

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'B': NEW DELHI)
(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 3223/Del/2018
(Assessment Year: 2014-15)**

DCIT, Circle-2, Meerut.	Vs.	Sarva UP Gramin Bank, C-39/5, Jagriti Vihar, Meerut.
APPELLANT		RESPONDENT
PAN No: AACAS9891G		

Revenue By : Ms. Nidhi Srivastava, CIT(DR)
Assessee By : Shri Vivek Gupta, CA

Per Anadee Nath Misshra, AM

(A) This appeal by Revenue is filed against the order of Learned Commissioner of Income Tax (Appeals), Meerut, ["Ld. CIT(A)", for short], dated 20.02.2018 for Assessment Year 2014-15. Grounds taken in this appeal of Revenue are as under:

"1. Whether in the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) has erred in law and fact in deleting the addition of Rs. 24,01,00,000/- made by the A.O. on account of disallowance of Provision for Bad & Doubtful Debts claimed by the assessee u/s 36(1) (vii) of the Income Tax Act, 1961, without recording his findings and by ignoring the observations of the A.O. that the deduction has been claimed as standard deduction and that in view of the facts there was no

need to create the said provision during the year?

2. Whether in the facts and circumstances of the case, the Id. Commissioner of Income Tax (Appeals) has erred in law and fact, by ignoring the findings of the AO that the accumulation of Provision for Bad & Doubtful Debts by the assessee every year, without actual requirement and without considering the opening balance for Bad & Doubtful Debts will go higher than the outstanding balance of loans.

3. That in the facts and circumstances of the case, the order of the Id. Commissioner of Income Tax (A), Meerut may be set aside and that of the AO be restored.

4. That the appellant craves leave to add, modify and / or delete any ground(s) of appeal."

(B) The only issue in dispute in this appeal filed by Revenue is regarding allowability of assessee's claim amounting to Rs. 24,01,00,000/- under Section 36(1)(viiia) of Income Tax Act, 1961 ("IT Act", for short) on account of provision for Bad & Doubtful Debts claimed by the assessee. Vide Assessment Order dated 20.12.2017, the Assessing Officer ("AO", for short) disallowed the aforesaid claim. The Assessee filed an appeal before the Ld. CIT(A). Vide impugned appellate order dated 20.02.2018, Ld. CIT(A) allowed this claim made by the assessee, and directed the AO to allow the full deduction of Rs. 24,01,00,000/- claimed by the assessee. The relevant portion of order dated 20.02.2018 of Ld. CIT(A), which are reproduced as under:

"4. Decision and Reasons:

I have carefully considered the grounds of addition and also the submissions made by the AR in appeal and the assessment order framed by the Assessing officer. The effective ground of appeal in ground No 1 to 2 is allowance of deduction u/s 36(1)(viiia) amounting to Rs 24,01,00,000/-.So they are dealt with jointly.

The case of the appellant was transferred to transfer Pricing Officer-3(2)(I), New Delhi , The Transfer Pricing Officer vide his order dated 29.09.2017 u/s 92CA(3) has not found any thing adverse in the case of the assessee.

The appellant has admitted in its submissions as well as before A.O regarding the entitlement of deduction U/s 36(I)(viiia) of Rs 171.72 crores. There is no dispute as to the correctness of the calculation of the entitlement of deduction u/s 36(I)(viiia) of The Act. It is a settled law that only against ascertained liability deduction can be allowed except for specific provisions in Act where deduction is allowed on provisions also. The Act has specifically provided in sec 36(I)(viiia) for deduction for provision made for advances made by the rural branches of the bank. The method of calculating deduction has been defined in the Act. The bank is entitled for deduction for 10% of the aggregate average advances made by the rural branches plus 7.5% of the total income computed before this deduction and amount deductible under sec 80C to 80 U. It is mandatory for all the banks to follow the income recognition norms and assets classification norms as prescribed by Reserve Bank of India. The appellant has also made provision for NPA'S by following the income recognition norms of Reserve Bank of India.

In the land mark judgment of Hon. Supreme Court (Catholic Syrian Bank Ltd Vs CIT Thrissur) it has been laid down that the legislative intent was to encourage the Rural advance and making of provisions for bad debts in relation to such rural advances and for providing greater deductions. But the deduction is allowable only on being legally entitled and on making provisions for such deduction in the books of Account.

