

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 849/Del/2023
Asstt. Year: 2017-18

E-oriental Bank of Commerce (Now amalgamated with Punjab National Bank-PNB) Punjab National Bank, Finance Division Plot No. 4, Sector Dwarka, New Delhi- 110 075 PAN AAACO0191M	Vs.	ACIT, Special Range-07 New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri K.V.S.R. Krishna, CA
Department by :	Shri T. James Singson, CIT-DR
Date of Hearing	04/12/2023
Date of pronouncement	20/02/2024

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 31.01.2023 of the Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi ("**CIT(A)**") pertaining to the Assessment Year ("**AY**") 2017-18.

2. The assessee has raised the following grounds:-

"1. The Ld. CIT(A) erred in law and on facts in setting aside the matter to AO by not allowing the claim of Rs. 4545.89 crores claimed as bad debt by the assessee u/s 36(1)(vii) in respect of identified debts. The claim is as per provisions of sec. 36(1) (vii) and should be allowed.

2. The Ld. CIT(A) has failed to appreciate that the said debts identified as bad debts in the previous year relevant to this assessment year against which no claim u/s 36(1)(vii) has been made. Therefore, the amended provision w.e.f. A.Y. 2014-15 is not applicable and hence the bad debt written off u/s 36(1)(vii) should be allowed.

3. The appellant contends that the claim of the assessee is as per the provisions of sec. 36(1) (vii) of the Income Tax Act as accepted by the CIT(A) in its order.

4. The appellant contends that similar claim has been allowed by the Hon'ble ITAT Delhi in assessee's own case for the A.Y. 2015-16. Therefore, following the precedence, the claim of the appellant should be allowed in the year under consideration also.

5. Without prejudice, the appellant contends that the provisions for bad and doubtful in the books of accounts of the bank is Rs.6315.18 crs. which is reduced from the loans and advances balances in the Balance sheet and hence should be allowed u/s 36(1) (vii) in entirety as bad debt written off following the Hon'ble Supreme Court judgement in the case of Vijaya Bank which is principally upheld by the CIT(A).

6. The above grounds are independent and without prejudice to one and other.”

3. Briefly stated, the assessee is a Nationalized Bank. It filed its original e-return on 28.10.2017 which was subsequently revised on 29.03.2019 at a returned loss of Rs. 370.79 crores. The case was picked up for scrutiny through CASS. Statutory notice(s) were issued/served upon the assessee to which the assessee responded. The Ld. Assessing Officer (“**AO**”) completed the assessment on 30.12.2019 under section 143(3) of the Income Tax Act, 1961 (**the “Act”**) on total income of Rs. 6483.38 crores by making various additions/disallowances; one such disallowance being under section 36(1)(vii) of Rs. 4545,89,00,000/-.

4. The assessee agitated the said disallowance under section 36(1)(vii) of the Act before the Ld. CIT(A) who recorded his observations and findings thereon as under:-

“5.2 The submissions of the appellant are considered carefully in the light of facts of the case, and legal pronouncements on the issue. It is noted that while making the addition, the AO has given following reasons:

1. *It is observed that the assessee has only reduced the provision in respect of bad debts from the loans and advances assets of the balance sheet. However, this is only mere reduction of the amount of loans and advances or the debtors at the end of the year and does not amount to actual write off as laid down by the Hon'ble Supreme Court cited above.*
2. *The statute requires the assessee to distinguish between rural advances and non-rural advances. However, in the instant case the assessee has only furnished a list of bank branches in big cities and claims that the advances given by these branches and the provisions made in this respect should be allowed as deduction. However, the assessee was required to submit complete list of advances given by rural branches and non-rural branches and thereafter clearly specifying the accounts where the provisions was created in respect of any financial year.*
3. *The assessee should also take into consideration the provisions of section 36(1)(vii) which pertain to provisions created for bad and doubtful debts. Out of these provisions the assessee should have culled out the provisions made in respect of non-rural branches which are eligible to be claimed u/s 36(1)(vii) During the proceedings, the assessee has not submitted any documents showing the above calculations and has merely relied on the fact that the provisions has been reduced from loans and advances assets of the balance sheet.*

5.3 It appears that the AO has not been able to properly grasp the import of Supreme Court decision in the case of Vijaya Bank v. CIT (2010) 323 ITR 166 (SC). In that decision, the hon'ble Supreme Court had laid down twin requirements for being eligible to claim the deduction u/s 36(1)(vii) viz (i) debiting the P&L a/c and creating a provision for bad and doubtful debt, and (ii) correspondingly/simultaneously obliterating the said provision from its accounts by reducing the corresponding amount from loans and advances/debtors on the asset side of the balance sheet.

5.4 This is to ensure that at the end of the year, the figure in the loans and advances or the debtors on the asset side of the balance sheet are necessarily shown as net of the provision for bad debt. In the instant case, the appellant had satisfied both the above conditions by duly writing off the bad debt by way of debit to P&L account and simultaneously reducing the corresponding amount from loans/advances. The AO has not brought any findings of facts on record to challenge the correctness of the amount duly reduced from the loans/advances/debtors. Therefore, the finding by the AO that it does not amount to actual write off is not tenable being against the law laid down by the hon'ble Apex Court.

5.5 Having held so, it is, however, pointed out that the claim of the appellant is not tenable in the light of amended legal provisions. It appears that both the appellant and AO have failed to take into account the insertion of Explanation 2 below section 36(1)(vii) of the Act which drastically changes the quantum of deduction available in the cases where section 36(1)(vii) and section 36(1)(viii), both, are applicable.

5.6 The appellant has contended that the deduction claimed u/s 36(1)(vii) is in respect of non-rural branches only and that the debts for which the claim has been made u/s 36(1)(vi) has never been

claimed u/s 36(1)(vii) of the Income-tax Act, 1961 in the past, and that if it is so, there cannot be any case of the benefit of double deduction in respect of any debt/loan which the appellant could have claimed u/s 36(1)(vii) and section 36(1)(vii).

5.7 In the case of Catholic Syrian Bank Ltd. Versus Commissioner of Income Tax. Thrissur (2012) (3 SCC 784), hon'ble Supreme Court had examined the scope of proviso to section 36(1)(vii) It was observed that the provisions of section 36(1)(vii) apply only to rural advances while the provisions of section 36(1)(vii) apply on other advances. It has been held that both these provisions are distinct and independent items of deduction and operate in their respective fields. The appellant has relied on the above ratio in support of its claim.

5.8 However, it is relevant to note here that, subsequently, Explanation 2 to section 36(1)(vii) has been inserted by the Finance Act, 2013 w.e.f. 01.04.2014 diluting the position laid down in Catholic Syrian Bank (supra). Explanation 2 reads as under:

S. 36(1) (1)

(vii) subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year.

Provided that in the case of an assessee to which clause (vii) applies, the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under that clause:

Provided further

Explanation 1.....

Explanation 2-For the removal of doubts, it is hereby clarified that for the purposes of the proviso to clause (vii) of this sub-section and clause (v) of sub-section (2), the account referred to therein shall be only one account in respect of provision for bad and doubtful debts under clause (vii) and such account shall relate to all types of advances, including advances made by rural branches,

5.9 As such, with effect from 01.04 2014, in respect of the tax payers in whose case provisions of section 36(1) (vii) is applicable, what is allowable u/s 36(1)(vii) is only the amount by which the debt written off exceeds the credit balance in the provision created under section 36(1)(vii), irrespective of whether the assessee had maintained two different accounts (viz one for rural advances, and the other for non-rural ones) or not. In fact, the quantum of outstanding rural advances covered in the claim u/s 36(vii) is not at all relevant now in view of the Explanation 2 as cited above.

5.10 It is also clarified here that in view of the amendment, the issue of any possible double deduction or absence thereof is loses its relevance now. What is relevant is that bad debts written off must first be adjusted against the credit balance available under 'provision for bad & doubtful debts' covered u/s 36(1)(vii). The decision of Hon'ble Supreme Court in the case of Vijaya Bank (supra)

relied up on by the appellant is for the period prior to 01.04.2014, and therefore, is not applicable in respect of present proceedings. In fact, as per various judicial rulings available for the period prior to the insertion of Explanation 2, the deduction was to be allowed u/s 36(1) (vii) so long as a taxpayer can establish that the claim is distinct from the debts covered u/s 36(1)(vii). However, the effect of Explanation 2 is twofold: (i) as long as there is sufficient credit balance available in the head 'provision for bad and doubtful debts which has been allowed to the appellant u/s 36(1)(vii), no additional claim is admissible u/s 36(1)(vii); and (ii) the fact that the claim might be distinct from what has been claimed and allowed u/s 36(1)(vii) is irrelevant now.

*5.11 In view of the above, it is held that the deduction u/s 36(1)(vii) relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance available in the books under the head **provision for bad and doubtful debts** u/s 36(vii) of the Act. The AO is directed to verify the credit balance available as provision for bad and doubtful debts u/s 36(1)(vii) and if it is found that the quantum of bad debts written off by the appellant during the year of Rs. 4545.89 crore exceeds such provision available u/s 36(1)(vii), then allow only such excess amount u/s 36(1)(vii). Needless to say, if the provision available u/s 36(1)(vii) exceeds the amount written off, no additional deduction u/s 36(1)(vii) is to be allowed to the appellant."*

5. The assessee is aggrieved and is before the Tribunal and all the grounds relate thereto.

6. At the very outset, the Ld. AR submitted that the issue is covered in assessee's own case by the decision of the Tribunal for immediately preceding AY 2016-17, a copy of which is placed at pages 45-77 of Paper Book 2. The Ld. AR further pointed out that cross appeals by the Revenue and the assessee were filed before the Hon'ble Delhi High Court pertaining to AY(s) 2013-14, 2014-15 and 2015-16. The Revenue's appeals for the aforesaid AY(s) were against deletion of disallowance of Rs. 1062.73 crores; Rs. 1231.56 crores and Rs. 315 crores by the Ld. CIT(A)/ITAT in AY 2013-14, 2014-15 and 2015-16 respectively under section 36(1)(vii) of the Act. Copy of Hon'ble Delhi High Court's decision is placed at pages 1-6 of Paper Book 3 wherein the Hon'ble Delhi High Court, dismissing the Revenue's appeal held that no substantial question of law arises qua the issue raised by the Revenue. The Ld. AR also submitted that against the Tribunal's decision for AY 2016-17 the Revenue had gone in appeal before the Hon'ble Delhi High Court proposing the following question of law for consideration:-

“whether on the facts and circumstances of the case Hon’ble ITAT is legally justified in deleting the disallowance of Rs. 2153.02 crores under section 36(1)(vii) by ignoring first proviso as well as clarificatory provision of Explanation 2 to section 36(1)(vii)?”

7. The Ld. AR submitted that before the Hon’ble Delhi High Court, the Revenue did not dispute the fact that the aforesaid proposed question of law was covered by the decision rendered by the Hon’ble Delhi High Court on 13.09.2023 in a bunch of appeals, the lead appeal being ITA 521/2023 titled PCIT vs. Oriental Bank of Commerce (now merged with Punjab National Bank Ltd.). The Hon’ble Delhi High Court closed the appeal with the observation *“In our view no substantial question of law arises for consideration by this Court”*. Copy of Hon’ble Delhi High Court’s decision rendered on 20.10.2023 in ITA No. 594/2023 appears at pages 7-9 of the assessee’s Paper Book 3.

8. The Ld. AR pointed out that there is no change in the fact pattern for the AY 2017-18 presently under consideration.

9. The Ld. CIT-DR relied on the order of the Ld. CIT(A).

10. We have given careful thought to the submission of the parties and perused the records. The assessee has brought on record a chart containing party-wise details of accounts which have been claimed as bad debts i.e. identified debts under section 36(1)(vii) which, according to the assessee has never been claimed under section 36(1)(viia) of the Act. The Ld. CIT-DR could not point out any flaw in the information which appears at pages 1-7 of assessee’s Paper Book 1.

11. Identical issue came up for consideration before the Co-ordinate Bench of the Tribunal in assessee’s case for AY 2015-16 wherein the Tribunal vide decision dated 04.03.2022 in ITA No.1199/Del/2018 decided

the appeal in favour of the assessee by observing and recording its findings as under:-

“40. This issue relates to disallowance of Rs.315 crores u/s 36(1)(vii) claimed as bad debts written-off by the assessee in its books of accounts.

41. The AO disallowed the claim of Rs. 315 Crores u/s 36(1)(vii) stating that:

“8.3 I have perused the details and reply submitted by the assessee and the same is not acceptable as per the provisions of the Income Tax Act. Accordingly the claim of the assessee is disallowed.”

42. However, the assessee has claimed deduction u/s 36(1)(vii) for a sum of Rs.315.00 crores in respect of bad debts written off identified separately in the profit & loss account other than those provisions which were claimed u/s 36(1)(viiia). The AO has mentioned in his order that the assessee has provided complete details of the bad debts claimed u/s 36(1)(vii) of Rs.315.00 crores at page 16-17 of his order.

43. The Id. CIT(A) has reproduced in her order at page no.66 the relevant page of the Annual accounts wherein the assessee has shown under the code 2404 separately “provision for bad and doubtful debts further provision (write off)” of Rs.315 cr. The provisions u/s 36(1)(viiia) are separate which has also been noted by the Id. CIT(A) in her order pages 66-67. However, the Id. CIT(A) has concluded that it is not a “bad debt written off but it is still a “provision for bad and doubtful debts” and is not a write off. Further, the Id. CIT(A) has relied on the CBDT Circular No.314 of 2014 and the amendment to section 36(1)(vii) wherein Explanation-2 was inserted by the Finance Act, 2013 with effect from A.Y. 2014-15 which [CIT(A)’s order at page 67] is again reproduced:

“11.7 In order to clarify the scope and applicability of provision of clause (vii), (via) of sub-section (1) and sub-section (2), an Explanation in clause (vii) of sub-section (1) of section 36 has been inserted stating that for the purposes of the proviso to clause (vii) of sub-section (1) of section 36 and clause (v) of sub-section (2) of section 36, only one account as referred to therein is made in respect of provision for bad and doubtful debts under clause (via) of sub-section (1) of section 36 applies, the amount of deduction in respect of the bad debts actually written off under clause (vii) of sub-section (1) of section 36 shall be limited to the amount by which such bad debts exceeds the credit balance in the provisions for bad and doubtful debts account made under clause (viiia) of sub-section (1) of section 36 without any distinction between rural advances and other advances.”

44. From the above, it was noticed that the deduction u/s 36(1)(vii) will be limited only in those cases where such bad debt exceeds provision u/s 36(1)(viiia). That means there should be a debt against which a provision u/s 36(1)(viiia) should exist and such debt is a subject matter of write off u/s 36(1)(vii). Under such circumstance only the excess will be allowed. Whereas as per the facts accepted by the AO in his order and also by the Id. CIT(A), a separate debit in the profit & loss account of Rs.315.00 crores in respect of debts which are listed by the Id. CIT(A) at page no.64 has been claimed as written off u/s 36(1)(vii) against which there has been no claim u/s 36(1)(viiia). There

is no double claim made by the assessee nor there are any such findings by the AO or by the Id. CIT(A).

45. The assessee submitted that all these bad debts are relating to advances which are reduced from the loans & advances and no deduction against such provisions has been claimed by the assessee in any of the assessment year u/s 36(1)(viii) of the Income Tax Act.

46. Further, the Id. CIT(A) in para 9.3.11 for the A.Y. 2015-16 accepted factual position that the sum of Rs.315.00 crores reduced from the loans & advances and thus the principle of the Hon'ble Supreme Court in the case of Vijaya Bank vs. CIT 323 ITR 166 for write off u/s 36(1)(vii) duly satisfied. The relevant extract of Hon'ble Supreme Court in the case of Vijaya Bank vs. CIT reported in (2010) 323 ITR 166 (SC) is reproduced as under:

"To this extent, we agree with the contentions of Shri Bhattacharya. However, as stated by the Tribunal, in the present case, besides debiting the P&L a/c and creating a provision for bad and doubtful debt, the assessee-bank had correspondingly/simultaneously obliterated the said provision from its accounts by reducing the corresponding amount from loans and advances/debtors on the asset side of the balance sheet and, consequently, at the end of the year, the figure in the loans and advances or the debtors on the asset side of the balance sheet was shown as net of the provision "for impugned bad debt". In the judgment of the Gujarat High Court in the case of Vithaldas H. Dhanjibhai Bardanwala (supra), a mere debit to the P&L a/c was sufficient to constitute actual write off whereas, after the Explanation, the assessee(s) is now required not only to debit the P&L a/c but simultaneously also reduce loans and advances or the debtors from the asset side of the balance sheet to the extent of the corresponding amount so that, at the end of the year, the amount of loans and advances/ debtors is shown as net of provisions for impugned bad debt. This aspect is lost sight of by the High Court in its impugned judgment. In the circumstances, we hold, on the first question, that the assessee was entitled to the benefit of deduction under s. 36(1)(vii) of 1961 Act as there was an actual write off by the assessee in its books, as indicated above. "

47. Therefore, in assessee's case also, it is an actual write off in view of the decision of the Hon'ble Supreme Court, this issue is fully covered in favor of assessee. The appeal of the assessee is hereby allowed on this ground."

12. The decision (supra) of the Tribunal has been followed in its decision rendered on 31.03.2023 in assessee's appeal in ITA No. 740/Del/2020 for AY 2016-17 (pages 57-61 of Paper Book 2 refer).

13. As pointed out by the Ld. AR, the appeals of the Revenue filed against the decision of the Tribunal on the impugned issue for AY 2013-14 to 2015-16 stand dismissed by the decision of Hon'ble Delhi High Court. The

Revenue had also gone in appeal before the Hon'ble Delhi High Court against the order of the Tribunal on this issue for AY 2016-17 as well but the Hon'ble Delhi High Court following its decisions for AY 2013-14 to 2015-16 held that 'no substantial question of law arises for consideration by this court'.

14. Since the parties agree that the facts and circumstances of the case on the impugned issue remain the same as in preceding years, we set aside the order of the Ld. CIT(A) on the point and allow the appeal of the assessee.

15. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 20th February, 2024.

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 20/02/2024
Veena

Copy forwarded to-

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMEBR

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	16.02.2024
Date on which the typed draft is placed before the dictating Member	16.02.2024
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	
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	