

IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH, PATNA



Before **Shri Waseem Ahmed, Accountant Member** and
Shri K.Narsimha Chary, Judicial Member

ITA No09. & 12/PAT/2012
Assessment Year:2007-08

Madhya Bihar Gramin Bank, C/o Nirmal & Associates, Nepali Kothi, Boring Road Patna [PAN No.AAAAM 7216 M]	<u>बनाम /</u> V/s.	DCIT, Circle-1 Patna
ACIT, Circle-1 Patna	<u>बनाम /</u> V/s.	Madhya Bihar Gramin Bank 1 st Floor, Meena Plaza, South of Museum, Patna
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

ITA No.55-56/PAT/2012
Assessment Year:2008-09

ACIT, Circle-1 Patna	<u>बनाम /</u> V/s.	Madhya Bihar Gramin Bank 1 st Floor, Meena Plaza, South of Museum, Patna
Madhya Bihar Gramin Bank, Patna	<u>बनाम /</u> V/s.	Addl. CIT, Range-1, Patna
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

ITA No.115/PAT/2012
Assessment Year:

Madhya Bihar Gramin Bank, C/o Nirmal & Associates, Nepali Kothi, Boring Road Patna [PAN No.AAAAM 7216 M]	<u>बनाम /</u> V/s.	Addl.CIT, Range-1 Patna
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अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent
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आवेदक की ओर से/By Assessee	Shri Nishant Maitin, AR
राजस्व की ओर से/By Revenue	Shri Sanjay Mallik, DR
सुनवाई की तारीख/Date of Hearing	22-11-2016
घोषणा की तारीख/Date of Pronouncement	02-12-2016

आदेश /ORDER

PER BENCH:-

Out of five appeals – three by assessee and two by Revenue are against the order of Commissioner of Income Tax (Appeals), Dhanbad by different dated 21.11.2011, 24.01.2012 and 28.06.2012. Assessments were framed by DCIT/ACIT/Addl. CIT-Range-1, Patna u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide their orders dated 02.12.2009, 23.12.2010 and 13.12.2011 for assessment years 2007-08 to 2009-10 respectively.

Shri Nishant Maitin, Ld. Authorized Representative appeared on behalf of assessee and Shri Sanjay Mallik, Ld. Departmental Representative appeared on behalf of Revenue.

2. All these appeals are heard together and are being disposed of by way of common order for the sake of convenience.

First we take up assessee’s appeal in ITA No.09/PAT/2012 and Revenue’s appeal in ITA No.12/PAT/2012 for A.Y.07-08

3. The 1st issue raised by assessee in this appeal is that learned CIT(A) erred in disallowing the deduction in the respect of provisions of bad and doubtful debts amounting to Rs. 25.63 Crores. For this, assessee has raised the following ground:-

“3. On the facts and circumstances of the case, the Ld. CIT(Appeals)-II erred in partly allowing the claim of Rs.56.68 crore on account of deduction for provisions of bad and doubtful debts and rejecting the balance claim of Rs.25.63 crores.”

Now, Revenue has raised in 1st issue in this appeal is that Ld. CIT(A) erred in allowing the deduction claimed by as for bad debts of Rs.56.68 crores. For this, ground reproduced below:-

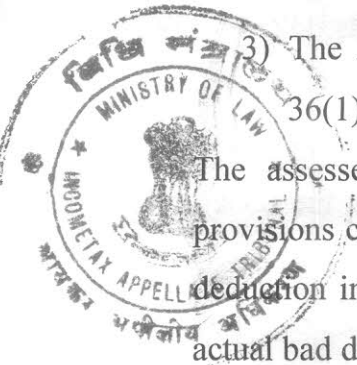
“1.That the CIT(A) has erred both on fact and in law in allowing the deduction claimed by the assessee in respect of provision made for bad debts of Rs.56.68 crores even when the assessee failed to adduce evidence that such advances actually pertained to rural branches as defined under sub-clause (ia) of explanation under section 36(1)(viia) of the Income-tax Act, 1961.”