From the facts of the case and in law, after the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank Vs CIT Thrissur 206 Taxman 182(SC) there is no ambiguity left in the interpretation of provision of sec 36 (1) (viiia). The appellant is a Regional Rural Bank sponsored by Punjab National Bank. The appellant has made advances from its rural branches which are not questioned. The provisions of sec 36(I)(viiia) are clearly interpreted by Supreme Court in the case of Catholic Syrian Bank. The appellant has claimed deduction of Rs.24.01 Crores against it's entitlement of Rs 171.72 Crores in the books it has made provision for Bad Debts of rural branches for Rs 10.50 crores over and above the provision made for NPA's as per RBI norms. This fact has been stated in the audited balance sheet of the bank in Schedule 16: in operating

Expenses Schedule.

The Hon'ble ITAT Bangalore in the case of DEPUTY COMMISSIONER OF INCOME TAX vs. ING VYSYA BANK LTD - (2014) 62 SOT 0026 (Banglore) has held that the actual provision made in the books by the Assessee on account of PBDD (irrespective of whether it is rural or non-rural) has to be seen. To the extent PBDD is so created, then subject to the permissible upper limits the deduction has to be allowed to the Assessee. The question of bifurcating the PBDD as one relating to rural advances and other advances (Non-rural advances) does not arise for consideration.

The Jurisdictional ITAT, Delhi Bench "F" in ITA No 4090/Del/2013 in the case of ACIT, Circle-1, Moradabad V/s Prathma Bank , Moradabad vide its order dated 14.07.2017 has held that the assessee is entitled to claim deduction u/s 36(1)(viiia) of Rs 105,69,80,000/- which is 10% of the aggregate rural advances of The Bank. The aforesaid claim was allowable to the assessee as per the ratio laid down by the Hon'ble Supreme Court in the aforesaid referred to cases of Southern Technologies Ltd Vs JCIT 320 ITR 577 and Catholic Syrian Bank Ltd Vs CIT 343 ITR 270.

The Hon'ble ITAT has affirmed the decision of CIT (A) in which it was held that the assessee is entitled to claim deduction u/s 36(1)(viiia) based on the calculation as provided in the Act irrespective of amount of provision made in the books of accounts. The Hon'ble ITAT Chennai in the case of TAMILNADU STATE APEX CO-OPERATIVE BANK LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2014) 62 SOT 0113 (Chennai) (URO) had held that:

Although the assessee had named the provision as 'Provision for NPA', but in pith and substance the provision had been created for 'Bad and Doubtful Debts'. The taxonomy of the provision had been done by the assessee to keep it in line with the RBI and NABARD guidelines.

In the present case, the assessee has admittedly made provision for non-performing assets (NPA) in respect of its urban branches. The assessee has debited Rs. 2.52 Crores (approximately) (i.e., 75% of the gross total income) in P&L A/c creating provision for non-performing assets in accordance with the provisions of section 36(1)(viiia) of the Act. The Revenue has disputed the deduction claimed for the reason,

that the assessee has not created provision for bad and doubtful debts. In case of Banking Companies, the accounts are made in accordance with the RBI guidelines and the Banking Regulation Act, 1949. Although the assessee has named the provision as 'Provision for NPA', but in pith and substance the provision has been created for 'Bad and Doubtful Debts'. The taxonomy of the provision has been done by the assessee to keep it in line with the RBI and NABARD guidelines.

We are satisfied that the assessee has made provision and claimed deduction in accordance with the provisions of section 36(1)(viiia). The assessee is entitled to the benefit of same.

Similarly the Hon'ble ITAT Chennai in the case of VELLORE DIST. CENTRAL CO-OPERATIVE BANK LTD. vs. COMMISSIONER OF INCOME TAX - (2013) 145 IDT 0129 (Chennai) has held that the question which arises for determination before us is whether the assessee has created any reserve / provision for bad and doubtful debts?

The AR has contended that the assessee has created provisions for bad and doubtful debts under the nomenclature 'Reserve for NPA'. The terminology 'Reserve for NPA' has been used by the assessee in accordance with the RBI directions. As is evident from the assessment order, the assessee has indeed created 'Reserve for NPA'. For claiming benefit under the provisions of Section 36(1)(viiia)(a) the conditions to be satisfied is: that provision for bad and doubtful debts should have been made by the bank eligible to claim such deduction. Cooperative Banks do not strictly follow the provisions of Banking Regulation Act for the purpose of maintaining their Books of Accounts. In our considered opinion, the assessee has created provision for bad and doubtful debts may be under different nomenclature. This will not dis-entitle the assessee for claiming deduction under the provisions of Section 36(1)(viiia)(a). The purpose for creation of reserve for NPA is same i.e., creating provision towards bad and doubtful debts.

Thus in view of the facts of the case and judicial pronouncement in the above state cases the assessee will be entitled to deduction u/s 36(1)(viiia) to the extent of Rs. 24,01,00,000/- for bad and doubtful debts. The A.O. is therefore directed to allow the full deduction of Rs. 24,01,00,000/- as claimed by the assessee in the computation of income and not to restrict it to Rs. Nil."

(B.1) The present appeal before us has been filed by Revenue against the aforesaid impugned appellate order dated 20.02.2018 of Ld. CIT(A). In the course of appellate proceedings in Income Tax Appellate Tribunal ("ITAT", for short), the assessee filed a Paper Book consisting of the following:

- *Notification dated 22/02/2019 from Ministry of Finance, Govt of India for amalgamation of Erstwhile Sarva UP Gramin Bank into Prathama UP Gramin Bank w.e.f. 01.04.2019.*
- *Copy of order dated 24.02.2020 of Hon'ble ITAT New Delhi in the appellant own case for AY 2013-14 (ITA No. 2096/Del/2017).*
- *Submission dated 05.12.2017 filed with Ld. AO.*
- *Submission dated 17.08.2016 filed with the Ld. AO.*

(C) At the time of hearing before us, the representatives of both sides; learned Commissioner of Income Tax (Departmental Representative) ["Ld. CIT(DR)", for short] for Revenue as well as Ld. Authorized Representative ("Ld. AR", for short) for the assessee; were in agreement that the aforesaid issue in dispute in the present appeal, regarding allowability of assessee's claim amounting to Rs. 24,01,00,000/- on account of assessee's claim under Section 36(1)(viiia) of IT Act, towards provision for Bad & Doubtful Debts is squarely covered in favour of the assessee, by above mentioned order dated 24.02.2020 of Coordinate Bench of ITAT, Delhi in assessee's own case for Assessment Year 2013-14 in ITA No.- 2096/Del/2017. The relevant portion of the aforesaid order dated 24.02.2020 of Coordinate Bench of ITAT is reproduced as under:

"5. The case of the assessee for the assessment year 2012-13 has been adjudicated by the ITAT in ITA No. 1937/Del/2016 in assessee's own case wherein the deduction was allowed taking into consideration, the CBDT Circular No. 421 dated 12.06.1985, UCO Bank Ltd. 237 ITR 889 (SC), Catholic Syrian Bank 88 ITD 185, South Indian Bank 233 CTR 214. Since, the factual matter remains unchanged, in the absence of any other judgment contrary to the facts available on record, the addition made by the revenue is hereby ordered to be deleted.

6. For the sake of brevity, the operative portion of the order of the ITAT in the case of the assessee for the assessment year 2012-13 is reproduced as under:

“8. Heard the arguments of the parties and perused the material available on record. We find that the judgment dated 21st May, 2004 pertains to AY 1985-86. The board has issued directions verifying the benefit of deduction allowable to banks vide CBDT Circular 421 dt. 12.06.1985 which has been mentioned above. After considering the facts and the entire submissions of both the parties, we find that (ii) U/s 119, the CBDT is entitled to issue Circulars to explain or tone down the rigours of law and to ensure fair enforcement of its provisions. These circulars have the force of law and are binding on the income tax authorities, though they cannot be enforced adversely against the assessee. Normally, these circulars cannot be ignored. A circular may not override or detract from the provisions of the Act but it can seek to mitigate the rigour of a particular provision for the benefit of the assessee in certain specified circumstances. So long as the circular is in force, it aids the uniform and proper administration and application of the provisions of the Act (UCO Bank vs. CIT 237 ITR 889 (SC) followed)

9. We have also gone through the guidelines given by the Supreme Court in the case of DCIT vs. Catholic Syrian Bank 88 ITD 185. In that case, the Hon'ble Court had to consider whether a bank was eligible to claim a deduction for bad debts u/s 36(1)(vii) in respect of its (rural & urban) advances and also claim a provision for bad and doubtful debts u/s 36(1)(viii) in respect of its rural advances in view of the Proviso to s. 36(1)(vii) which provides that only the excess over the credit balance in the provision for bad and doubtful debts account made u/s 36(1)(viii) can be claimed. The Special Bench of the Tribunal in DCIT vs. Catholic Syrian Bank 88 ITD 185 held that as s. 36(1)(viii) was confined to rural advances, a claim for bad debts of urban advances was not subject to the limitation of the Proviso to s. 36(1)(vii). However, the Full Bench of the Kerala High Court took a contrary view in CIT vs. South Indian Bank 233 CTR 214 (Ker) (FB) and held that a bank was entitled to claim deduction of bad debts u/s 36(1)(vii) only to extent it exceeded the provision allowed as deduction under s. 36(1)(viii). On appeal to the Supreme Court, HELD reversing the Full Bench of the High Court: Per Court:

