

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ "बी" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

श्री आर. के. पांडा, लेखा सदस्य एवं
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

**BEFORE SHRI R.K. PANDA, AM
AND SHRI VIKAS AWASTHY, JM**

आयकर अपील सं. / ITA No.2123/PN/2014
निर्धारण वर्ष / Assessment Year : 2010-11

The Parbhani Dist. Central
Cooperative Bank Ltd.,
Jawaharlal Nehru Road,
Parbhani - 431401
PAN : AAAAT6996R

..... अपीलार्थी / Appellant

बनाम v/s

ACIT (HQ) (Admn.),
Aurangabad

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Assessee by : Shri Nikhil Pathak
प्रत्यर्थी की ओर से / Respondent by : Shri P.L. Kureel

सुनवाई की तारीख / Date of Hearing :01.09.2016	घोषणा की तारीख / Date of Pronouncement: 02.09.2016
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आदेश / ORDER

PER R.K.PANDA, AM :

This appeal filed by the Assessee is directed against the order dated 20-10-2014 of the CIT(A), Aurangabad relating to Assessment Year 2010-11.

2. Facts of the case, in brief, are that the assessee is a District Central Cooperative Bank engaged in the business of banking at Parbhani. It filed its return of income on 15-10-2010 declaring total income at Nil after claiming deduction of Rs.13,25,20,173/- u/s.80P of the Act. The AO completed the assessment u/s.143(3) on 24-03-2013 determining the total income at Rs.14,50,46,740/-. The assessee went in appeal before CIT(A).

3. During the appeal proceedings on perusal of the profit and loss account and revised computation of income of the assessee bank, the CIT(A) noticed that the assessee has claimed deduction u/s.36(1)(viia) of Rs.2,15,86,000/- without making any provision for bad and doubtful debts in the books of account. Therefore, he was of the opinion that the said deduction has been wrongly claimed in view of unambiguous provisions of section 36(1)(viia) and CBDT Instruction No.17/2008 dated 26-11-2008. Therefore, he issued notice u/s.251 for enhancement of income to the extent of Rs.2,15,86,000/- on 10-09-2014. Rejecting the various explanations given by the assessee and following the decision of the Pune Bench of the Tribunal in the case of Nanded District Central Cooperative Bank Ltd. Vs. JCIT vide ITA No.2328/PN/2002 the Ld.CIT(A) enhanced the income of the assessee by Rs.2,15,86,000/- by observing as under :

"9.2 I have carefully considered facts of the case and rival contentions. The contention of the Ld.AR of the appellant that the provision of Rs.5,46,01,000/- has been made u/s 36(1)(viia) in the books of account is not acceptable as while deciding Ground No.1, the appellant has been allowed deduction of Rs.5,19,83,647/- u/s 36(1)(viia) after reducing recovery of Rs.26,17,353/- as the appellant bank has made provision of the said amount in the books of account.

On perusal of the issue to be decided in respect of the proposed enhancement of income, it has been noticed that in order to claim deduction u/s 36(1)(viia), the bank has to make provision for bad and doubtful debts. The relevant portion of the said section is as under –

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

.....
.....

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

From the above mentioned provision of section 36(1)(viia), it is clear that in order to claim deduction for bad and doubtful debts, the provision in respect of the same is required to be made. This proposition is also supported/clarified by CBDT Instruction No.17/2008 dated 26/11/2008. This proposition of law is also supported by the decision in

the case of State Bank of Patiala Vs. CIT & Anr (2005) 272 ITR 54 (P&H). In this case, it has been laid down that making a provision for bad and doubtful debts equal to the amount mentioned in section 36(1)(viia) is a condition precedent for allowing deduction; assessee claiming deduction for bad debt under un-amended section 36(1)(viia) but after amendment enhancing the deduction in the return by making-up the shortfall in the provision in the balance sheet of subsequent year, the claim to the extent of enhancement is not allowable. From the above referred decision it is clear that in order to claim deduction u/s 36(1)(viia), the provision has to be made in the year in which the deduction has been claimed and the provision made in the subsequent year is of no relevance, It is also undisputed fact that the appellant has not made provision for bad and doubtful debts of Rs.2,15,86,000/- in the year under appeal in respect of which, deduction u/s 36(1)(viia) has been claimed. In view of the above facts and discussion and unambiguously worded provision of section 36(1)(viia) and CBDT circular clarifying the provisions of the said section, I am of the considered view that it is justified in making disallowance of interest amounting to Rs.2,15,86,000/- claimed by the appellant u/s 36(1)(viia) of the Act.

The above legal proposition has been upheld by Hon'ble ITAT, Pune in the recent decision in the case of The Nanded District Central Cooperative Bank Ltd., Nanded Vs. JCIT, Range-3, Nanded in ITA No.2328/PN/2012 vide order dated 25/06/2014. In the said case, the appellant has claimed deduction of Rs.27,29,51,500/- u/s 36(1)(viia) of the Act, however, the appellant bank has not made provision for the same. The said issue has been decided by the undersigned vide order dated 28/09/2012 in favour of Revenue which has been upheld by Hon'ble ITAT, Pune. The relevant portion of the order of Hon'ble ITAT, Pune is reproduced below –

"In appeal, the Ld.CIT(A) upheld the action of the A.O. by observing as under –

"10.3 I have carefully considered facts of the case and rival contentions. On perusal of the same it has been noticed that in order to claim deduction u/s 36(1)(viia), the bank has to make provision for bad and doubtful debts. The relevant portion of the said section is as under -

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

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

From the above mentioned provision of section 36(1)(viia), it is clear that in order to claim deduction for bad and doubtful debts, the provision in respect of the same is required to be made. This proposition is also supported/clarified by CBDT Instruction No.17/2008 dated 26/11/2008. This proposition of law is also supported by the decision in the case of State Bank of Patiala Vs. CIT & ANR (2005) 272 ITR 54 (P&H). In this case, it has been laid down that making a provision for bad and doubtful debts equal to the amount mentioned in section 36(1)(viia) is a

condition precedent for allowing deduction; assessee claiming deduction for bad debt under un-amended section 36(1)(viia) but after amendment enhancing the deduction in the return by making-up the shortfall in the provision in the balance sheet of subsequent year, the claim to the extent of enhancement is not allowable. From the above referred decision it is clear that in order to claim deduction u/s 36(1)(viia), the provision has to be made in the year in which the deduction has been claimed; the provision made in the subsequent year is of no relevance. It is also undisputed fact that the appellant has not made provision for bad and doubtful debts in the year under appeal. The decisions relied on by the appellant in support of this ground are on distinguishable facts. In view of the above facts and discussion and unambiguously worded provision of section 36(1)(viia) and CBDT circular clarifying the provisions of the said section, I am of the considered view that the A.O. is justified in making disallowance of interest amounting to Rs.27,29,51,500/- claimed by the appellant u/s 36(1)(viia) of the Act. The addition of Rs.21,29,51,500/- is accordingly confirmed. Ground No.6 stands dismissed.

17.2 Aggrieved with such order of CIT(A) the assessee is in appeal before us.

18. The Ld. Counsel for the assessee at the outset submitted that the issue stands decided against the assessee by the decision of the Coordinate Bench of the Tribunal in the case of Shri Mahalaxmi Co-op Bank Ltd. Vs. ITO vide ITA No. 1658/PN/2011 order dated 29-10-2013.

18.1 In view of the above submission of the Ld. Counsel for the assessee and in absence of any objection by the Ld. Departmental Representative this ground is decided against the assessee. The order of CIT(A) is accordingly upheld on this issue and the ground raised by the assessee is dismissed.

In view of the above facts and discussion and respectfully following the above recent decision of Hon'ble ITAT, Pune, the income of the appellant is enhanced by Rs.2,15,86,000/- as the appellant has claimed the deduction u/s.36(1)(viia) without making provision for the same. The A.O. is directed accordingly."

4. Aggrieved with such order of the CIT(A) the assessee is in appeal before us with the following grounds :

"1. The learned Commissioner of Income Tax (Appeals), Aurangabad has erred in facts and on law by enhancing the income by Rs.2,15,86,000/-, by disallowing the deduction claimed u/s. 36(1)(viia) of Rs.2,15,86,000/- which was duly verified & allowed by the learned Assistant Commissioner of Income Tax, (HQ)(Admn.), Aurangabad. Hence the learned Commissioner of Income Tax (Appeals), Aurangabad has erred in enhancing the income by Rs.2,15,86,000/- by disallowing the deduction claimed u/s. 36(a)(viia) of Rs.2,15,86,000/-. Hence the said addition of Rs.2,15,86,000/- needs to be deleted.

2. Such other orders be assed as may be deemed fit and proper

3. The Appellant craves leave to add, amend, alter vary and / or withdraw any or all the above grounds of appeal."

5. The Ld. Counsel for the assessee at the outset fairly conceded that the issue stands decided against the assessee by the decision of the Pune Bench of the Tribunal in the case of Nanded District Central Cooperative Bank Ltd. (Supra) which has been followed by the Ld.CIT(A).

6. The Ld. Departmental Representative on the other hand heavily relied on the order of the CIT(A) and submitted that the issue stands decided against the assessee by the decision of the Tribunal in the case of Nanded District Central Cooperative Bank Ltd. (Supra).

7. After hearing both the sides, we find no infirmity in the order of the CIT(A) who has enhanced the income of the assessee by Rs.2,15,86,000/- by following the decision of the Pune Bench of the Tribunal in the case of Nanded District Central Cooperative Bank Ltd. (Supra). Since nothing contrary was brought to our notice by the Ld. Counsel for the assessee, therefore, we uphold the order of the CIT(A) on this issue. Grounds raised by the assessee are accordingly dismissed.

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 02-09-2016.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 2nd September, 2016.
सतीश

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A), Aurangabad
4. The CIT, Aurangabad
विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" पुणे /
5. DR, ITAT, "B" Pune;
5. गार्ड फाईल / Guard file.

y आदेशानुसार/ BY ORDER,

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune