

आयकर अपीलीय अधिकरण, विशाखापट्टणम पीठ, विशाखापट्टणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.Nos.326/Viz/2016 & 327/Viz/2016
(निर्धारण वर्ष/Assessment Year:2010-11 & 2011-12 respectively)**

ACIT, Circle-2(1)
Guntur

Vs. M/s Chaitanya Godavari
Grameena Bank
3rd Floor, Raghu Mansion
4/1, Brodipet
Guntur – 5200 002
[PAN :AAAJC0523A]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

**Cross Objection Nos.53/Viz/2016 & 54/Viz/2016
(Arising out of I.T.A.Nos.326/Viz/2016 & 327/Viz/2016 respectively)
(निर्धारण वर्ष/Assessment Year:2010-11 & 2011-12 respectively)**

M/s Chaitanya Godavari Grameena Bank
3rd Floor, Raghu Mansion
4/1, Brodipet
Guntur – 5200 002
[PAN :AAAJC0523A]

Vs. ACIT, Circle-2(1)
Guntur

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

निर्धारिती की ओर से/ Assessee by
राजस्व की ओर से / Revenue by

: Shri G.V.N.Hari, AR
: Shri T.S.N.Murthy, DR

सुनवाई की तारीख / Date of Hearing

: 12.04.2018

घोषणा की तारीख/Date of Pronouncement

: 04.05.2018

आदेश /ORDER

Per Bench :

1. These appeals are filed by the revenue against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-1, Guntur vide ITA No.106/CIT(A)-1/GNT/2013-14 and ITA No.15/CIT(A)-1/GNT/2014-15 dated 31.03.2016 for the assessment year 2010-11 and 2011-12 respectively. Cross Objections are filed by the assessee in support of the Ld.CIT(A)'s order in ITA No.106/CIT(A)-1/GNT/2013-14 and against the Ld.CIT(A)'s order in ITA No.15/CIT(A)-1/GNT/2014-15.

ITA No.326/Viz/2016

2. All the grounds of appeal in this case are related to the provision for bad and doubtful debts u/s 36(1)(vii)(a) of I.T.Act. The assessee debited a sum of Rs.2,65,10,567/- under the head 'provision for bad and doubtful debts' which includes provisions provided against standard assets amounting to Rs.47,93,922/-. The Assessing Officer (AO) called for explanation of the assessee as to why the provision for standard assets should not be disallowed and added back to income. The authorized representative submitted explanation stating that as per section 36(1)(viia) of I.T.Act, the assessee is eligible for deduction in respect of

provision for bad and doubtful assets made in the books of account, an amount not exceeding 7.5% of the total income computed before any deduction under Chapter VIA of Income Tax Act or an amount of 10% of aggregate advances made by the rural branch or such bank computed in the prescribed manner. The assessee argued before the AO that the provision for standard assets also represents the provision for bad and doubtful debts and only the nomenclature is different. The entire provisions made in respect of provision for bad and doubtful debts u/s 36(1)(viiia) is within the limit prescribed under I.T.Act, hence requested the AO to allow the same as deduction. Not being convinced with the explanation of the assessee the AO held that the provision made against the standard assets is contingent liability, cannot constitute deductible expenditure for the purpose of Income Tax Act. Provision for standard assets is not against any debt which has become doubtful. Accordingly, the AO disallowed a sum of Rs.47,93,922/- for the AY 2010-11 and Rs.69,37,085/- for the A.Y.2011-12. The AO relied on the decision in the case of Southern Technologies Ltd. Vs. JCIT(SC) 320 ITR 577 and the decision rendered by ITAT, Chennai in the case of Bhart Overseas Bank Vs. CIT (139 ITD 154) and the Instruction No.17/2008 of CBDT dated 26.11.2008.

3. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and furnished the computation of provision for bad and doubtful assets and the deduction entitled by the assessee as per section 36(1)(viia) r.w.rule 6ABA of IT Rules which is as under :

Sl.No.	Particulars	Amount (Rs.)
1.	Actual provision made in the books of account during the previous year relevant to the Assessment Year 2010-11 (including provision for Standard Assets amounting to Rs.47,93,922/-)	2,65,10,567
2.	7.5.% of the total income (computed before making any deduction under this clause and Chapter VIA) (i.e. 7.5% of Rs.11,79,85,971/-	88,48,947
3.	10% of the aggregate average advances made by the rural branches of such bank (Rural Advances Rs.287,23,36,000/-	28,72,33,600
4.	Total of 02 & 03 rows above	29,60,82,547
5.	Eligible Amount u/s 36(1)(vii)(a) – Lower of 01 and 04	2,65,10,567

