clear that an assessment order which has been passed without making inquiries or verification which should have been made or which is passed allowing any relief without inquiring into the claim, will make such order both erroneous and prejudicial to the interest of revenue.

7. In this context, reference may be made to the decision of the Hon'ble Bombay High Court in the case of Shoreline Hotels Pvt. Ltd. vs.CIT (98 Taxman 234). In this case, it has been held that if there is failure to make enquiry by the AO, then the order of the AO becomes erroneous in so far it is prejudicial to the interest of the Revenue. Similarly, it has been stated by the Hon'ble Himachal Pradesh High Court in the case of CIT vs. HP Financial Corporation Ltd. (186 Taxmann.com 105) that *"an incorrect assumption of fact or an incorrect application of law satisfy the requirement of the order being erroneous".*

8. In view of the above facts, the assessment order passed u/s 143(3) r.w.s. 144B of the I.T. Act, 1961 dated 29.09.2021 prima-facie appears to be erroneous and prejudicial to the interests of the Revenue. You are, therefore, requested to explain as to why the provisions of section 263 of the I.T. Act, 1961 should not be invoked. In this regard, you are hereby given an opportunity of being heard by means of this notice u/s 263(1). For this purpose, the case is fixed for hearing on **21/12/2023 at 11.30 AM**. You may also furnish your written reply along with supporting evidence, if any, which may be filed in the office of the undersigned or through your account in the e-filing portal of the Income Tax Department or e-mail of this office pune.pcit3@incometax.gov.in on or before the aforesaid date. Please note that non-compliance to this notice may create a presumption that you have nothing to say on this matter and may lead to passing of an ex-parte order on the basis of material available on record.

5. The assessee in response to the same submitted that during the course of assessment proceedings the assessee had submitted all the relevant details making complete disclosure in relation to the claim in the following manner:

- *Financial statements - Schedule 8 discloses the amount of carrying provision under various stage 1 and stage 2 as provision for standard assets*
- *Financial statements - note 2 discloses the basis on which provision for debts is accounted for including the standard assets*

6. It was submitted that during the course of assessment proceedings the Assessing Officer had called for various information / details from time to time

after considering the financial statements submitted by the assessee. It was argued that if the Assessing Officer has enquired into the claim and followed one of the permitted views under the law, the order cannot be regarded as erroneous.

7. So far as variance in relation to 40A(2)(a) of the Act is concerned, the assessee submitted that there was no difference in the amount reported as a part of disclosure made in tax audit report and the assessee's financial statement. It was accordingly argued that the twin conditions required for invoking the jurisdiction u/s 263 of the Act are not satisfied and therefore, the 263 proceedings should be dropped. The assessee also made elaborate arguments on merit justifying its stand that the assessee is a Non-Banking Finance Company and the provisions have been made in accordance with the directions issued by the RBI. Relying on various decisions it was argued that the 263 proceedings initiated by the Ld. PCIT should be dropped since the twin conditions are not satisfied.

8. However, the Ld. PCIT was not satisfied with the arguments advanced by the assessee and held the assessment order to be erroneous in so far as it is prejudicial to the interests of the Revenue. He, therefore, set aside the order partly to the file of the Assessing Officer for the limited purpose of examining the issue of admissible deduction u/s 36(1)(viia)(d) r.w.s. 36(2)(v) and also the transactions made with related parties u/s 40A(2)(b) of the Act. The relevant observations of the Ld. PCIT from para 7 onwards read as under:

FINDINGS

7. I have carefully gone through the facts of the case, the relevant position of law, the assessment order and the written submissions filed by the asseessee. Apart from making submissions on merits on the issues involved, the assessee has also raised arguments questioning the validity of the revisionary proceedings on the ground of incorrect assumption of jurisdiction. The main supporting argument advanced by the assessee is that the AO having considered the facts and relevant position, allowed such deduction by adopting one of the two views possible and a mere disagreement by the PCIT would not render the order erroneous. Similarly, with regard to the variance in the value of the transactions reported u/s.40A(2)(a), the assessee says that there existed no variance so as to attract the said provisions, calling for revision u/s.263 of the Act.

7.1 To decide on the objections raised by the assessee on assumption of revisionary jurisdiction it is, therefore, necessary to deal with the merits of the issues involved first.

I) Excess allowance of deduction of provision for bad and doubtful debts u/s.36(1)(viia):-

8. The assessee states that it is a non-banking financial company and that the provisions in respect of standard assets have been made and claimed in accordance with the Reserve Bank of India ('RBI') Non Banking Financial Company (NBFC) systematically important deposit taking NBFC (Reserve Bank) Directions (also referred to as "RBI Master Directions"). It is claimed that the said directions mandate the assessee to make provision on standard assets @ 0.4% of the value included in such assets. It is also the argument of the assessee that the term 'bad and doubtful debts' has not been defined in the Act, and therefore, the same needs to be interpreted in the light of the extant RBI regulations / master guidelines and the underlying nature of the assets and the reason for creation of such provision.

8.1 At this juncture, it is necessary to first refer to the relevant provisions of Section 36 of the I.T. Act, which provides allowance of certain deductions as per the various clauses in respect of the matters dealt with therein, in computing the income referred to in section 28 i.e. income under the head 'Profits and gains of business or profession'.

8.1.1 Clause (viia) to Sec.36(1) and sub-clause (d) thereof, which allows deduction in the case of a of Non-Banking Financial Company, reads as under:-

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

(*d*) a non-banking financial company, an amount not exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VI-A).

8.1.2 Thus, the provisions of Sec.36(1)(viia) in fact envisage deduction allowable in respect of provisions made on **'bad and doubtful'** debts.

8.2 Now the question that arises is that what constitute 'bad and doubtful debts' and whether assets classified as 'standard assets' can be considered as 'bad and doubtful assets' for the purpose of Section 36(1)(viia) of the Act. The assessee has laid great emphasis on the Master Directions issued by the RBI for Non-Banking Financial Company to argue that the provision has been made in accordance with the directions contained therein.

8.3 Chapter V of the above Direction issued by the RBI deals with Asset Classification and Provisioning. Para 8.1 under this Chapter states that the assets have to be classified in the following categories after taking into account the degree of well-defined credit weaknesses and extent of dependence on collateral security for realization:-

a. Standard asset

b. Sub-standard assets

c. Doubtful assets and

d. Loss assets.

8.3.1 The broad parameters of classification of the assets in the above categories have been elaborated in para 8.3 of the directions as per which -

"Standard asset"	shall mean the asset in respect of which, no default in repayment of principal or payment of interest is perceived and which does not disclose any problem or carry more than normal risk attached to the business.
"Sub-standard asset"	shall mean as an asset which has been classified as non-performing asset not for a period exceeding 12 months…

"Doubtful asset"	shall mean an asset which remains a sub-standard asset for a period exceeding 12 months.
"Loss asset"	shall mean an asset which has been identified as loss asset or which is affected by a potential threat of non-recoverability.

8.3.2 From the above, it can be seen that the term 'Standard Asset' has been defined to be an asset in respect of which there is no perceivable threat of default in repayment and which does not disclose any problem in recovery. Thus, even though the assessee, being a non-banking finance company' operating under the guidelines laid down by the RBI may be required to classify its assets in accordance with the guidelines laid down by the RBI and make provisions in order to meet the exigencies in collecting the dues in relation to such assets, all the provisions made in respect of such assets cannot be classified as 'bad and doubtful debts' for the purpose of Section 36(1)(viia) of the I.T. Act. In this context, reference may be made to the decision of the Hon'ble Supreme Court in the case of Southern Technologies Ltd. vs. JCIT (320 ITR 577) where it has been held that the RBI guidelines have nothing to do with the computation of taxable income under the I.T. Act. The prudential norms prescribed by the RBI, in pursuance of which the said provision is stated to have been made, cannot regulate income tax laws and admissibility of such provision for bad debts or losses is to be examined under the provisions of the Income Tax Act.

8.4 Thus, what would constitute 'bad and doubtful assets' for the purpose of Sec.36(1)(viia) could be only those assets which have been classified as 'sub-substandard asset, doubtful debt and loss assets' as these classifications are made based on the actual status of recovery of these assets. Therefore, a standard asset cannot be clubbed with other strained assets so as to classify it in the category of 'bad and doubtful debts' as these are performing assets of which there is no perceivable threat of recovery, even as per the classification made under the RBI guidelines.

8.5 At the most, such provision made on standard assets can be considered to be of 'contingent nature' in order to take care of the distinct possibility of such assets turning NPAs. Contingent liabilities are potential obligations that may or may not materialize in the future, depending on the occurrence or non-occurrence of uncertain future events. These liabilities are not certain as on the balance sheet date. The Income Tax Act allows deductions for expenses that are incurred and have crystallized, meaning they are actual and definite expenses. Provisions made for contingent liabilities do not meet this criterion as they are based on estimations or possibilities and are not certain liabilities at the time of provision. Merely because the assessee has made certain provisions in its books based on the directives of the RBI, the same would not constitute a liability as it is not a debt in *preasenti*

or in *futuro* till that contingency has arisen as held by the Hon'ble Apex Court in the case of CIT Vs. Łucas TVS Ltd. – 249 ITR 302 (SC). Considering this position, the reliance placed by the assessee on decisions of various benches of the ITAT on the issue of provision on standard assets cannot come to the rescue of the assessee in the present case.

8.6 On the contrary, while dealing with similar issue, the Chennai Bench of the ITAT in the case of Bharat Overseas Bank Ltd. vs. CIT as reported in [2012] 26 taxmann.com 330 (Chennai), held that standard assets are always considered recoverable and any provision made on such assets cannot be considered as a provision for bad and doubtful debts and upheld the revisionary proceedings initiated by the PCIT u/s.263 of the Act. The assessee has claimed that unlike in the above case, the assessee has demonstrated in its case that even standard asset carries the risk of becoming bad. However, this argument is not found to be relevant as provision on standard assets is not in the nature of a crystallized liability in *preasenti* or in *future,* but based on a contingency that may or may not happen in a subsequent period. It may be true that some of the assets classified as 'standard asset' may have turned into bad or doubtful debts in later years. However, the assessee always has the statutory option of making the provision once the assets actually turns bad and doubtful.

8.7 The Ahmadabad Bench of the ITAT in the case of Bharuch Dist. Central Co-op. Bank Ltd. vs. ITO, Ward-1, Baruch ([2013] 36 taxmann.com 517) has also held that amount credited by bank to reserve for bad and doubtful debts towards standard assets is not deductible under section 36(1)(viia), as it is not a provision for bad and doubtful debts. The assessee claims that the decision is distinguishable on the ground that in the said case, the credit was made to 'reserve' and not 'provision' as is done in the present case. However, this distinction is of little significance since in both case, the relevant expenditure claimed is in respect of 'standard assets' and under the provisions of Sec.36(1)(viia) and merely because the claim was made under a different nomenclature will not alter the fact that such provision was of contingent nature.

8.8 The above position makes it absolutely clear that the deduction as envisaged in Section 36(1)(viia) is only in respect of bad and doubtful debts and the same cannot be extended to any provision made on standard assets which has not become bad or doubtful.

II) Applicability of the provisions of Sec.40A(2)(b) in respect of payments made to related parties:

9. As regards the issue of variation in the payment made to related parties under section 40A(2)(b) of the Act as per clause 23 of tax audit report vis-a-vis financial statement of related parties, on the basis of clarifications given, the assessee has argued that there was no actual variation and that in some instances, the value disclosed is less than the value appearing in the books of the related parties and therefore, they are beyond the purview of Sec.40A(2)(a) of the Act.

9.1 The contention of the assessee is carefully considered. It is an undisputed fact that the impugned transactions are reported in clause 23 of tax audit report furnished by the assessee for the year under consideration. When such transactions are reported in the tax audit report, it was incumbent upon the AO to examine whether the values of such transactions were excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to it therefrom. During the present proceedings, justifying the variance in the value of transactions with related parties, the assessee has attributed various reasoning such as timing difference, exclusion of GST in the transaction value, premium having been collected on behalf of related concern but not routed through the P & L A/c of the assessee etc. However, none of these claims seems to have been verified by the AO during the assessment proceedings. Therefore, it is clear that the order was passed by the AO without making inquiries or verification which should have been made vis-à-vis the payments made to related parties.

10. Having dealt with the merits of the issues involved, now, I proceed to deal with the contentions raised by the assessee questioning the assumption of jurisdiction u/s.263 of the Act. The assessee argues that all the relevant facts relating to the Provisions made on bad and doubtful debts and the basis for quantification of such deduction have been duly disclosed during the assessment proceedings. It is contended that the deduction claimed by the assessee is admissible in the light of various judicial pronouncements on the basis of which the AO allowed the claim and therefore, it is not a case where the order was passed without making any enquiry. The assessee also argues that where the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss of revenue or where two views are possible and the AO has taken one view with which the Commissioner does not agree, would not render the order passed by the AO as erroneous and prejudicial to the interest of the revenue, even under Explanation 2 to Sec.263 of the Act.

10.1 The above arguments of the assessee are not found to be acceptable. After the introduction of Explanation 2 to Sec. 263 of the Act it has been made clear as to what kind of assessment order shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue. The Explanation 2 to Sec. 263 is reproduced below :-

"Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer ***[****or 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."

10.2 The above Explanation which has come into effect from 01.06.2015, makes it abundantly clear that an assessment order, which has been **passed without making any inquiries or verification which should have been made,** or **allowing any relief without inquiring into the claim**, will be deemed to be both erroneous and prejudicial to the interest of revenue.

10.3 From the discussion made in para 8 hereinabove, it becomes clear that the Assessing Officer did not make necessary inquiries and verification of all relevant issues which has led to granting of excess relief to the assessee in the form of deduction u/s.36(1)(viia) of the I.T. Act. Similarly, no enquiries are also prima facie made to ascertain the justifiability of the transactions carried out with the related concerns reported u/s.40A(2)(a) of the Act, as discussed in para 9 hereinabove. Thus, this is not a case where the AO analyzed the issues in question and took one of the possible views, but this is a case where the issues were not at all examined by the AO and therefore, no view could be said to have been taken on those issues. Therefore, both clause (a) and (b) of Explanation to Sec.263 are clearly attracted to the assessment order passed by the AO making it both erroneous and prejudicial to the interest of the Revenue. Here, it is worth mentioning that all the decisions relied upon by the assessee to draw support for its argument challenging the validity of the proceedings, are rendered prior to the insertion of Explanation 2 to Sec.263 of the Act. For this reason, the ratio decidendi in various decisions relied upon by the assessee to question exercising of the revisionary jurisdiction cannot be applied to the facts of the present case. Further, as already noted hereinabove, this is not a case of the AO having taken one of the possible views on the issues involved, but this is a case where there is a clear failure on the part of the AO to examine the very admissibility or otherwise of the claims and hence, question of difference of opinion does not arise. Therefore, the reliance of the assessee on the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT (243 ITR 82) and CIT vs. Max India Ltd. (295 ITR 83) is misplaced also.

10.4 The Hon'ble Himachal Pradesh High Court in the case of CIT vs. HP Financial Corporation Ltd. (186 Taxmann.com 105) has held that "an incorrect assumption of fact or an incorrect application of law satisfy the requirement of the order being erroneous". Once it is established that there was lapse on the part of the AO in applying the correct position of law, intervention of the PCIT to set right such a lapse cannot be termed as a mere change of opinion. For this reason also, the ratio of the various judicial precedents cited by the assessee challenging the assumption of revisional jurisdiction in the case cannot be attracted

to the facts of the present case.

10.5 In assailing the revisionary proceedings, the assessee has also raised an argument that while arriving at the variance with regard to the transactions reported u/s.40A(2)(a), reliance is placed upon the financial statement of the related party which is not permissible since the term 'record' for the purpose of Sec.263 would include only such documents which were available at the time of conclusion of proceedings.

10.5.1 The contention of the assessee is considered carefully. The argument that the scope of 'record' for examination by the Commissioner under the provisions of Sec.263 is confined to the documents available at conclusion of proceedings by the AO is bereft of merit. Clause (b) to Explanation 1 to Section 263 of the Act defines 'record' as under:-

> *"record" [shall include and shall be deemed always to have included] all records relating to any proceeding under this Act available at the time of examination by the [5][Principal [9][Chief Commissioner or Chief Commissioner or Principal] Commissioner or] Commissioner;*

From the above, it is clear that 'record' for the purpose of revision u/s.263 would include all records relating to 'any proceeding' under this Act available at the time of examination by the authority exercising the jurisdiction and not merely the records available with the AO at the conclusion of the relevant proceedings. The assumption of jurisdiction u/s.263 of the Act is necessitated for the precise reason that the AO failed to enquire into certain issues and carry out the verification by calling for the relevant evidence which ought to have been done by him. The conclusion as to whether an order is erroneous and prejudice to the interest of the revenue is drawn by the PCIT/CIT on the basis of records/documents/evidence available at the time of such examination. Therefore, the contention of the assessee that the reviewing authority ought to confine the examination only to the records at the time of conclusion of the proceedings by the AO, has no legal sanctity.

11. Accordingly, the objections raised by the assessee, both on challenging the validity of the revisionary proceedings as well as on merits of the issues involved, are held to be not tenable and the same are rejected.

12. In the light of the above facts, I am satisfied that the assessment order dated 29/09/2021 passed for the Assessment Year 2019-20 is erroneous in so far as it is prejudicial to the interest of the Revenue. Consequently, the said assessment order passed by the

Assessing Officer u/s.143(3) r.w.s. 144B of the I.T. Act dated 29/09/2021 for the A.Y.2019-20 is hereby partly set aside to the file of the A.O for the limited purpose of examining the following issues and passing fresh assessment order in the light of inquiries made:

1. The AO shall examine the nature of assets in respect of which provisions have been made by the assessee in its books of accounts on account of 'bad and doubtful assets'.
2. The AO shall examine and determine the quantum of such deduction admissible to the assessee u/s.36(1)(viia)(d) r.w.s. 36(2)(v) of the I.T. Act, in respect of provision made for 'bad and doubtful assets'
3. The AO shall examine the reasonableness of the transactions made with related parties u/s.40A(2)(b) of the Act as reported in clause 23 of the Tax Audit report and verify the correctness of the claims made by the assessee with regard to such transactions and record his finding thereof.

13. The Assessing Officer is directed to give adequate opportunity of being heard to the assessee before passing the consequential order.

9. Aggrieved with such order of the Ld. PCIT, the assessee is in appeal before the Tribunal by raising the following grounds:

separate and without prejudice to each other

1. Ground 1: Challenging the validity of revision proceedings under section 263 of the Act

1.1. The learned PCIT failed to appreciate that the assessment order passed by the Assistant Commissioner of Income Tax, Circle 8, Pune (hereinafter referred to as learned AO) under section 143(3) of the Act was neither erroneous nor prejudicial to the interest of the revenue and thus, the order under section 263 of the Act is without jurisdiction and bad-in-law

1.2. The learned PCIT erred in initiating the proceedings under section 263 of the Act without appreciating that the learned AO during the course of original assessment proceedings had made necessary enquiry and verification, before allowing the claim made by the Appellant under section 36(1)(viia) of the Act.

1.3. The learned PCIT ought to have appreciated that the proceedings under section 263 of the Act cannot be initiated on interpretational issues based on mere difference in opinion from the position adopted by the learned AO.

2. Ground 2. Challenging the deduction claimed under section 36(1)(viia) of the Act on standard assets:

2.1 The learned PCIT erred in holding that deduction under section 36(1)(viia) of the Act is not allowable on provision made for standard assets on the premise that the said provision allows deduction only for provision made for 'bad or doubtful debts.

2.2 The learned PCIT ought to have appreciated that the term bad and doubtful assets is not defined under the provisions of section 36(1)(viia) of the Act and the same should be interpreted in general parlance and considering the facts of the present case.

2.3. The learned PCIT ought to have appreciated that provision made on 'standard assets' as per the RBI directive at a normative rate of 0.4% is considering the probability of such assets turning bad and doubtful in future, as demonstrated basis the facts of the case and hence falls within the scope of section 36(1)(viia) of the Act.

2.4. The learned PCIT failed to consider the fact that though the Appellant has made the provision for standard assets of Rs.239.15 crores but the receivables which became doubtful and written off later in subsequent years were more than Rs.3500 crores, which substantiates that pad of the Act the standard assets were doubtful and hence, falls within the purview of section 36(1)(viia).

2.5. The learned PCIT failed to consider various favourable decisions relied upon by the Appellant including the decision of Amritsar Tribunal in case of Punjab Gramin Bank (ITA No.134/ASR/2015) dated 22 June 2015 and Surat Tribunal in case of Surat Co-operative Bank Limited (ITA No.16/AHD/2015) dated 17 May 2022 which are squarely applicable to the facts of the present case.

3. Ground 3: Challenging the applicability of provisions of section 40A(2)(b) of the Act in respect of payments made to related parties:

3.1. The learned PCIT erred in holding that the learned AO has not verified the transactions reported under section 40A(2)(b) of the Act and the order passed by the learned AO was without making inquiries or without verification of facts.

3.2. The learned PCIT failed to appreciate that in most of the transactions there was no variation between amount reported by the Appellant and by the related party and the variation was only on account of wrong consideration of the amount or non-consideration of GST amount etc.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at the time of hearing of the appeal, so as to enable the Hon'ble Tribunal to decide this appeal according to law.

10. The Ld. Counsel for the assessee at the outset referring to the decision of the Co-ordinate Bench of the Tribunal in assessee's own case for assessment year 2018-19 submitted that the Tribunal vide ITA No.564/PUN/2023 order dated 26.02.2024 for assessment year 2018-19 has quashed the 263 proceedings under identical circumstances wherein the Ld. PCIT set aside the order u/s 263 to the file of the Assessing Officer on the ground that the Assessing Officer has allowed the deduction on account of provision for doubtful debts claimed u/s 36(1)(viia) of the Act erroneously.

11. Referring to the decision of the Co-ordinate Bench of the Tribunal in the case of Shri Samartha Sahakari Bank Ltd. Vs. ACIT vide ITA No.873/PUN/2017 order dated 07.01.2020 for assessment year 2013-14, he submitted that the Tribunal in the said decision, following the decision of Hon'ble Karnataka High Court in the case of Bellad Bagewadi Urban Souhard Sahakari Bank Niyamit vs. CIT & Anr vide order dated 29.01.2018, has held that the assessee is eligible for deduction in respect of provision made against standard assets.

12. Referring to the decision of the Mumbai Bench of the Tribunal in the case of M/s. Union Bank of India vs. DCIT vide ITA No.2956/Mum/2024 order dated 20.06.2025 for assessment year 2019-20, he drew the attention of the Bench to para 8 of the order which reads as under:

> *"8. Coming to the issues relating to the broken period interest paid on purchase of securities, amortization on securities and unrealized interest on bad and doubtful debts, though no specific queries were raised by the AO but these issues have already been decided by the Hon'ble Supreme Court and Hon'ble Bombay High Court and the Tribunals (supra) in favour of the assessee and*

against the revenue. Therefore, on these issues also the assessment order is neither erroneous nor prejudicial to the interest of the revenue."

13. Referring to the decision of Hon'ble Supreme Court in the case of CIT M/s. HCL Comnet Systems & Services Ltd. vide Civil Appeal No.5800 of 2008, order dated 23.09.2008, he drew the attention of the Bench to the following paragraph:

"As stated above, the said Explanation has provided six items, i.e., Item Nos.(a) to (f) which if debited to the profit and loss account can be added back to the net profit for computing the book profit. In this case, we are concerned with Item No.(c) which refers to the provision for bad and doubtful debt. The provision for bad and doubtful debt can be added back to the net profit only if Item (c) stands attracted. Item (c) deals with amount(s) set aside as provision made for meeting liabilities, other than ascertained liabilities. The assessee's case would, therefore, fall within the ambit of Item (c) only if the amount is set aside as provision; the provision is made for meeting a liability; and the provision should be for other than ascertained liability, i.e., it should be for an unascertained liability. In other words, all the ingredients should be satisfied to attract Item (c) of the Explanation to Section 115JA. In our view, Item (c) is not attracted. There are two types of "debt". A debt payable by the assessee is different from a debt receivable by the assessee. A debt is payable by the assessee where the assessee has to pay the amount to others whereas the debt receivable by the assessee is an amount which the assessee has to receive from others. In the present case "debt" under consideration is "debt receivable" by the assessee. The provision for bad and doubtful debt, therefore, is made to cover up the probable diminution in the value of asset, i.e., debt which is an amount receivable by the assessee. Therefore, such a provision cannot be said to be a provision for liability, because even if a debt is not recoverable no liability could be fastened upon the assessee. In the present case, the debt is the amount receivable by the assessee and not any liability payable by the assessee and, therefore, any provision made towards irrecoverability of the debt cannot be said to be a provision for liability. Therefore, in our view Item (c) of the Explanation is not attracted to the facts of the present case. In the circumstances, the AO was not justified in adding back the provision for doubtful debts of Rs.92,15,187/- under clause (c) of the Explanation to Section 115JA of the 1961 Act."

14. Referring to the decision of the Co-ordinate Bench of the Tribunal in the case of ITO vs. Latur District Central Co-Op Bank Ltd. vide ITA No.1222/PUN/2024 order dated 28.01.2025 for assessment year 2018-19, he submitted that the Tribunal in the said decision has held that the assessee is eligible for deduction in respect of provision for standard assets and bad & doubtful debts & reserves u/s 36(1)(viia) of the Act. He submitted that since the issue stands decided in favour of the assessee by various decisions, therefore, the Ld. PCIT was

not justified in invoking the provisions of section 263 for provision of doubtful debts claimed u/s 36(1)(viiia) of the Act.

15. So far as the second issue is concerned i.e. allowability of deduction u/s 40A(2)(a) of the Act, he submitted that the Assessing Officer in the set aside order has already allowed the claim of the assessee, therefore, there is no error on the second issue. He accordingly submitted that the order passed by the Ld. PCIT should be set aside and the grounds raised by the assessee be allowed.

16. The Ld. DR on the other hand submitted that the Assessing Officer has not conducted any enquiry whatsoever on the issue of provision for bad and doubtful debts claimed u/s 36(1)(viia) of the Act on standard assets. Referring to four notices issued by the Assessing Officer, copies of which are filed in the paper book he submitted that nowhere the Assessing Officer has ever asked the assessee any query on this issue. He submitted that merely because the Assessing Officer has not made any addition that does not mean that the Assessing Officer has accepted the contention of the assessee regarding the allowability of the claim made u/s 36(1)(viia) of the Act towards provision for doubtful debts.

17. Referring to the decision of the Pune Bench of the Tribunal in the case of Jalgaon People's Co-op Bank Ltd reported in (2021) 188 ITD 608 (Pune-Trib.), he submitted that the Tribunal in the said decision has held that where the assessment had been made by Assessing Officer, without verification of claim of bad debts written off as deduction, such order has become erroneous and prejudicial to

interest of revenue, hence, Commissioner was correct in assuming revisionary jurisdiction and passing order under section 263 of the Act.

18. So far as the decision of the Co-ordinate Bench of the Tribunal in assessee's own case for assessment year 2018-19 is concerned, the Ld. DR drew the attention of the Bench to the same and submitted that the Assessing Officer in the said case during the course of assessment proceedings had called for the details of standard assets. The assessee had submitted all the details to the Assessing Officer and after considering the submissions of the assessee, the Assessing Officer had arrived at the conclusion after studying the details. However, in the instant case no such query has been raised by the Assessing Officer on this issue. Therefore, the decision in assessee's own case for assessment year 2018-19 is not applicable to the facts of the present case.

19. So far as the argument of the Ld. Counsel for the assessee that the various Benches of the Tribunal have taken a favourable view on the issue of allowability of claim u/s 36(1)(viia) of the Act towards provision for doubtful debts is concerned, he submitted that if the Assessing Officer had called for the details and has taken a view on this issue, then probably the powers of the Ld. PCIT could have been limited. However, in the instant case since no query whatsoever was raised on this issue and the Assessing Officer has not taken any view and has allowed the claim of the assessee, therefore, the order has become erroneous as well as prejudicial to the interests of the Revenue and therefore, the Ld. PCIT was fully justified in invoking his revionary powers u/s 263 of the Act.

20. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. PCIT and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case completed the assessment u/s 143(3) of the Act on 29.09.2021 determining the total income of the assessee at Rs.5732,80,60,408/-. We find the Ld. PCIT set aside the order u/s 263 of the Act on the ground that the Assessing Officer has not conducted any enquiry on the following two issues:

> (i) excessive allowance of deduction of provision for bad debts u/s 36(1)(viia) of the Act; and
>
> (ii) the excessive payments made u/s 40A(2)(b) of the Act in respect of payments made to the related parties.

21. He, therefore, set aside the order of the Assessing Officer to his file for the limited purpose of the above two issues.

22. So far as the second issue is concerned, the Ld. Counsel for the assessee filed a copy of the order passed by the Assessing Officer u/s 143(3) r.w.s. 263 of the Act dated 13.03.2025 where the Assessing Officer has not made any addition on account of payments made to the related parties by invoking the provisions of section 40A(2)(b) of the Act. That leaves us with the first issue i.e. allowance of deduction of provision for bad and doubtful debts u/s 36(1)(viia) of the Act in respect of such provision on account of standard assets.

23. So far as the provision created for bad and doubtful debts u/s 36(1)(viia) of the Act which include the provision in respect of standard assets is concerned, we

find admittedly the Assessing Officer has not raised any query on this issue. However, it is also an admitted fact that the Assessing Officer has raised specific queries on this very issue in the immediately preceding assessment year and had not made any addition on account of provision in respect of bad and doubtful debts which include standard assets. We find the Co-ordinate Bench of the Tribunal in the case of Shri Samartha Sahakari Bank Ltd. vs. ACIT vide ITA No.873/PUN/2017 order dated 07.01.2020 for assessment year 2013-14, following the decision of Hon'ble Karnataka High Court in the case of Bellad Bagewadi Urban Souhard Sahakari Bank Niyamit vs. CIT & Anr vide ITA No.100168/2015 order dated 29.01.2018 has held that the assessee is eligible for deduction in respect of provision for bad and doubtful debts for the purpose of section 36(1)(viia) of the Act which includes the standard assets.

24. We find the Co-ordinate Bench of the Tribunal in the case of ITO vs. Latur District Central Co-Op Bank Ltd. vide ITA No.1222/PUN/2024 order dated 28.01.2025 for assessment year 2018-19 has also held that the assessee is entitled for deduction u/s 36(1)(viia) of the Act in respect of provision for bad and doubtful debts which includes the standard assets.

25. We find the Co-ordinate Bench of the Tribunal in assessee's own case vide ITA No.564/PUN/2023 order dated 26.02.2024 for assessment year 2018-19 has quashed the 263 proceedings under identical circumstances by observing as under:

> *"6. We have heard both the parties and perused the records. The issue involved is whether ld.Pr.CIT had rightly invoked jurisdiction under section 263 of the Act.*

6.1 It is observed that different benches of ITAT have taken different views on the issue of allowability under section 36(1)(viia) deduction for provision for standard assets. The ITAT Indore Bench in the case of Vikramaditya Nagrik Sahkari Bank Maryadit Vs. ACIT in ITA No.36/IND/2017 (supra), ITAT Mumbai Bench in the case of Kotak Mahindra Bank Limited Vs. ACIT in ITA Nos.3267 to 3269/MUM/2019(supra) and ITAT Amritsar Bench in the case of Dy.CIT Vs. M/s.Punjab Gamin Bank in ITA No.134/ASR/2015 for A.Y.2008-09(supra), had held that deduction under section 36(1)(viia) is allowable for provision for standard assets which is basically in the nature of bad & doubtful debts.

6.2 Before we discuss the case further, we will like to mentions the relevant case laws on this issue.

6.3 The Hon'ble Supreme Court in the case of CIT Vs. Amitabh Bachchan, 384 ITR 200(SC) observed as under :

> *"21. There can be no doubt that so long as the view taken by the Assessing Officer is a possible view the same ought not to be interfered with by the Commissioner under Section 263 of the Act merely on the ground that there is another possible view of the matter. Permitting exercise of revisional power in a situation where two views are possible would really amount to conferring some kind of an appellate power in the revisional authority. This is a course of action that must be desisted from."*

6.4 The Hon'ble Madras High Court in the case of CIT Vs. Mepco Industries Ltd. 294 ITR 121 (Madras) held as under :

> *Quote, "8. Therefore, on the facts of the case, when two views are possible and it is not the case of the Revenue that the view taken by the Assessing Officer is not permissible in law, the CIT is not justified in invoking the jurisdiction under section 263 of the Act. " Unquote.*

6.5 The Hon'ble Bombay High Court in the case of CIT Vs. Future Corporate Resources Ltd in IT Appeal No.1275 of 2017 vide order dated September 29, 2021 held as under :

> *Quote ," 7. In the order of PCIT it is stated "in paragraph 4.3 of the assessment order, the Assessing Officer has recorded that from the details submitted by the assessee and the explanation given by him, it was observed that assessee had regular business connection with the company in which investment had been made and also there was business income to the assessee from the same. Therefore, interest expense debited by the assessee has not been considered for the calculation of disallowance under section 14A because the same has been incurred for the purpose of business." The PCIT therefore agrees that the Assessing Officer has recorded from the details submitted by respondent and the explanation given by respondent that the assessee had regular business connection with the company in which investment has been made and also there was a business income to the assessee from the same. He notes that the Assessing Officer, therefore did not consider the calculation of disallowance under section 14A the interest expense debited by the assessee because the same*

> *has been incurred for the purpose of business. The PCIT though was unhappy with the view of the Assessing Officer, the PCIT himself does not say why it should have been considered for the calculation of disallowance under section 14A. Even if one assumes that he has, after reading of the order expressed his views, but still the position is two views therefore were possible. Therefore, if one of the two possible views was taken by the Assessing Officer, the PCIT could not have exercised his powers under section 263 of the Act. 8." Unquote*
>
> *6.6 Thus, the principal of the law emanating from the above decision of the Hon'ble Supreme Court, the Hon'ble Jurisdictional High Court, the Hon'ble Bombay High Court is that when two views are legally possible and AO adopts one view the Assessment Order cannot be said to be erroneous for the CIT to invoke jurisdiction u/s 263. In this case, applying the above principle of law, it is held that assessment order is not erroneous and prejudicial to the interest of the revenue and hence the order under section 263 is bad in law. Accordingly, appeal of the assessee is allowed."*

26. So far as the argument of the Ld. DR that while the Assessing Officer in assessment year 2018-19 has made specific queries on the issue of allowability of deduction under the provision of bad and doubtful debts which included the standard assets, however, for the impugned assessment year he has not raised any query is concerned, we find the Mumbai Bench of the Tribunal in the case of M/s. Union Bank of India vs. DCIT vide ITA No.2956/PUN/2024 order dated 20.06.2025 for assessment year 2019-20 at para 8 of the order has observed as under:

> *"8. Coming to the issues relating to the broken period interest paid on purchase of securities, amortization on securities and unrealized interest on bad and doubtful debts, though no specific queries were raised by the AO but these issues have already been decided by the Hon'ble Supreme Court and Hon'ble Bombay High Court and the Tribunals (supra) in favour of the assessee and against the revenue. Therefore, on these issues also the assessment order is neither erroneous nor prejudicial to the interest of the revenue."*

27. Since the Co-ordinate Benches of the Tribunal have taken the consistent view that the assessee is entitled for deduction u/s 36(1)(viia) of the Act on account of provision for bad and doubtful debts which include the standard assets and since

the Co-ordinate Bench of the Tribunal in assessee's own case in the preceding assessment year has quashed the 263 proceedings on this very issue under identical circumstances, therefore, respectfully following the order of the Co-ordinate Bench of the Tribunal in assessee's own case for the immediately preceding assessment year, we quash the 263 proceedings initiated by the Ld. PCIT. The grounds raised by the assessee are accordingly allowed.

28. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 29th January, 2026.

Sd/-	**Sd/-**
(VINAY BHAMORE)	(R. K. PANDA)
JUDICIAL MEMBER	VICE PRESIDENT

पुणे Pune; दिनांक Dated : 29th January, 2026

GCVSR

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to</u>:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Assistant Registrar
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	13.01.2026		Sr. PS/PS
2	Draft placed before author	14.01.2026		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Office Superintendent			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			