4. The facts in brief are that the assessee is a Gramin bank and engaged in the business of banking. The assessee bank was amalgamated by 4 regional rural banks namely Bhojpur Rohtas Gramin bank, Magadh Gramin Bank, Nalanda Gramin bank and Patliputra Gramin Bank. The scheme for the amalgamation was effected on 10th February 2006. The assessee filed its original return of income dated 28.12.2007 declaring a profit of Rs.17,09,58,000/- . The assessee claimed the deduction in respect to the provisions for bad and doubtful debts for Rs. 45,01,200/- in the books of accounts u/s 36(1)(viia) of the Act. The AO, during the assessment proceedings, observed that the assessee has claimed the deduction for Rs. 82,31,79,887/- in respect of the provisions for doubtful debts as specified u/s 36(1)(viia) of the Act in the computation of income. As a result of aforesaid deduction, the loss was shown in the computation of income. The provision for Rs. 81,86,78,687.00 (82,31,79887-45,01,200) claimed by the assessee in the computation of income was questioned by the AO by observing as under :

- 1) The aforesaid provision was not actually accounted for in the books of the assessee.
- 2) It was not clear whether such provision is actually representing the bad debts written off.

3) The AO further observed that the deduction under the provisions of section 36(1)(viia) is available only in respect of the rural branches.

The assessee before the AO submitted that the deduction is available for the provisions created as envisaged under section 36(1)(viia) of the Act. For claiming the deduction in respect to the provisions u/s 36(1)(viia) it is not necessary to write off actual bad debts. The return for the year under consideration was revised subsequently



on 29.01.2009 claiming the deduction u/s 36(1)(viiia) of the Act. The assessee also submitted the working of the deduction u/s 36(1)(viiia) as per Rule 6ABA of Income Tax Rules, 1962 for the year under consideration amounting to Rs. 56.68 crores. The assessee also submitted that provisions of Rs. 25.63 crores pertaining to the earlier years was also claimed in terms of the approval obtained from the RBI. However, the AO disregarded the claim of the assessee and added the same to the total income.

Aggrieved, assessee preferred an appeal to the Id. CIT(A) who partly allowed the assessee by observing as under:-

"7. I have considered the facts of the case. For claiming deduction under this section, there is no requirement that such bad debts should actually be written off. Such deduction is allowable to the eligible assessee as per computation under Rule 6ABA. It was submitted by the appellant that after approval was obtained from Reserve Bank of India, an amount of Rs.81.86 crores was drawn from reserves and surplus head during the financial year 2007-08 for provision of NPA pertaining to assessment years 2006-07 and 2007-08. Accordingly, deduction of this amount was claimed in the revised return. However, from the details files by the appellant, it is seen that deduction allowable as per Rule 6ABA in the assessment year under consideration would be Rs.56.68 crores only for this assessment year and Rs.25.6 crores pertains to the preceding assessment year which cannot be claimed in this assessment year. Therefore, allowable deduction under this clause would be Rs.56.68 crores. "

Now, being Aggrieved, by the order of Id. CIT(A) both assessee and Revenue came in appeal before us.

5. The assessee came before us against the disallowance of deduction u/s 36(1)(viiia) in respect of the provisions created for bad doubtful debts pertaining to the earlier years for Rs. 25.63 crores. Similarly the Revenue is in appeal against the deletion of the addition made by the AO for Rs. 56.68 crores.

5.1 The Id. AR before us filed a paper book running from pages 1 to 37 and submitted that the provision for the earlier years was created out of the withdrawal from the Reserve & Surplus after taking the approval from the RBI. The Id. AR further submitted that the provision u/s 36(1)(viiia) was duly created in the books of account in the subsequent AY 2008-09 after having withdrawal from the RBI.

On the other hand, the ld. DR submitted that the revised return filed for claiming the deduction u/s36(1)(viia) by the assessee was not a valid return. Therefore, the deduction is not available to the assessee for Rs. 56.68 crores under the provisions of section 36(1)(viia) of the Act. Both the parties relied in the order of lower authorities as favourable to them.

6. We have heard the contentions of rival parties and perused the materials available on record. From the foregoing discussion we find that the AO disallowed the deduction claimed by the assessee u/s 36(1)(viia) of the Act on the ground that such deduction was not accounted in the books of accounts and the same was not written off in the profit and loss account of the assessee as irrecoverable bad debts. However, the ld CIT(A) partly allowed relief to the assessee for the provisions created in the revised return pertaining to the year under consideration. However, the ld CIT(A) rejected the claim of the assessee for the provisions created pertaining to the earlier years. At this juncture, it is pertinent to reproduce the provisions of section 36(1)(viia) of the Act which reads as under:-

“Other deductions

36 (1) The deductions 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-

(i) ...

(ii)

(iii)

(iv) ...

©.....

(vi)

(viia) [In respect of any provision for bad and doubtful debts made by-
*(i) a scheduled bank [not being [***] a bank incorporate by or under the laws of a country outside India] of 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:”*



From a plain reading of the aforesaid provisions we find that the assessee is entitled for the provisions created in respect of bad & doubtful debts and advances made by the rule of branches. It is not necessary that such provisions should be written off in the books of accounts of the assessee as irrecoverable bad debts. We also find that the assessee has claimed the deduction as envisaged in the section 36(1)(viia) of the Act in the revised return which was filed within the time prescribed under section 139 of the Act. However from the perusal of the balance sheet for the year under consideration we find that the provision for Rs. 81.86 was not created in the books of accounts which was mandatory for claiming the deduction u/s 36(1)(viia) of the Act. In this connection we rely in **ITA No. 578/Bang/2012** for the AY 2008-09 in the case of *JCIT Vs. M/s. Vijaya Bank*, where the Hon'ble Tribunal has held as under :

"15. We have considered the submissions and are of the view that the same cannot be accepted. The creation of a special reserve u/s.32A or Sec.36(1)(viii) of the Act cannot be equated with creation of PBDD u/s.36(1)(viia) of the Act. Creation of provision u/s.36(1)(viia) of the Act is governed by certain rules like Rule 6ABA of the rules in respect of rural advances. It cannot be created at the bank's whims and fancy. Moreover the Assessee is not making a claim for creation of PBDD in the books of accounts of PY relevant to AY 08-09. The excess reserve created in the ITA Nos. 578 & 653/Bang/2012 subsequent year cannot be equated to the PBDD created in the books for the present AY. The decisions relied upon by the learned counsel for the Assessee do not lay down a proposition that excess provision created in the subsequent year can supplement the inadequate created in an earlier year. The decisions relied upon by the learned counsel for the Assessee lay down proposition that the Assessee should be given liberty to create a reserve in the books of accounts of the relevant AY. For the reasons given above, we reject the second alternate submission made by the learned counsel for the Assessee. Thus the Assessee will be entitled to deduction u/s.36(1)(viia) of the Act of Rs.100,55,67,213/- only. Ground No.2 of the Revenue is allowed to this extent."

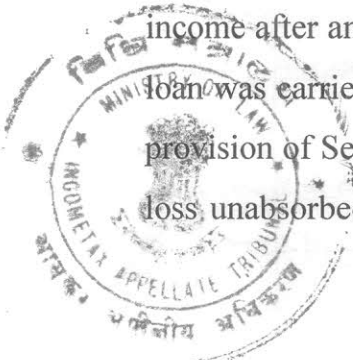
In view of above, we find no merits in the appeal filed by the assessee as the provision was not made in the books of accounts but it was claimed in the computation of income. Hence, the deduction as claimed by the assessee cannot be allowed. Similarly the appeal filed by Revenue against the order of Id. CIT(A) has valid ground on the reasoning discussed above. As such, the assessee claimed the deduction in the computation of income without recording the same in the books of accounts which assessee is not authorized to claim the deduction. Hence, the ground of Revenue's appeal is allowed.

However, from the perusal of the balance sheet of the assessee for the AY 2008-09 we find that the assessee has duly recorded in the books of accounts the provisions as specified u/s 36(1)(viiia) of the Act. Such provision was created after drawing down the reserve of the assessee and having approval from RBI. The copy of the approval from the RBI was enclosed on pages 10 to 13 of the paper book. We also find from the provisions of section 36(1)(viiia) does not make any distinction for the provisions of the earlier year and current year. The requirement of the section is to create the provisions in the books of accounts has been duly complied by the assessee. In view of above, we direct the AO to allow the deduction of the provisions created in the AY 2008-09 after necessary verification and as per law which was made out of the reserve account of the bank. Hence, this ground of assessee's appeal is allowed for statistical purposes.

7. The second issue raised by assessee in this appeal is that Ld. CIT(A) erred in allowing carry forward of losses as envisaged u/s. 72AA of the Act of Rs.21,24,13,971/-.

8. The assessee for the year under consideration has filed NIL under head "income from business or profession" and claimed carry forward of loss from earlier years amounting to Rs. 21,24,13,971/-. The Assessing Officer during the course of assessment proceedings observed that the aforesaid losses represents loss from exempted income as the income of the assessee is eligible for deduction u/s. 80P(2)(a)(i) of the Act. Therefore, carry forward of loss under the provision of Sec. 72AA are not allowable. Accordingly, AO disallowed the same and added to the total income of assessee.

9. Aggrieved, assessee preferred an appeal before Ld. CIT(A) whereas assessee submitted that loss represents the loss of Nalanda Gramin Bank, which was amalgamated with the assessee with effect from 10.02.2006. Therefore, first return income after amalgamation was filed by assessee for A.Y 2006-07 the amount of such loan was carried forward in the return of income filed for the AY 2006-07 in terms of provision of Sec. 72AA of the Act. As per the provision of Sec.72AA the accumulated loss unabsorbed depreciation of the banking company shall be deemed to be loss or



depreciation of such banking institutions for the previous year in which the scheme for amalgamation came into effect. Accordingly, aforesaid loss became the loss of assessee with effect from AY 2006-07 and such loss was accordingly claimed in AY 2007-08. However, Ld. CIT(A) disregarded the claim of assessee by observing as under:-

"9. The submission of the appellant were examined. The fact is that the appellant came into being in a scheme of amalgamation of four rural banks sanctioned by the Central Government. However, from the return of assessment year 2006-0 which was the first return filed by the appellant, it is seen that an income of Rs.2,75,47,000/- has been shown and the same has been claimed deductible under Section 80P. there is no mention of such brought forward loss and depreciation at Rs.21.24 crores. No such loss have either been set off against the total income shown or no such loss or depreciation has been shown to be carried forward to the next year. Since assessment year 2006-07 was the first return of the appellant, any such claim under Section 72AA if allowable to the appellant, was required to be made therein. Since nothing has been shown in this assessment year, no such loss can be brought forward to assessment year 2007-08. Therefore, the claim of the appellant in this regard is not admissible and the action of the AO in this regard is upheld."

Aggrieved by this, assessee has come up second appeal before us.

10. Before us Ld. AR for the assessee reiterated same submission as made out before Ld. CIT(A) whereas Ld. DR for the Revenue relied on the order of authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. From the foregoing discussion, we find that the AO has treated the loss of assessee as loss from the exempted income. Therefore, such loss was not eligible to be carried forward for set off. However, in our considered view, income of assessee was entitled for deduction u/s. 80P(2)(a)(i) of the Act subject to fulfillment of certain conditions. The deductions provided under Chapter-VIA of the Act is different from the exemptions provided under Chapter-III of the Act. Both exemptions and deduction cannot be equated at par. The assessee admittedly was claiming deduction u/s. 80P(2)(a)(i) of the Act but that deduction does not mean that assessee was having income from the source of exempted income. Therefore, the reason taken by AO for making the disallowance brought forward loss is without any base. The case laws cited by the AO are distinguishable on the facts of the case on

hand as the income of the assessee is not from the source of exempted income. We also find that the necessary details for the loss of the assessee were furnished at the time of assessment which is placed on pages 14 of the paper book. Similarly the proof for filing the income tax return of the Nalanda Gramin Bank before the amalgamation has also been filed which is placed on pages 15 to 22 of the paper book. We also find relevant to reproduce the provisions of section 72AA of the Act which reads as under:-

“72AA. Notwithstanding anything contained in sub-clauses (i) to (iii) of clause (1B) of section 2 or section 72A, where there has been an amalgamation of a banking company with any other banking institution under a scheme sanctioned and brought into force by the central Government under sub-section (7) of section 45 of the Banking Regulation Act, 1949 (10 of 1949), the accumulated loss and the unabsorbed depreciation of such banking company shall be deemed to be the loss or, as the case may be, allowance for depreciation of such banking institution for the previous year in which the scheme of amalgamation was brought into force and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly. “

In view of above, we are not inclined to agree with the view taken by lower authorities and accordingly we reverse the order of authorities below. This ground of assessee's appeal is allowed.

12. In the result, assessee's appeal is partly allowed for statistical purpose and that of Revenue is allowed.

Coming to Assessee's appeal in ITA No.56/Pat/2012 for A.Y. 08-09.

13. The assessee's raised following grounds of appeal:-

“1. That the order passed by Ld. CIT(Appeals)-II is unjust, unwarranted and bad in law.

2. That the Ld. CIT(Appeals)-II failed to appreciate and/or overlook and/or did not consider the submissions made by the appellant as also the other facts of the case.

3. On the facts and circumstances of the case, the Ld. CIT(Appeals)-II erred in disallowing the carry forward of losses of Rs.79,55,90,798/- as envisaged u/s. 72AA of the Income-tax Act, 1961.”



14. Since we have already discussed the matter in para-11 in the body of the order in assessee's appeal in ITA No.09/Pat/2012. Taking a consistent view in assessee's appeal (supra), we allow assessee's ground.

15. In the result, assessee's appeal is allowed

Coming to Revenue's appeal in ITA No.55/Pat/2012 for A.Y. 08-09.

16. The Revenue's has raised following grounds of appeal. :-

"1. The CIT(A) has erred both in fact and in law in allowing the deduction claimed by the assessee in respect of provision made for bad debts of Rs.61.50 lakhs even when the assessee failed to adduce evidence that such advances actually pertained to rural branches as defined under sub-clause (ia) of explanation under section 36(1)(viia) of the Income-tax ct, 1961.

2. The CIT(A) has erred both on fact and in law in allowing the deduction claimed by the assessee in respect of provision made for bad debts of Rs.61.50 lakhs even though there is nothing on record to establish that the assets were classified by the Reserve Bank of India as doubtful debts or loss assets in accordance with the guidelines issued by it in this behalf thereby ignoring the requirement mandated under the first proviso to section 36(1)(viia) of the Income-tax Act, 1961."

17. The only inter-linked issue raised by Revenue is that that Id. CIT(A) erred in allowing relief to the assessee under section 36(1)(viia) for Rs. 61.50 lacs without establishing the fact whether it pertains to rural branches and also the provision pertains to Non-performing assets of the bank.

18. The AO during the assessment proceedings observed that the assessee has claimed the deduction for u/s 36(1)(viia) for Rs. 61.50 lacs in mechanical manner. Such observation of the AO was based on the report given by the Inspector as followed:-

- 1) There were several deficiencies in the banking system of giving loans and advances. Appraisal of loans was not carried out satisfactorily. Viability of the loan was not worked out. Sanctioned letters were not issued and acceptances from the borrowers were not obtained.
- 2) Crop loans were given to the persons ineligible under the scheme. Insurance register for the crop wasn't maintained.

3) The proportion of NPA to the total credit increased from 2.8% on 31.3.2007 to 25.37% as on 31.3.2008.

4) Non-performing assessable were not correctly quantified.

In view of the above, the AO disallowed the deduction for Rs. 61.50 lacs claimed u/s36(1)(viia) of the Act

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

"7. I have considered the facts of the case. Deduction under section 36(1)(viia) of the IT Act, 1961 is to be given to the appellant as per methodology prescribed in this section. The AO has not pointed out any mistakes in such calculation of the appellant. Case law relied upon by the AO is not applicable to the facts of this case. Even as per this decision, deduction in respect of provision for Bad and Doubtful debts under this section is required to be given as prescribed in this section. However, deduction in respect of provisions for NPA cannot be allowed. Accordingly, the AO is directed to allow deduction for provision of Bad and Doubtful Debts at Rs.61.50 lacs under section 36(1)(viia) of the IT Act, 1961."

Aggrieved by this, Revenue has come up in appeal before us.

20. Before us Ld. AR for the assessee reiterated same submission as made out before Ld. CIT(A) and relied in the order of Ld. CIT(A) whereas Ld. DR for the Revenue relied on the order of AO.

21. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset we find that the deduction under section 36(1)(viia) of the Act was claimed as per rule 6ABA of Income Tax Rules and the AO has not brought any specific defect in such working made by the assessee. The learned DR has also not brought anything contrary to the finding of learned CIT(A). Accordingly, we find no infirmity in the order of learned CIT(A). Hence this ground of revenue is dismissed.

Coming to Assessee's appeal in ITA No. 115/Pat/2012 for A.Y. 08-09.

22. The assessee's raised following grounds of appeal:-

"1. That the order passed by Ld. CIT(Appeals) -II is unjust, unwarranted and bad in law.



2. That the Ld. CIT(Appeals) -II failed to appreciate and/or overlooked and/or did not consider the submissions made by the appellant as also the other facts of the case.

3. On the facts and circumstances of the case, the Ld. CIT(Appeals) -II erred in disallowing the carry forward of losses of rs.15,35,56,470/- as envisaged u/s.72AA of the Income tax Act, 1961."

23. Since we have already discussed same issue in Para 11 of this order in assessee's appeal ITA No.09/Pat/2012 Ay 07-08 and taking a consistent view in assessee's appeal in ITA No.09/Pat/2012 (supra) we allow assessee's ground.

24. In the result, assessee's appeal is allowed.

25. In combined result, appeals of Revenue in ITA No.12/Pat/2012 is allowed and 55/Pat/2012 is dismissed and that of assessee's appeals ITA No.09/Pat/2012 is partly allowed for statistical purposes and that of ITA No.56/Pat/2012 and ITA No.115/Pat/2012 are allowed.

Order pronounced in open court on 02/12/2016

Sd/-
(K.Narsimha Chary)
Judicial Member

Sd/-
(Waseem Ahmed)
Accountant Member

*Dkp, Sr.P.S

दिनांक:- 02/12/2016 Patna

Copy of Order Forwarded to:-

1. Assessee-Madhya Bihar Gramin Bank, C/o Nirmal & Associates, Nepali Kothi, Boring Road, Patna
2. Respondent-DCIT/ACIT Cicle-1Addl. CIT,Range-1 Patna
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Patna
6. Guard file.

/True Copy/



By order/आदेश से,
Sagun Singh
SR.PS/PS, ITAT, PATNA
Private Secretary
Income Tax Appellate Tribunal
Patna Bench. Patna