The assessee argued that it is entitled for deduction u/s 36(1)(viia) on standard assets also since the entire deduction claimed was within the limit prescribed u/s 36(1)(viia) and relied on the decision of Hon'ble Cuttak Bench in the case of Mayurbhanj Central Cooperative Bank Limited Vs. Asst.Commissioner of Income Tax, Balasore. The Commissioner of Income Tax Appeals relied on the decision of the ITAT Amritsar Bench in the case of DCIT Vs. The Gurdaspur Central Co-op Circle, Pathankot Bank Ltd. in ITA

No.99/ASR/2011 dated 07.05.2012 and the RBI guidelines and also the decision of Hon'ble ITAT 'B' Bench, Chennai in the case of DCIT, Circle-I, Vellore Vs. The Little Kancheepuram Cooperative Urban Bank Limited and held that the assessee is entitled for deduction on standard assets also and accordingly deleted the addition made by the AO and allowed the appeal of the assessee.

4. Aggrieved by the order of the Ld.CIT(A), the revenue is in appeal before this Tribunal. During the appeal hearing, the Ld.DR argued that the provision for standard assets does not cover u/s 36(1)(viiia) as the same is contingent in nature. Though Reserve Bank of India (RBI) provided for standard assets in prudential norms, the same is to be considered as a precautionary measure to deal with a situation, where banks are not to suffer shock of sudden risks that could happen in future. The provision for standard assets is not against any debts which have become doubtful and are always considered in the sense that bank has no doubt of recovery. When the bank itself has treated the such assets as good and recoverable any provision made on such assets cannot be considered as a provision for bad and doubtful debts and hence not allowable as deduction u/s

36(1)(viia) on the standard assets, thus argued that the AO has rightly made the disallowance which required to be upheld.

5. On the other hand, Ld.AR submitted that the assessee is a bank engaged in the finance of rural advances as well as urban banking. The assessee is entitled for deduction in respect of provision for bad and doubtful debts at 7.5% on the total income but not exceeding 10% of aggregate average advances made by the rural branches computed in the manner specified under the Rule 6ABA of Income Tax Rules. The nomenclature is not material and it is enough if the assessee debits the expenditure in the Profit & Loss account. The only requirement is the provision should not exceed the limits prescribed u/s 36(1)(viia). Even Circular No.17/2008 dated 26.11.2008 supports the allowability of provision for bad and doubtful debts. Rule 6ABA prescribed the manner in which aggregate advances is computed for the purpose of deduction u/s 36(1)(viia) of the Act. Hence argued that since the overall limit does not exceed the limit prescribed under 36(1)(viia), the assessee is entitled for deduction of provision for standard assets also and accordingly argued that no interference is called for in the order of the Ld.CIT(A) and the same is to be upheld.

6. We have heard both the parties and perused the material placed on record. The assessee has debited provision for bad and doubtful debts to the extent of Rs.2,65,10,567/- in the year under consideration. The expenditure debited by the assessee includes the provision for standard assets amounting to Rs.47,93,922/- which is being added by the AO. According to the AO, the provision for standard assets cannot be treated equally with the provision for bad and doubtful debts and the same should be held recoverable in the sense that the bank has no doubt of recoverability and the same is continued though as per the guidelines of RBI provision for standard asset is to be created as a precautionary measure, the same cannot be allowed as the deduction u/s 36(1)(viiia) of the Act. Whereas the assessee's case is that the entire amount of Rs.2,65,10,567/- including the provision against standard assets is covered u/s 36(1)(viiia) of I.T.Act. The Ld.AR argued that the nomenclature is immaterial and as long as the assessee makes a provision within the limits prescribed u/s 36(1)(viiia) r.w.r.6ABA of I.T.Act, the assessee is entitled for deduction. Before deciding the issue it is necessary to go through section 36(1)(vii) and Section 36(1)(viiia) which reads as under :

“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 (viiia) 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 that where the amount of such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof becomes irrecoverable or of an earlier previous year on the basis of income computation and disclosure standards notified under sub-section (2) of [section 145](#) without recording the same in the accounts, then, such debt or part thereof shall be allowed in the previous year in which such debt or part thereof becomes irrecoverable and it shall be deemed that such debt or part thereof has been written off as irrecoverable in the accounts for the purposes of this clause.]