(i) The clear legislative intent of s. 36(1)(vii) & 36(1)(viii) together with the circulars issued by the CBDT demonstrate that the deduction on account of provision for bad and doubtful debts u/s 36(1)(viii) is distinct and independent of s. 36(1)(vii) relating to allowance of bad debts. The legislative intent was to encourage rural advances and the making of provisions for bad debts in relation to such rural branches. The functioning of such banks is such that the rural branches were practically treated as a distinct business, though ultimately these advances would form part of the books of accounts of the head office. An interpretation which serves the legislative object and intent is to be preferred rather than one which subverts the same. The deduction u/s 36(1)(vii) cannot be negated by reading into it the limitations of s. 36(1)(viii) as it would frustrate the object of granting such deductions. The Revenue's argument that this would lead to double deduction is not correct in view of the Proviso to s. 36(1)(vii)

which provides that in respect of rural advances, the deduction on account of the actual write off of bad debts would be limited to excess of the amount written off over the amount of the provision which had already been allowed u/s 36(1)(viiia) (Southern Technologies 320 ITR 577 (SC) & Vijaya Bank 323 ITR 166 (SC) referred)

10 . In the instant case, we endorse the decision of Ld .CIT(A) which held that the assessee has admitted in its submissions as well as before AO regarding the entitlement of deduction u/s 36(1)(viiia) of Rs . 114.76 crores . There is no dispute as to the correctness of the calculation of the entitlement of deduction u/s 36(1)(viiia) of the Act. It is a settled law that only against ascertained liability deduction can be allowed except for specific provisions in Act where deduction is allowed on provisions also. The Act has specifically provided in sec. 36(1)(viiia) for deduction for provision made for advances made by the rural branches of the bank.

11 . The method of calculating deduction has been defined in the Act. The bank is entitled for deduction for 10% of the aggregate average advances made by the rural branches plus 7.5% of the total income computed before this deduction and amount deductible under sec 80C to 80 U. It is mandatory for all the banks to follow the income recognition norms and assets classification norms as prescribed by Reserve Bank of India. The assessee has also made provision for NPA'S by following the income recognition norms of Reserve Bank of India. The Hon. Supreme Court in the case of Catholic Syrian Bank Ltd laid down that the legislative intent was to encourage the Rural advance and making of provisions for bad debts in relation to such rural advances and for providing greater deductions. But the deduction is allowable only on being legally entitled and on making actual provisions for such deduction in the books of Account.

12 . From the facts of the case and in law, after the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank Vs CIT Thrissur 206 Taxman 182(SC) there is no ambiguity left in the interpretation of provision of sec 36 (1)(viiia) . The appellant is a Regional Rural Bank sponsored by Punjab National Bank. The assessee has made advances from its rural branches which are not questioned. The provisions of sec 36(1)(viiia) are clearly interpreted by Supreme Court in the case of Catholic Syrian Bank. The assessee has claimed deduction of Rs. 16.07 Crores against its entitlement of Rs 114.76 Crores in the books it has made provision for Bad Debts of rural branches for Rs 3,70,00,000/- over and above the provision made for NPA's as per RBI norms . This fact has been stated in the audited balance sheet of the bank in Schedule 17: Principle Accounting Policies & Notes on Account, where point 1(IV)(iii) which is reproduced as under:

“(iii) Bank has made provision of Rs.3 ,70,00,000/- (Previous year- Nil) against total monthly average advance of Rural Branches of the Bank for the Bad and doubtful debts, over and above the provision for bad & doubtful debts required to be made in accordance with the Prudential norms suggested by RBI. The bank has reduced Rs . 210.36 lacs (previous year Rs 363 .05 lacs) for write off of the rural advances not recoverable and are bad and doubtful debts from the

provision made in earlier years and net provision for rural branches advances is Rs 2844.03 lacs (Rs 3054.39 lacs - Rs . 210.36 lacs) . . included in other provisions in Schedule -5 ' .

The ITAT Bangalore in the case of DEPUTY COMMISSIONER OF INCOME TAX vs . ING VYSYA BANK LTD – (2014) 62 SOT 0026 (Banglore) and ITAT Chennai in the case o f TAMILNADU STATE APEX COOPERATIVE BANK LTD . vs. ASSISTANT COMMISSIONER OF INCOME TAX – (2014) 62 SOT 0113 (Chennai) (URO) has held that the actual provision made in the books by the Assessee on account o f PBDD (irrespective of whether it is rural or non- rural) has to be seen.

