IN THE INCOME TAX APPELLATE TRIBUNAL
*KOLKATA BENCH "**C**" KOLKATA*

Before **Shri N.V.Vasudevan, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.1633/Kol/2002 Assessment Year :1998-99

DCIT, Circle-7, P-7, Chowringhee Square, Aayakar Bhawan, 5th Floor, Kolkata	**V/s.**	Allahabad Bank 2, N.S. Road, Kolkata-700 001 [**PAN No.AACCA 8464 F**]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri G. Mallikarjuha, CIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri B.K. Ghosh, FCA
सुनवाई की तारीख/Date of Hearing	07-11-2016
घोषणा की तारीख/Date of Pronouncement	18-11-2016

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-VII, Kolkata in appeal No.19/CIT(A)-VII/2001-02 dated 31.05.2002. Assessment was framed by Addl. CIT, SPL. Range-3, Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 30.03.2008 for assessment year 1998-99. Shri G. Mallikarjuha, Ld. Departmental Representative appeared on behalf of Revenue and Shri B.K. Ghosh, Ld. Authorized Representative appeared on behalf of assessee.

2. First issue raised by Revenue in this appeal is that Ld. CIT(A) erred in deleting the disallowance of ₹10,81,616/- made by Assessing Officer on account of prior period expense. For this, Revenue has raised following ground:-

> *"(1) That the Ld. CIT(A) has erred both in law and in facts in deleting the disallowance of Rs.10,81,616/- being expenses pertaining to earlier years by contradicting the finding of the Assessing Officer that earlier years' expenses were not allowable when the assessee was following mercantile system of accounting."*

3. Facts in brief are that assessee in the present case is a scheduled bank and engaged in banking business. The assessee in the year under consideration has claimed certain expenses for ₹10,81,616/-. The AO during the course of assessment proceedings observed that the said expenses do not pertain to the year under consideration and accordingly he disallowed the same by adding to the total income of assessee.

4. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who deleted the addition made by AO by observing as under:-

> *"Ground No. 3: This ground is directed against the disallowance of expenses of Rs.10,81,616/- pertaining to earlier years. On going through the details of the earlier year's expenses it was noticed that the amount of Rs.10,81,16/- includes salary and allowance of staffs, rent and taxes, travelling and conveyance, printing and stationary, repairs and maintenance and postage etc., bills for which were received in the subsequent years and as such, the liability to pay these expenses were ascertain and crystallized in the relevant assessment years. This identical issue came up for my consideration in the appellant's appeal for assessment years 1995-96, 1996-97 and 1997-98 in appeal No. 8/A-VII/2001-02,14/A-VII/2001-02, and 21/A-VII/2001-02 respectively. Following my earlier decision in the matter I hold that the claim is admissible a deduction. The AO is accordingly directed to allow this claim."*

Being aggrieved by this order of Ld. CIT(A) Revenue is in appeal before us.

5. Before us Ld. DR submitted that the expense claimed by assessee are in the nature of regular and routine expenses and therefore it cannot be said that these expenses were crystallized and ascertaining in the year under consideration. The ld. DR relied on the order of Hon'ble ITAT Mumbai in the case of Tipco Industries Ltd. Vs. ACIT in **ITA No. 5708/Mum/2009** vide its order dated 3.8.2012. Ld. DR left the issue to the discretion of the Bench.

On the other hand, Ld. AR submitted that these expenses were crystallized in the year under consideration. The ld. AR further submitted that in the earlier years on the identical facts in assessee's own case Ld. CIT(A) deleted the addition. Therefore, this year also disallowance made by AO deserves to be deleted. He vehemently relied on the order of Ld. CIT(A).