[Explanation 1].—For the purposes of this clause, any bad debt or part thereof written off as irrecoverable in the accounts of the assessee shall not include any provision for bad and doubtful debts made in the accounts of the assessee;]

[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 (viia) and such account shall relate to all types of advances, including advances made by rural branches;]

*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 [eight 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 Reserve 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:]”

Careful reading of section 36(1) and (viia) shows that the word used in Sections is Bad debt and Bad and doubtful debt but not the standard

asset. Both the sections are interrelated and the allowance is subject to satisfactions of the terms and conditions specified in section 36(2) of the IT Act. Deduction is allowed under section 36(1)(vii) if the debt is written off in the books of accounts subject to the condition that the same is offered as income in the earlier year or incurred in the ordinary course of business in the case of money lender. The same conditions required to be satisfied for the purpose of Bad and doubtful debts also. i.e the debt should have been incurred in the ordinary course of business and classified as doubtful debt. The bad debt which is written off and claimed as deduction required to be offered to income when it is recovered. Similarly the provision made for bad and doubtful debt recovered subsequently required to be offered to income as and when it is recovered. Therefore the deduction of Provision for Bad and doubtful debts should be provided for on identification of each debt as per the conduct of the business but not lump sum deduction as argued by the assessee. For identification of Non performing assets, Bad and doubtful debts the bank has to identify each debt as per the norms prescribed by the Reserve Bank of India and classify the same as Bad and doubtful Debts. As per the Master circular of Prudential Norms NPAs and Bad and doubtful debts are classified as under:

“Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances, RBI/2014-15/74, DBOD.No.BP.BC.9/21.04.048/2014-15, July 1, 2014

2.1 Non performing Assets

2.1.1 An asset, including a leased asset, becomes non performing when it ceases to generate income for the bank.

2.1.2 A non performing asset (NPA) is a loan or an advance where;

- i. interest and/ or instalment of principal remain overdue for a period of more than 90 days in respect of a term loan,*
- ii. the account remains 'out of order' as indicated at paragraph 2.2 below, in respect of an Overdraft/Cash Credit (OD/CC),*
- iii. the bill remains overdue for a period of more than 90 days in the case of bills purchased and discounted,*
- iv. the instalment of principal or interest thereon remains overdue for two crop seasons for short duration crops,*
- v. the instalment of principal or interest thereon remains overdue for one crop season for long duration crops,*
- vi. the amount of liquidity facility remains outstanding for more than 90 days, in respect of a securitisation transaction undertaken in terms of guidelines on securitisation dated February 1, 2006.*
- vii. in respect of derivative transactions, the overdue receivables representing positive mark-to-market value of a derivative contract, if these remain unpaid for a period of 90 days from the specified due date for payment*

4. ASSET CLASSIFICATION

4.1 Categories of NPAs

Banks are required to classify nonperforming assets further into the following three categories based on the period for which the asset has remained nonperforming and the realisability of the dues:

- i. Substandard Assets*
- ii. Doubtful Assets*
- iii. Loss Assets*

4.1.1 Substandard Assets

With effect from March 31, 2005, a substandard asset would be one, which has remained NPA for a period less than or equal to 12 months. Such an asset will have well defined credit weaknesses that jeopardise the liquidation of the debt and are

characterised by the distinct possibility that the banks will sustain some loss, if deficiencies are not corrected.

4.1.2 Doubtful Assets

With effect from March 31, 2005, an asset would be classified as doubtful if it has remained in the substandard category for a period of 12 months. A loan classified as doubtful has all the weaknesses inherent in assets that were classified as sub-standard, with the added characteristic that the weaknesses make collection or liquidation in full, – on the basis of currently known facts, conditions and values – highly questionable and improbable.

The provisioning requirements for all types of standard assets stands as below. Banks should make general provision for standard assets at the following rates for the funded outstanding ii) The provisions on standard assets should not be reckoned for arriving at net NPAs.

(ii) The provisions on standard assets should not be reckoned for arriving at net NPAs.

(iii) The provisions towards Standard Assets need not be netted from gross advances but shown separately as 'Contingent Provisions against Standard Assets' under 'Other Liabilities and Provisions Others' in Schedule 5 of the balance sheet.