13. In the present case, the assessee has admittedly made provision for non performing assets (NPA) in respect o f its urban branches. The assessee has debited Rs.2.52 Crores (approximately) (i .e. , 7.5% of the gross total income) in P&L A/c creating provision for non-performing assets in accordance with the provisions of section 36(1)(viiia) of the Act. The Revenue has disputed the deduction claimed for the reason, that the assessee has not created provision for bad and doubtful debts. In case o f Banking Companies, the accounts are made in accordance with the RBI guidelines and the Banking Regulation Act, 1949. Although, the assessee has named the provision as 'Provision for NPA', but in pith and substance the provision has been created for 'Bad and Doubtful Debts'. The taxonomy of the provision has been done by the assessee to keep i t in line with the RBI and NABARD guidelines.

14. We are satisfied that the assessee has made provision and claimed deduction in accordance with the provisions of section 36(1)(viiia) . The assessee is entitled to the benefit of same.

15. Similarity the Hon'ble ITAT Chennai in the case of VELLORE DIST. CENTRAL CO-OPERATIVE BANK LTD. VS. COMM ISSION ER OF INCOME TAX - (2013) 145 IDT 0129 (Chennai) has held that the question which arises for determination before u s is whether the assessee has created any reserve/ provision for bad and doubtful debts? The AR has contended that the assessee has created provisions for bad and doubtful debts under the nomenclature 'Reserve for NPA' . The terminology 'Reserve for NPA' has been used by the assessee in accordance with the RBI directions. As is evident from the assessment order, the assessee has indeed created 'Reserve for NPA'. For claiming benefit under the provisions of Section 36(1)(viiia)(a) the conditions to be satisfied is: that provision for bad and doubtful debts should have been made by the bank eligible to claim such deduction. Co-operative Banks do not strictly follow the provisions o f Banking Regulation Act for the purpose of maintaining their Books of Accounts. In our considered opinion, the assessee has created provision for bad and doubtful debts may be under different nomenclature. This will not dis-entitle the assessee for claiming deduction under the provisions of Section 36(1)(viiia)(a) . The purpose for creation o f reserve for NPA is same i .e. , creating provision towards bad and doubtful debts.

Thus, in view of the facts of the case and judicial pronouncements in the above state cases the assessee will be entitled to deduction u/s 36(1)(viiia) to the extent of provision made for bad and doubtful debts of Rs 16,06,72,355/-. The A.O is therefore directed to allow the full deduction of Rs 16,06,72,355/- as claimed by the assessee in the computation of income and not to restrict it on Rs 1,33,93,000/."

7. In the result, the appeal of the revenue is dismissed."

(C.1) From the foregoing, it is obvious that Co-ordinate Benches of ITAT, Delhi have decided identical issue in favour of the assessee in similar facts and circumstances, in Assessment Year 2012-13 and in Assessment Year 2013-14 in assessee's own case, in ITA No. 1937/Del/2016 and in ITA No. 2096/Del/2017 respectively. Neither side has brought any materials for our consideration to persuade us to take a view different from the view already taken by Co-ordinate Benches of ITAT, Delhi in assessee's own case in aforesaid appeals in ITA No. 2096/Del/2017 for Assessment Year 2013-14; and in ITA No. 1937/Del/2016 for Assessment Year 2012-13. Neither side has brought to our attention any distinguishing facts and circumstances for Assessment Year 2014-15 (to which the present appeal pertains) from facts and circumstances of the aforesaid orders of Coordinate Benches of ITAT, Delhi, in ITA No.- 2096/Del/2017 and ITA No. 1937/Del/2016 respectively for Assessment Years 2013-14 and 2012-13 in assessee's own case. Moreover, both sides are in agreement that the issue in dispute in the present appeal before us is squarely covered in favour of the assessee by aforesaid order dated 24.02.2020 of Coordinate Bench of ITAT, Delhi, in ITA No. 2096/Del/2017 in assessee's own case. In view of the foregoing; and respectfully following the aforesaid orders of Coordinate Bench of ITAT, Delhi in ITA No.- 2096/Del/2017 for Assessment Year 2013-14

and in ITA No. 1937/Del/2016 for Assessment Year 2012-13 in assessee's own case; we decline to interfere with the aforesaid impugned appellate order dated 20.02.2018 of the Ld. CIT(A). Accordingly, this appeal filed by Revenue is dismissed.

Order pronounced in the Open Court on 17.08.2021.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 17.08.2021
(Pooja)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	17.08.2021
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	