

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF JANUARY 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE RAVI V.HOSMANI

I.T.A. NO.256 OF 2011

C/W

I.T.A. NO.258 OF 2011

I.T.A. NO.256 OF 2011

BETWEEN:

1. COMMISSIONER OF INCOME TAX-III
C.R. BUILDING, QUEENS ROAD
BANGALORE.
2. ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE-1, CANARA TOWERS
MISSION HOSPITAL ROAD
UDUPI-576101, MANGALORE.
3. DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE-I, UDUPI-576101.

... APPELLANTS

(By Sri. E.I. SANMATHI, ADV.)

AND:

M/S. SYNDICATE BANK
H.O. ACCOUNTS DEPT.
MANIPAL.

... RESPONDENT

(By Sri. T. SURYANARAYANA RAO, ADV.)

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THIS I.T.A. IS FILED U/S.260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 16-3-2011 PASSED IN ITA NO.118/BANG/2008 AND 227/BANG/2008, FOR THE ASSESSMENT YEAR 2004-05, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN. SET ASIDE THE APPELLATE ORDER DATED 16/3/2011 PASSED BY THE ITAT, 'A' BENCH, BANGALORE IN ITA NO.118/BANG/2008 AND 227/BANG/2008, AS SOUGHT FOR IN THIS APPEAL, IN THE INTEREST OF JUSTICE AND EQUITY.

I.T.A. NO.258 OF 2011

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1. COMMISSIONER OF INCOME TAX-III
C.R. BUILDING, QUEENS ROAD
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THESE I.T.As. COMING ON FOR HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

ITA No.256/2011 has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act', for short), which was admitted on 04.06.2012 by a bench of this court on the following substantial questions of law:

1) *"Whether on the facts and in the circumstances of the case, the tribunal was right in law in allowing deduction claimed towards bad and doubtful debts without making provision and without considering that section 36(1)(vii) and 36(1)(viia) are separate and independent, apart from that assessee's claim under section 36(1)(vii) of the I.T. Act is limited to the amount which*

exceeds the credit balance of the provisions made under section 36(1)(viia) of the I.T. Act?".

2) *Whether on the facts and in the circumstances of the case the tribunal's order can be considered as perverse in nature since tribunal has allowed the assessee's appeal by over-looking the provisions of I.T. Act?"*.

3) *"Whether on the facts and in the circumstances of the case the tribunal erred in law in deleting the addition representing excess claim of bad debts written off under section 36(1)(vii) of the I.T. Act, exceeding the credit balance of the provision made under section 36(1)(viia) of the I.T. Act when the provisions of the said section do not permit such an action?"*.

ITA No.258/2011 has been filed by the revenue, which was admitted on 04.06.2012 by a bench of this court on the following substantial questions of law:

1) *"Whether on the facts and in the circumstances of the case, the tribunal was*

right in law in allowing deduction claimed towards bad and doubtful debts without making provision and without considering that section 36(1)(vii) and 36(1)(viia) are separate and independent, apart from that assessee's claim under section 36(1)(vii) of the I.T. Act is limited to the amount which exceeds the credit balance of the provisions made under section 36(1)(viia) of the I.T. Act?"

2) *"Whether on the facts and in the circumstances of the case the tribunal's order can be considered as perverse in nature since tribunal has allowed the assessee's appeal by over-looking the provisions of I.T. Act?"*

3) *"Whether on the facts and in the circumstances of the case the tribunal was right in law in allowing the interest on zero coupon bonds even when interest on zero coupon bonds is not an exempt income under the provisions of I.T. Act and assessee had shown the interest income in the books of account?"*

2. For the facility of reference, facts from ITA No. 258/2011 are being referred to –

The assessee is a Public Limited Company engaged in banking business. The assessee filed return of income on 24.11.2003 along with audit report under Section 44AB of the Act, declaring income of Rs.293,25,57,628/- for Assessment year 2003-04. The Return was processed under Section 143(1) on 05.04.2004 and an order of refund of Rs.82,69,52,235/- was determined and an order of refund of Rs.82.50/-Crores was issued. Subsequently, an order under Section 154 of the Act was passed on 10.08.2004 for refund of an amount of Rs.82.50/- Crores. Thereafter, an order under Section 154 of the Act was passed on 17.02.2003, by which Minimum Alternative Tax credit of Rs.68,07,83,946/- was withdrawn. While going through computation of income, it was found that net loss of Rs.8,17,44,119/- under long term capital loss after set off of short term capital gain of Rs.51,06,737/-. According to Assessing Officer

the set off of short term capital gain against long term capital loss was not permissible under Section 70(3) of the Act. An order was passed withdrawing an amount of Rs.51,06,737/- from long term capital loss and same has been taxed as short term capital gains. Notices under Section 143(2) / 142(1) of the Act were issued to the Assessee an order under Section 143(3) of the Act was passed on 28.02.2005 disallowing an amount of Rs.192,53,21,426/- on reversal of interest pertaining to earlier years as deduction out of current years income and added back to interest on zero coupon bonds to the tune of RS.1,03,53,095/- along with other additions/disallowance in computation of regular income/book profit. It was held that as per section 36(1)(viiia) of the Act, the assessee is required to make provisions in the books of account, which the assessee has not done.

3. The Commissioner of Income Tax (Appeals) by an order dated 14.11.2007 partly allowed the appeals

and held that since, no interest accrued on zero coupon bonds, therefore, making addition in respect of book profit under Section 115JB of the Act, is not called for. The Commissioner of Income Tax (Appeals) also granted relief to the appellant in respect of doubtful debts. Being aggrieved, the assessee as well as revenue filed the appeals against order of Commissioner of Income Tax (Appeals). The Income Tax Appellate Tribunal vide order dated 16.03.2011, allowed the appeal of the assessee and dismissed the appeal preferred by revenue. In this background, the revenue has filed these appeals.

4. Learned counsel for the Revenue has invited our attention to budget speech of Finance Minister and has pointed out the provision to promote the rural banking was incorporated to grant deduction in respect of provision made for bad and doubtful debts. While referring to Memorandum explaining the provisions in Finance Bill, 1979 and the Circular dated 30.06.1982 it is contended that deduction under Section 36(1)(viiia) of

the Act is made in respect of provisions made by them for bad and doubtful debts relating to advances made by their rural branches. It is further contended that in order to claim deduction under Section 36(1)(vii)(a) of the Act, a provision for bad and doubtful debt should be made in the accounts of the assessee. In this connection, reliance has been placed on Division Bench decision of this '**COURT IN COMMISSIONER OF INCOME TAX VS. M/S. VIJAY BANK', IN ITA NO.1066/2008 DATED 21.10.2014.**

5. On the other hand, learned counsel for the assessee has placed reliance on decision of Supreme Court in '**CATHOLIC SYRIAN BANK LTD VS. COMMISSIONER OF INCOME TAX', (2012) 18 TAXMANN.COM 282 (SC)** and has submitted that Section 36(1)(viiia) was introduced by Finance Act, 1979 to promote rural banks and to assist Scheduled Commercial Banks in making adequate provision from their current profits to provide for risk in relation to their

rural advances and the deductions were to be limited as specified in Section. It is further argued that Section 36(1) (vii) and Section 36(1)(viia) operate in different fields. It is also argued that a provision in taxing Statute granting incentive for promoting growth and development should be construed literally. In this connection, reliance is placed on '**BAJAJ TEMPO LIMITED VS. COMMISSIONER OF INCOME TAX, (1992) 62 TAXMAN 480 (SC)**'. It is contended that for determining real income entries in Statutory form may not be conclusive. For aforesaid proposition reference is made to '**UNITED COMMERICAL BANK VS. COMMISSIONER OF INCOME TAX, (1999) 106 TAXMAN 501**'. While referring to '**DEPUTY COMMISSIONER OF INCOME TAX (ASST.) SPECIAL RANGE VS. KARNATAKA BANK LTD, (2008) 175 TAXMAN 325**' it is urged that deduction under Section 36(1)(vii) is allowable independently of provision contained in Section 36(1)(viia) of the Act.

6. We have considered the submissions made on both sides and have perused the record. Before proceeding further, is it apposite to take note of Section 37(1)(viiia) of the Act which reads as under:-

37. Insofar as 1st substantial question of law is concerned, it revolves around the interpretation of Section 36(1)(viiia), which reads as follows:

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

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

the prescribed manner: Provided that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed in any of the relevant assessment years, deduction in respect of any provision made by it for any assets classified by the Reserved Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf, for an amount not exceeding five per cent of the amount of such assets shown in the books of account of the bank on the last day of the previous year:

Provided further that for the relevant assessment years commencing on or after the 1st day of April, 2003 and ending before the 1st day of April, 2005, the provisions of the first proviso shall have effect as if for the words "five per cent", the words "ten per cent" had been substituted:

Provided also that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed a further deduction in excess of the limits specified in the foregoing provisions, for an amount not exceeding the income derived

from redemption of securities in accordance with a scheme framed by the Central Government:

Provided also that no deduction shall be allowed under the third proviso unless such income has been disclosed in the return of income under the head "Profits and gains of business or profession".

Explanation. – For the purposes of this sub-clause, "relevant assessment years" means the five consecutive assessment years commencing on or after the 1st day of April, 2000 and ending before the 1st day of April, 2005;

(b) a bank, being a bank incorporated by or under the laws of a country outside India, an amount not exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VIA);

(c) a public financial institution or a State financial corporation or a State industrial investment corporation, an amount not exceeding five per cent of the total income (computed before making any

deduction under this clause and Chapter VI-A):

Provided that a public financial institution or a State financial corporation or a State industrial investment corporation referred to in this sub-clause shall, at its option, be allowed in any of the two consecutive assessment years commencing on or after the 1st day of April, 2003 and ending before the 1st day of April, 2005, deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf, of an amount not exceeding ten per cent of the amount of such assets shown in the books of accounts of such institution or corporation, as the case may be, on the last day of the previous years”.

7. Explanatory notes on provisions contained in Circular No.346 dated 30.01.1982 deals with object of deductions made in respect of payments to associations

and doubtful debts under Section 36 (1)(viiia) of the Act.

The relevant extract reads as under:-

17.3 *As non-scheduled commercial banks are also engaged in providing rural credit and promoting rural banking, the Finance Act has amended clause (viiia) of sub-Section 36 of the IT Act to extend the provision relating to deduction in respect of provisions made by scheduled commercial banks for bad and doubtful debts relating to advances by rural branches to non-scheduled commercial banks as well. For this purpose, the expression "non-scheduled Bank" means a banking company as defined incl. (c) of S.5 of the Banking Regulation Act, 1949 but which is not a scheduled bank.*

8. Thus, a conjoint reading of provision contained in Section 36(1)(viiia) and explanatory note dated 30.06.1982 it is evident that deduction provided in Section 36(1)(viiia) shall be allowed in respect of the matters dealt therein in computing the income. The condition precedent for claiming deduction under Section 36(1)(viiia) of the Act is that a provision for bad and

doubtful debt should be made in the accounts of the assessee. The aforesaid Section mentions the maximum amount for which such a provision should be made. If a provision is made in excess of the limits prescribed under the Section, the assessee would not be entitled to deduction of the excess amount. Once a provision is made and the amount of deduction is within the limit prescribed under the Act, the assessee would be entitled to deduction of the amount for which provision is made in the books of accounts.

9. The language employed in Section 36(1)(vii) of the Act is clear and unambiguous. It is well established Rule of interpretation stated by LORD CAIRNS that "if the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case

might otherwise appear to be. It is equally well settled legal proposition that "in a taxing act once has to look merely as what is said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." [**SEE: 'COMMISSIONER OF INCOME TAX, MADRAS VS. KASTURI AND SONS LTD.', AIR 1999 SC 1275** and '**MAHIM PATRAM (P) LTD. VS. UNION OF INDIA (2007) 3 SCC 668**] [**See: PRINCIPLES OF STATUTORY INTERPRETATION, JUSTICE G.P.SINGH, 14TH EDITION, PAGE 879**]. Therefore, the question of going into intention or object behind the provision viz., Section 36(1) (viiia) of the Act does not arise.

10. The submission that even in the absence of any provision, the assessee is entitled to deduction cannot be accepted. The assessee is entitled to

deduction to the extent provision made in the accounts subject to limit mentioned in Section 36(viia) of the Act.

11. So far as decision in **CATHOLIC SYRIAN BANK** is concerned, from perusal of para 16, it is evident that aforesaid decision is an authority for the proposition that section 36(1)(vii) and 36(1)(viia) are independent provisions and from perusal of para 23 and 24 of the decision, it is axiomatic that Supreme Court has taken note of statement of objections and reasons for the Finance Act, 1986 and has held that amendments were intended to encourage rural advances and making of provision for bad debts in relation to such rural branches. The Supreme Court in aforesaid decision negated the contention that grant benefits under 36(1)(vii) and 36(1)(viia) of the Act, amounts to double deduction and in para 41 has concluded that bad debts, written off in debts other than those for which provisions is made under Section 36(1)(viia) of the Act will be covered under main part or Section 36(1)(vii) of the Act. Thus, the

aforesaid decision is also an authority for the proposition that Section 36(1)(viiia) of the Act, permits deduction in respect of provision made by the bank in respect of bad and doubtful debts. Therefore, aforesaid decision is of no assistance in the fact situation of the cases to the assessee.

12. In view of preceding analysis substantial questions of law in ITA No.256/2011 are answered in favour of revenue and substantial questions of law Nos.1 & 2 in ITA No.258/2010 are answered in favour of revenue and hence, substantial question of law No.3 in ITA No.258/2010 is answered in terms of judgment dated 17.01.2020 passed by this Court in ITA No.97/2010.

Accordingly, the appeals are disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**