5.3 Doubtful assets

i. 100 percent of the extent to which the advance is not covered by the realisable value of the security to which the bank has a valid recourse and the realisable value is estimated on a realistic basis.

ii. In regard to the secured portion, provision may be made on the following basis, at the rates ranging from 25 percent to 100 percent of the secured portion depending upon the period for which the asset has remained doubtful:"

From the above norms of RBI it is clarified that the Non performing assets and the Doubtful debts constitute the debt in cases of non recoveries of principal and interest or the Interest or the principal for certain period of time. For this purpose the assessee has to identify each asset and classify the same in the correct head. Since the recovery is doubtful in the case of NPAs, Bad and doubtful debts they are identified by asset wise and are

covered under section 36(1)(viia) and allowable as deduction. Though prudential norms of the RBI are mandatory for classification of assets and to compile the financial statements of the assessee they are guidelines for the purpose of computation of profit and loss account and balance sheets of the assessee but not binding on the income tax for computing the income. Even if the aggregate amount of Bad and doubtful debts exceed the limit, the maximum allowable deduction is limited to the amount computed in the manner prescribed under Section 36(1)(viia) r.w.r.6ABA. The provision for standard asset is purely contingent and cannot be equated with the provision for Bad and doubtful debts. For ready reference we extract the relevant part of the Master guidelines to Prudential norms which reads as under:

“5.5 Standard assets

(i) The provisioning requirements for all types of standard assets stands as below. Banks should make general provision for standard assets at the following rates for the funded outstanding on global loan portfolio basis:

(a) direct advances to agricultural and Small and Micro Enterprises (SMEs) sectors at 0.25 per cent;

(b) advances to Commercial Real Estate (CRE) Sector at 1.00 per cent;

(c) advances to Commercial Real Estate – Residential Housing Sector (CRE - RH) at 0.75 per cent¹

(d) housing loans extended at teaser rates and restructured advances as as indicated in Para 5.9.13 and 12.4 respectively;

(e) all other loans and advances not included in (a) (b) and (c) above at 0.40 per cent.

(ii) The provisions on standard assets should not be reckoned for arriving at net NPAs.

(iii) The provisions towards Standard Assets need not be netted from gross advances but shown separately as 'Contingent Provisions against Standard Assets' under 'Other Liabilities and Provisions Others' in Schedule 5 of the balance sheet."

Prudential norms shows that it is a general provision which should not be reckoned for the purpose of reckoning the NPA, should not be netted from gross advances to be shown separately as contingent provision against standard assets. In the Income tax, the provisions are not allowable deduction and only the expenditure actually incurred or ascertained as per the system of accounting is the allowable expenditure except the provision for Bad and doubtful debts discussed above. The above classification of the provision clearly shows that it was purely general and contingent in nature. There is no indication of non-recoverability of the debt. Therefore the provision for standard assets cannot be equated with the Provision for bad and doubtful debt and the assessee's argument that only the nomenclature is different is unacceptable. The provision is required only to meet the unexpected eventuality in the interest of the banking, but it is neither an allowable expenditure nor an ascertained liability. The Ld.CIT(A) relied on the decision of DCIT Vs. The Gurdaspur Central Co-op Circle, Pathankot Bank Ltd. in ITA No.99/ASR/2011 dated 07.05.2012 and in the cited case

the coordinate bench of ITAT set aside the issue and remitted the matter back to the file of the AO, hence the case law relied up on the Ld.CIT(A) does not help the assessee. The assessee relied on the decision of this tribunal in Krishna District Cooperate Central Bank Ltd. in ITA No.120 and 121/Viz/2013 and the issue involved in the appeal is NPA at branch level and the expenses incurred as legal charges, notice charges etc.. of NPA advances. The ITAT held that the NPA the debt includes the expenses incurred for recovery and allowable so long as the limit is within section 36(1)(viiia) but it does not relate to provision on standard assets. Hence the case law relied up on by the Ld.AR is distinguishable on facts and not applicable. The AO relied on the decision of ITAT, Chennai in Bharat Overseas Bank Ltd vs CIT, 139 ITD 154 where in the coordinate bench held as under:

"It is clear from the above that it is not a standard allowance which is given, but, the allowance is subject to the actual provision made by the assessee, which in no case shall exceed 7.5% of the gross total income. Therefore, the argument of the assessee that whatever the provision it had actually made in its books, a provision of 7.5% of the gross total income had to be allowed, is not in accordance with law. Now considering the second aspect, whether provision for standard assets could be considered as provision for bad and doubtful debts, admittedly a provision on standard assets is not against any debts which had become doubtful. Standard assets are always considered recoverable, in the sense, bank has no doubt of recoverability. When the bank itself has treated such assets as good and recoverable, any provision made on such assets cannot be considered as a provision for bad and doubtful debts. The debt itself being good, a provision made on good debt cannot be considered as a provision for bad and doubtful debts. May be, the RBI has made a regulation for 10% provision for standard assets also a prudential norm. This can however be considered as a measure prescribed in abundant caution, to deal with a

situation where banks are not to suffer shock of sudden delinquency that could happen in future. There is always a possibility that an asset, which is fully recoverable, may not be so at future date. Nevertheless, possibility of happening of such a contingency cannot be a sufficient reason to consider a provision made on standard assets also as a provision for bad and doubtful debts. Therefore, claim of the assessee that provision for standard assets also has to be considered for applying the condition set out under Section 36(1)(vii-a) is not in accordance with law."

Coordinate Bench of ITAT, Hyderabad 'A' also expressed the similar view in the case of M/s. Andhra Pradesh Grameena Vikas Bank, Warangal Vs. ACIT, Warangal, ITA Nos. 502/H/11- Asst. year 2007-08/967/Hyd/11- A.Year 2007-08 And ITA No. 1387/Hyd/11- A.Year.2008-09. In instant case the ITAT held as under:

"Again, according to RBI, a sub-standard asset is one which has remained NPA for a period of at least 18 months. In such cases, the current net worth of the borrower or the current market value of the security is not enough to ensure recovery of the dues in full. Doubtful asset is one which has remained NPA for a period of exceeding 18 months. It has all weaknesses inherent in assets that were classified as sub- standard, with the added characteristic that the weaknesses make collection or liquidation in full highly questionable and improbable. A loss asset is one where loss has been identified which has not been written off fully. Such an asset is considered as uncollectible and of such little value that its continuance as a bankable asset is not warranted. As against these, standard assets are performing assets. In other words, they are neither bad nor doubtful of recovery. Non-performing assets have well defined creditworthiness that jeopardize the liquidation of the debt and there is distinct possibility that the bank will sustain loss if deficiencies are not corrected. On the other hand, performing assets are such which have not ceased to generate income for the bank. Nonetheless, as a matter of prudence, the RBI has directed the banks to make a general provision of a minimum of 0.25% on standard assets w.e.f. the year ending 31-3-2000. This is only, in our opinion, a safety measure or an over-cautious approach to take care of a standard asset becoming non-standard in future. But certainly, the provision for standard asset cannot be equated with a provision for a bad and doubtful debt. That is why, it is prescribed by the RBI that the provision for standard assets need not be netted out from gross advances but should be shown separately as "contingent Provisions against Standard Assets". The head itself is indicative of

the fact that this provision is contingent in nature whereas the provision for non A.P. Grameena Vikas Bank, Warangal.

performing assets is to guard against a loss which is looming large on the bank or for the loss which has already taken place. Therefore, the RBI further prescribes that provision on standard assets should not be reckoned for arriving at net NPAs. The Act itself has given an option to the assessee to make provision for its doubtful or loss assets (first proviso to [section 36\(1\)\(viii\)](#)). We do agree that the bank is bound to follow the RBI guidelines. But the deduction available has to be as per the provisions of the Act only. Accordingly, we uphold the order of the CIT(A) disallowing the deduction in respect of provision made for standard assets.”

7. Since the facts are identical, respectfully following the view taken by the coordinate benches supra we hold that the provision for standard assets is not an allowable deduction and we set aside the order of the Ld.CIT(A) and restore the order of the Ld.AO. The appeal of the revenue is allowed on this ground.

Cross Objection No.53/Viz/2016

8. The assessee filed Cross Objection supporting the order of the Ld.CIT(A). Since, we have allowed the appeal of the revenue cross objections filed by the assessee are dismissed.

ITA No.327/Viz/2016

9. Ground No.1 and 4 are general in nature which does not require specific adjudication.

10. Ground No.2 is related to the provision made against the standard assets u/s 36(1)(viiia) under the head 'provision for bad and doubtful debts'. The assessee made the provision for bad and doubtful debts in aggregate of Rs.6,12,89,928/- which includes provision made against standard assets amounting to Rs.69,37,085/-. This issue was discussed in the earlier order in appeal No.326/Viz/2016 for the assessment year 2010-11 and confirmed the addition made by the AO allowed the appeal of the revenue. Accordingly we hold the issue in favour of revenue and against the assessee. Revenue's appeal on this ground is allowed.

11. The next issue is writing back of excess provision of bad and doubtful debts against non- rural advances. The AO during the assessment proceedings disallowed a sum of Rs.9,57,70,177/- relating to the writing back of the excess provision. During the assessment proceedings, the AO asked the assessee to furnish the provisions created and allowed in respect of rural advances and non-rural advances u/s 36(1)(viiia) in the light of Hon'ble Apex court's decision in the case of Catholic Syrian Bank Ltd(343 ITR 270). The assessee furnished the details according to which the assessee is entitled for deduction u/s 36(1)(viiia) on rural advances and

the in respect of non- rural advances and the excess claim worked out to Rs.10,75,01,184/- as under :

Claim / Allowable Breakup Statement Year wise				
Financial Year	Details	Claim	Allowable	Excess Claim
2006-07		25241116	0	25241116
2007-08		35940626	6771163	29169463
2008-09		1107481	1107481	0
2009-10		26510567	12348065	14162502
2010-11		61289928	22361825	38928103
	Total Provision made	150089718	42588534	107501184

11.1. The AO applied the decision of the Hon'ble Supreme Court in the case of Catholic Syrian Bank (343 ITR 270) and held that the assessee is entitled for deduction u/s 36(1)(viii) only on rural advances but not on the total advances. Accordingly disallowed the sum of Rs.9,57,70,177/-.

12. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) held that till the assessment year 2006-07, the assessee was entitled for deduction u/s 80P hence the assessee gets the relief of Rs.2,52,41,116/- and worked out the excess disallowance at Rs.6,37,79,159/- as under :

A.Y.	Particulars	Amount (Rs.)
2007-08		2,52,41,116
2008-09		2,91,69,463

2010-11	Rs.1,41,62,502 less Rs.47,93,922/- relating to provision of standard assets made during the previous year relevant to the Assessment Year 2010-11 disallowed during assessment u/s 143(3).	93,68,580
	Total	6,37,79,159

The correctness of the above sum requires further verification at the end of the AO. The Ld.CIT(A) has adopted the incorrect figure for the assessment year 2007-08 and did not consider the excess claim for the assessment year 2009-10. The Ld.CIT(A) relied on the decision of the Hon'ble ITAT Bangalore Bench in the case of DCIT, Circle-11(4) Vs. ING Vysya Bank Limited 42 Taxman.com 303, Bangalore and allowed the appeal of the assessee. The Ld.CIT(A) directed the AO to verify the books of accounts of the assessee and if any excess provision is made for bad and doubtful debts the same is to be brought to tax.

13. We have heard both the parties and perused the material placed on record. The assessing officer allowed the provision made on Rural advances excluding the provision for standard assets. The AO restricted the net provision for Bad and Doubtful debts to the extent of provision made on rural advances. The AO is of the view that the assessee is entitled for deduction u/s 36(1)(viiia) only on rural advances and worked out the

excess claim under provision for bad and doubtful debts to the extent of Rs.9,57,70,177/- relating to the assessment year 2007-08 to 2011-12 and the same was added back to the total income. The assessee's case is that the assessee is entitled for provision for bad and doubtful debts not only on Rural debts but also on non-rural advances. He argued that the deduction claimed is within the limit of section 36(a)(viia) and the same is allowable as deduction. The Coordinate Bench of ITAT Bangalore in the case of DCIT, Circle-11(4) Vs.ING Vysya Bank Limited (supra) held that what is to be seen by the AO is whether the provision for bad and doubtful debts is created, whether it is in respect of rural or non-rural advances by debiting profit and loss account and to the extent provision for doubtful debts so created, the assessee is entitled for deduction subject to the upper limit of deduction laid down in the said section. Hon'ble ITAT while delivering the decision considered the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank (343 ITR 270)also. For ready reference, we extract the relevant paragraph of the order of the ITAT in the case of ING Vysya Bank Ltd. Supra which reads as under :

“31. The IT (Amendment) Act, 1986 substituted the present cl. (viia) for the one as substituted by the Finance Act, 1985. These provisions came into effect from 1.4.1987.

'SECTION 36 - OTHER DEDUCTIONS

The section reads as under :

Other deductions.- (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 —

(viii) 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 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 VI-A) 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 Reserve 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 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 account of such institution or corporation, as the case may be, on the last day of the previous year.

(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).

Explanation : For the purposes of this clause—

- (i) "non-scheduled bank" means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949) which is not a scheduled bank;]*
- (ia) "rural branch" means a branch of a scheduled bank or a non-scheduled bank situated in a place which has a population of not more than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year;*
- (ii) "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955, a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959, a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934;*
- (iii) "public financial institution" shall have the meaning assigned to it in section 4A of the Companies Act, 1956 (1 of 1956);*
- (iv) "State financial corporation" means a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporations Act, 1951 (63 of 1951) ;*
- (v) "State industrial investment corporation" means a Government company within the meaning of section 617 of the Companies Act, 1956 (1 of 1956) engaged in the business of providing long-term finance for industrial projects and eligible for deduction under clause (viii) of this sub-section;*
- (vi) "co-operative bank", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank" shall have the meanings respectively assigned to them in the Explanation to sub-section (4) of section 80P.'*

32. The object of the substitution, as explained in para 5 of the CBDT [Circular No. 464, dt. 18th July, 1986](#), was to give the separate deduction, viz., one in respect of rural advances and the other for provision for bad and doubtful debts in general and also to extend the benefit of deduction to all banks including foreign banks.

"Modification in respect of deduction on provision for bad and doubtful debts made by the banks.

5.1 Under the existing provisions of cl. (viia) of sub-s. (1) of s. 36 of the IT Act inserted by the Finance Act, 1979, provisions for bad and doubtful debts made by a scheduled or a non-scheduled Indian bank is allowed as deduction within prescribed limits. The limit prescribed is 10% of the total income or 2% of the aggregate average advances made by the rural branches of such banks, whichever is higher. It had been represented to the Government that the foreign banks were not entitled to any deduction under this provision and to that extent they were being discriminated against. Further, it was felt that the existing ceiling in this regard i.e. 10% of the total income or 2% of the aggregate average advances made by the rural branches of Indian banks, whichever is higher, should be modified. Accordingly, by the Amending Act, the deduction presently available under cl. (viia) of sub-s. (1) of s. 36 of the IT Act has been split into two separate provisions. One of these limits the deduction to an amount not exceeding 2% of the aggregate average advances made by rural branches of the banks concerned. It may be clarified that foreign banks do not have rural branches and hence this amendment will not be relevant in the case of the foreign banks. The other provision secures that a further deduction shall be allowed in respect of the provision for bad and doubtful debts made by all banks not just the banks incorporated in India, limited to 5% of the total income (computed before making any deduction under this clause and Chapter VI-A). This will imply that all scheduled or non-scheduled banks having rural branches would be allowed the deduction upto 2% of the aggregate average advances made by such branches and a further deduction upto 5% of their total income in respect of provision for bad and doubtful debts."

33. To complete the sequence of amendments, we may also make a reference to the Amendment to sec.36(1)(viia) of the Act by the Finance Act, 2013. By the Finance Act, 2013, in section 36 of the Income-tax Act, in sub-section (1), with effect from the 1st day of April, 2014, in clause (vii), the Explanation was numbered as Explanation 1 thereof and after Explanation 1 as so numbered, the following Explanation was inserted, namely:—

"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 (viia) and such account shall relate to all types of advances, including advances made by rural branches;"

34. It can be seen from the history of Sec.36(1)(viia) of the Act that at stage-I the deduction was allowed in respect of any provision for bad and doubtful debts

made by a scheduled bank in relation to the advances made by its rural branches. At this stage the PBDD had to be linked to the advances made by Bank's rural branches. At stage-II of Sec.36(1)(viia), the deduction while computing the taxable profits was allowed of an amount not exceeding ten per cent of the total income (computed before making any deduction under the proposed new provision) or two per cent of the aggregate average advances made by rural branches of such banks, whichever is higher. At this stage also the PBDD had to be created and debited to the profit and loss account but it was not required to be done in relation to advances made by Bank's rural branches and can be in relation to any debt. PBDD need not be in relation to rural advances but can be in relation to any advances both rural and non-rural advances. The two percent AAA made by rural branches of such banks had to be computed and the PBDD made in books has to be in relation to rural advances. The other eligible sum which can be considered for deduction u/s.36(1)(viia) of the Act viz., ten per cent of the total income (computed before making any deduction under the proposed new provision) does not require computation in relation to rural advances. Nevertheless the debit of PBDD to Profit and Loss account is necessary of the higher of the two sums to claim deduction u/s.36(1)(viia) of the Act. If the concerned bank does not have rural branches then they could not claim the deduction. Therefore the deduction was confined only to banks that had rural branches.