6. We have gone through the submission made by both the sides and order of the lower authorities along with the materials available on record. From the foregoing discussion we find that the assessee has claimed prior period expenses in the year under consideration but the same was disallowed by the AO. However the ld. CIT(A) deleted the addition by observing that prior period expenses were ascertained and crystallized in the year under consideration. The ld. CIT(A) also observed that in the earlier assessment years 1995-96, 1996-97 & 1997-98 the relief was provided by his predecessor in the identical issues. In the case on hand the ld. CIT(A) has given clear cut finding that the prior period expenses were crystallized in the year under consideration. The ld. DR before us has not brought anything on record to counter the findings of the ld. CIT(A). We also find that the ld. CIT(A) has allowed the appeal in favor of the assessee on the ground that in the earlier years the prior year expenses were allowed. Therefore in our considered view we are not inclined to disagree with the reasoning of the ld. CIT(A). It is settled law that the deductions can be permitted in respect of only those expenses which are incurred in the relevant accounting year for the purpose of

computing yearly profits and gains. But the expenses crystallized in particular year will be allowed in that year only irrespective of the fact these were pertaining to the earlier years. We accordingly are of the view that the claim of the assessee of expenses pertaining to prior period is allowed. In view of above, we have no reason to interfere in the order of ld. CIT(A). Hence the ground raised by the Revenue is dismissed.

7. Next issue raised by Revenue in this appeal is that Ld. CIT(A) erred in deleting the addition made by AO for ₹1 crore on account of conversion of non-performance (NPA for short) to performing asset (PA for short) by admitting the additional evidence in contravention to the Rule 46A of the IT Rules,1962 (the Rule' for short).

8. The assessee is covered under the provision of Sec. 36(1)(viia) and accordingly it is claiming the deduction in respect of provision against the NPA on year-to-year basis. The AO accordingly, observed that the provision credited in earlier years in respect of NPA should be offered to tax when such NPA becomes PA. Accordingly, AO during the course of assessment proceedings requested the assessee to furnish the details of the provision written back in respect of NPA converted to PA in the year under consideration. The assessee failed to file any details in this connection. In the absence of any information, AO has added the provision in respect of NPA converted to PA for ₹ 1crores on *ad hoc* basis and added to the total income of assessee.

9. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who has deleted the addition made by AO by observing as under:-

> *"Ground Nos. 6 to 6.2: These grounds are directed against the ad hoc addition of Rs.1,00,00,000/- on the alleged ground of NPA converting*

into PA. Following my earlier decisions on the same issue in the immediately preceding three years appeal, I hold that this ad hoc addition is not sustainable in law. Accordingly, the AO is directed to delete the addition."

Being aggrieved by this order of Ld. CIT(A) Revenue is in appeal before us.

10. Before us both parties relied on the order of Authorities Below as favourable to them.

11. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. We find that the Assessing Officer has made the impugned disallowance on the short ground that the assessee has failed to provide the details in respect to the provisions written back with regard to the conversion of non-performing assets into performing assets in the year under consideration. The assessee has claimed the deduction in the earlier years under the provisions of section 36(1)(viia) in respect to the provisions for bad debts on year to year basis. But every year some NPA must be becoming PA and therefore the assets which has become PA then the provisions in relation to such assets should be offered to tax as the assessee has already claimed the deduction under section 36(1)(viia) in respect to such assets. However the ld. CIT(A) has deleted the addition by observing that the addition was made on adhoc basis and in identical case of the assessee of the earlier years such addition was deleted by his predecessor. Now the issue before us arises for the consideration whether the Action of the CIT(A) deleting the addition is correct in the aforesaid facts & circumstances. At the outset we find that the addition was made on adhoc basis by the AO on his own premise and conjuncture. The assessee claimed the deduction in terms of the provisions of section 36(1)(viia) of the Act and no defect was pointed out by the AO in the claim of the assessee. The calculation for the deduction under rule 6ABA of

Income Tax Rules was provided. The AO did not bring any defect in the calculation of the deduction but the AO has made the addition on adhoc basis. We also find the Revenue has challenged the ld. CIT(A) order on the ground that the relief was provided on the basis of additional document/ evidence but the same were accepted in contravention to the Income Tax Rules 46A of the Act. But from the perusal of the order we find that no such additional evidence was submitted. Therefore in our considered view the ground of Revenue is not a valid ground as the issue raised by the Revenue is not arising from the order of ld. CIT(A). In such circumstances, a purely adhoc disallowance on the basis surmise and conjuncture is wholly uncalled for. We are unable to see any merits in this same. It is not really necessary, therefore, to deal with that aspect of the matter. Suffice to say that we disapprove the action of the AO and confirm the relief granted by the CIT(A). In our considered view, we uphold the order of Ld. CIT(A). Hence, the ground raised by Revenue is dismissed.

12. Next issue raised by Revenue in this appeal is that Ld. CIT(A) erred in allowing the deduction in respect of provision for bad debts amounting to ₹62,77,00635/- u/s 36(1)(viia) of the Act as the provision for bad debt in respect of average aggregating rural advances.

13. During the course of assessment proceedings, AO observed that assessee has filed its return of income declaring loss and therefore, it was not entitled the benefit for the aforesaid deduction. As per AO, assessee is entitled to claim 5% of the total income or 10% of the aggregate average advance of the rural branches in respect of provision for doubtful debts as specified u/s 36(1)(viia) of the Act. The AO further observed that assessee is entitled for deduction towards the provision for doubtful debts either 5% of total income or 10% of aggregating rural advance. As in the present case, as has filed income declaring at loss. Therefore, the limit of 5% of total income

cannot be worked out and as per the interpretation of the provisions of Act least of the too is allowed. Hence, no deduction is available to the assessee u/s 36(1)(viia) of the Act.

14. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who deleted the addition made by AO by observing as under:-

> *"Grounds No. 7 to 7.3: These grounds are directed against the disallowance of the appellant's claim of Rs.62,77,00,635/- u/s 36(1)(viia) of the Income-tax Act. Similar issue came up for my consideration in the appellant's appeal for the immediately preceding three assessment years in which I have decided the claim in favour of the appellant. Following my earlier year's decisions, in the matter, I allow the appellant's claim of deduction of Rs.62,77,00,635/- u/s. 36(1)(viia) of the Income-tax Act. the AO is accordingly directed to allow the claim of Rs.62,77,00,635/- u/s 36(1)(viia) of the income-tax Act."*

15. Before us Ld. DR vehemently relied on the order of AO whereas Ld. AR relied on the order of Ld. CIT(A).

16. We have gone through the submission made by both the sides and order of the lower authorities along with the materials available on record. From the foregoing discussion we find that the assessee has declared the return of income at loss. Accordingly the AO was of the view that the assessee is entitled for deduction under section 36(1)(viia) of the Act either @ 5% of the income or 10% of the rural advance whichever is less. As there is no income declared by the assessee and therefore no deduction is available to the assessee under section 36(1)(viia) of the Act. But the ld. CIT(A) has reversed the order of the AO. Now the issue before us arises so as to whether the Action of the CIT(A) deleting the addition is correct in the aforesaid facts & circumstances. At this juncture we find relevant to reproduce the provisions of section 36(1)(viia) of the Act which reads as under:-

"36.(1) The deductions provided for in the following clauses shall be allowed in respect of the mattes dealt with therein, in computing the income referred to in section 28-

(i) …. …
(ii) … …
(iii) … …
(iv) … …
(v) … ..
(vi) … …

[(viia) [in respect of any provision for bad and doubtful debts made by-

(a) a scheduled bank [not being [***] a bank incorporated by or under the laws of a country outside India] or a non-scheduled bank [or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank], an amount [not exceeding seven and one-half per cent] of the total income ((computed before making any deduction under this clause and Chapter VIA) and an amount not exceeding [ten] per cent of the aggregate average advances not made by the rural branches of such bank computed in the prescribed manner:

From the above provision, we find that the assessee is entitled for both the deduction in pursuance to the provisions of section 36(1)(viia) of the Act. Hence, we uphold the order of Ld. CIT(A) and the ground raised by the Revenue is dismissed.

17. Last issue raised by Revenue in ground No. 4 & 5 this appeal is that Ld. CIT(A) erred in giving relief to assessee in computing the book profit u/s. 115JA of the Act.

18. At the outset, we find the provisions of section 115JB of the Act are not applicable to the banking companies. The assessee was established under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The assessee is neither a '**company**' registered under Companies Act, 1956

nor is it an existing company registered under the Act specified in clause (ii) of section 3(1) of the Companies Act, 1956. In the circumstances, even though the assessee is assessed in the status of a '**company**' for tax purposes, it is not a '**company**' within the meaning assigned to that expression by section 3 of the Companies Act, 1956. The newly inserted *Explanation* 3 to section 115JB amplifies the intention of the legislature and categorically clarifies that the assessees to which section 115JB is applicable are only those who are '**companies**' to which proviso to sub-section (2) of section 211 of the Companies Act, 1956 is applicable and not to assessees which are assessed in the status of '**company**' for tax purposes. To illustrate this point, it may be stated that HDFC Bank Ltd, Kotak Mahindra Bank Ltd etc. are '**banking companies**' as defined in section 5(c) & (d) of Banking Regulation Act, 1949. These banking companies are incorporated under the provisions of Companies Act, 1956. These assessees carry on business of banking. As such proviso to section 211(2) is applicable to these banking companies and, therefore, these banking companies prepare their accounts in conformity with Schedule II of Banking Regulation Act, 1949. By virtue of *Explanation* 3 to section 115JB, such banking companies are retroactively made liable to pay tax on the deemed income computable with respect to net profit as disclosed by profit and loss account prepared by such banking companies in conformity with the provisions of Banking Regulation Act, 1949. In this connection we rely in the order of Hon'ble ITAT in the case of **UCO Bank Vs. Deputy Commissioner of Income-tax , Cirlcle-6, Kolkata** 1768 (KOL) OF 2009 VIDE ORDER DATED NOVEMBER 27, 2015. The head note reads as under :

> *"Section 115JB of the Income-tax Act, 1961, read with section 211 of the Companies Act, 1956 - Minimum alternate tax (Banking companies) - Assessment year 2002-03 - Whether section 115JB is applicable only to entities registered and recognized to be companies under Companies Act, 1956 and not to assessees which are assessed in status of 'company' for purpose of tax - Held, yes - Whether where assessee was a banking company and not a company within meaning of Companies Act, 1956, proviso to sub-section (2) of section 211 would not be applicable and, therefore,*

consequently provisions of section 115JB would also not be applicable - Held, yes - Whether amendment brought about in section 115JB vide Finance Act 2012, to bring all companies (Including Banking Companies) within its ambit with effect from 1-4-2013 is applicable only with effect from assessment year 2013-14 onwards - Held, yes"

In view of above, we hold that the provisions of section 115JB are not applicable to the banking companies. Therefore the grounds raised by the Revenue do not require any adjudication. Hence both the grounds raised by Revenue are dismissed.

19. **In the result, Revenue's appeal stands dismissed.**

Order pronounced in the open court 18/11/2016

Sd/-	Sd/-
(न्यायिक सदस्य)	(लेखा सदस्य)
(N.V.Vasudevan)	(Waseem Ahmed)
(Judicial Member)	(Accountant Member)

Kolkata,

*Dkp, Sr.P.S

दिनांकः- 18/11/2016 **कोलकाता** ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-DCIT, Circle-7, P-7, Chowringhee Sq., Aayakar Bhawan, 5th Fl, Kol-69
2. प्रत्यर्थी/Respondent-Allahabad Bank, 2, N.S. Road, Kolkata-01
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

उप/सहायक पंजीकार

आयकर अपीलीय अधिकरण,

कोलकाता ।