35. *At Stage-III of the provisions of Sec.36(1)(viia) of the Act, the deduction allowed earlier was enhanced. The enhancement of the deduction was consequent to representation to the Government that the existing ceiling in this regard i.e. 10% of the total income or 2% of the aggregate average advances made by the rural branches of Indian banks, whichever is higher, should be modified. Accordingly, by the Amending Act, the deduction presently available under cl. (viia) of sub-s. (1) of s. 36 of the IT Act has been split into two separate provisions. One of these limits the deduction to an amount not exceeding 2% (as it existed originally, now it is 10%) of the aggregate average advances made by rural branches of the banks concerned. This will imply that all scheduled or non-scheduled banks having rural branches would be allowed the deduction (a) upto 2% (now 10%) of the aggregate average advances made by such branches and (b) a further deduction upto 5% of their total income in respect of provision for bad and doubtful debts. The further deduction of 5% of total income was available to banks which did not have rural branches.*

36. *Therefore after 1.4.1987, scheduled or non-scheduled banks having rural branches were allowed deduction., (a) upto 2% (now 10%) of the aggregate average advances made by such branches and (b) Schedule or non-scheduled banks whether it had rural branches or not a deduction upto 5% of their total income in respect of provision for bad and doubtful debts. Even under the new provisions creating a PBDD in the books of accounts is necessary.*

37. *Though under Stage-II and Stage-III of the provisions of Sec.36(1)(viia) of the Act, PBDD has to be created by debiting the profit and loss account of the sum claimed as deduction, the condition that the provision should be in respect of*

rural advances is not necessary. At stage-II of the provisions of Sec.36(1)(viia) of the Act, this condition was done away with and it was only necessary to create PBDD in the books of accounts and debit to profit and loss account. The quantification of the maximum deduction permissible u/s.36(1)(viia) of the Act had to be done. Firstly it has to be ascertained as to what is 10% of the aggregate average advances made by rural branches, if the Bank has rural branches, otherwise that part of the deduction u/s.36(1)(viia) of the Act will not be available to the bank. The second part of the deduction u/s.36(1)(viia) has to be ascertained viz., 7.5% seven and one-half per cent of the total income (computed before making any deduction under this clause and Chapter VI-A). The above are the permissible upper limits of deductions u/s.36(1)(viia) of the Act. 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 referred to above, 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.”

14. In the instant case there is no dispute with regard to the creation of provision for bad and doubtful debts and no dispute with regard to the fact that the assessee bank has rural branches and given rural advances. Hence, the case law relied upon by the CIT(A) is squarely applicable to the assessee, hence, we do not see any reason to interfere with the order of the Ld.CIT(A). Accordingly we uphold the order of the Ld.CIT(A). However, there was a mistake in Ld.CIT(A) as discussed in this order earlier which needs verification. The Ld.CIT(A) has directed the AO to verify the provision made in the books of accounts and if it is found any excess provision the same should be brought to tax. Hence, we direct the AO to apply the case law cited (supra) and allow the correct deduction for the relevant assessment years and excess if any claimed by the assessee may be

disallowed. Accordingly, the issue is remitted back to the file of the AO to work out the correct disallowance as per the directions given in this order. The appeal of the assessee on this ground is allowed for statistical purpose.

Cross Objection No.54/Viz/2016

15. Ground No.1 is with regard to the provision for standard assets. Since the order of the CIT(A) is set aside the cross objection filed by the assessee is dismissed.

16. Ground Nos. 2 to 4 are related to the provisions written back in respect of non rural advances u/s 36(1)(viii). As per the detailed discussion made in the appeal, we have upheld the order of the Ld.CIT(A) and remitted the issue back to the file of the AO to re work the correct amount of deduction for the assessment year 2006-07 to 2010-11, hence, the Cross Objection filed by the assessee is allowed for statistical purposes.

17. In the result, the appeals of the revenue are allowed. Cross objections filed by the assessee for the assessment year 2010-11 is dismissed and for the assessment year 2011-12 is partly allowed.

The above order was pronounced in the open court on 4th May, 2018.

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 04.05.2018

L.Rama, SPS

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती / The Assessee - M/s Chaitanya Godavari Grameena Bank, 3rd Floor, Raghu Mansion, 4/1, Brodipet, Guntur – 5200 002
2. राजस्व / The Revenue - ACIT, Circle-2(1), Guntur
3. The Pr.Commissioner of Income Tax, Guntur
4. The Commissioner of Income-Tax(Appeals), Guntur
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM