आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

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.77 & 78/Viz/2018**
(निर्धारण वर्ष**/Assessment Years:2013-14 & 2014-15 respectively)**

ACIT Circle-1(1) Guntur	Vs.	The Guntur District Cooperative Central Bank Ltd. Tenali, Guntur **[PAN : AAATT6101H]**
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

CO Nos. 27 & 28/Viz/2018
(Arising out of I.T.A Nos. 77 & 78/Viz/2018)

The Guntur District Cooperative Central Bank Ltd. Tenali, Guntur **[PAN : AAATT6101H]**	ACIT Circle-1(1) Guntur
(अपीलार्थी/ Appellant)	**(प्रत्यर्थी/ Respondent)**

राजस्व की ओर से/ Revenue by	:	Shri V.Appala Raju, DR
निर्धारिती की ओर से/ Assessee by	:	Shri G.V.N.Hari, AR
सुनवाई की तारीख / Date of Hearing	:	24.07.2018
घोषणा की तारीख/Date of Pronouncement	:	31.07.2018

आदेश /O R D E R

PER D.S. SUNDER SINGH, Accountant Member:

These appeals are filed by the revenue against the orders of the Commissioner of Income Tax (Appeals) [CIT(A)]-1, Guntur vide I.T.A.No.22/2016-17/CIT(A)-1/GNT and I.T.A.No.10169/2016-17/CIT(A)-1/GNT dated 01.02.2018 and Cross Objections filed by the assessee in support of the orders of the CIT(A) for the assessment year 2013-14 and 2014-15.Since the issues involved in these appeals are common, all the appeals are clubbed, heard together and disposed off in a common order for the sake of convenience as under.

2. During the assessment proceedings, the Assessing Officer (AO) found that the assessee debited the expenditure of Rs.76,15,159/- towards premium paid to LIC under 'Group Gratuity Scheme'. As per Part 'C' to Schedule-IV of the Income Tax Act (hereinafter called as 'Act'), any such contributions should be under a scheme duly approved by the Chief Commissioner or Commissioner of Income Tax, for allowing as eligible deduction. The contributions made for Group Gratuity Fund approved by an appropriate authority are only allowable expenditure under the

provisions of Sec.36(1)(v) of the Act. In the instant case, the assessee made contribution to Group Gratuity Scheme of LIC of India which does not have approval of concerned authority. Therefore, the sum of Rs.76,15,159/- was disallowed u/s 36(1)(v) of the Act and added back to the income. This issue is involved for the assessment years 2013-14 and 2014-15.

3. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) followed his own order for the earlier years in the assessee's own case and allowed the actual payment u/s 37(1) of the Act. For ready reference, we extract relevant part of the order of the Ld.CIT(A) which reads as under :

> *" During the course of appellate proceedings, the Ld.AR of the appellant brought to the notice that on identical issue in the earlier years, the Ld.CIT(A) granted relief and copies of the orders were placed for consideration. The appellant also relied on several decisions. This issue was contested by the appellant for the assessment years 2008-09, 2009-10 & 2012-13 and the Ld.AR also clarified that for the assessment year 2010-11 & 2011-12 there was no such as issue. The Ld.AR of the appellant filed copies of the orders of the Ld. CIT(Appeals), Guntur for the assessment years 2008-09, 2009-10 & 2012-13. On careful consideration of these orders and also the material facts considered by the Ld. CIT(Appeals) in those years, it is noticed that the issue is identical and I have no reason to deviate from the decision of my predecessors. The issue was decided by the Ld. CIT(Appeals)-I, Guntur for the assessment year 2012-13 and operating portion of the order is as under:*
>
> > *"I have gone through facts of the case, contents of the assessment order, written submissions of the assessee and the ease laws preferred and relied by the assessee. The assessee has claimed expenditure of As. 56, 62,325/- towards Premium' paid to LIC under*

'Group Gratuity Scheme'. As per part 'C' to Schedule-TV of the Act, any such contributions should be under a scheme duly approved by the Chief Commissioner or Commissioner of income Tax, for allowing as eligible deduction. Any contributions made for gratuity-fund approved by an appropriate authority only are allowable expenditure under the provisions ofsec.36(1)(v) of the Income Tax Act, 1951. In the instant case, the assessee is contributing for group gratuity scheme to LIC of India which does not have approval of the concerned authority. Hence, added to the total income.

The Hon 'ble ITAT, Hyderabad B-Bench, in the case of international Ore and Fertilizer (India) (P) Lid., Vs ITO (3 ITO Hyd., 593) has held that payment to LIC Group Gratuity Scheme is in the nature of business expenditure deductible under the provisions of Section 37 of the Act and therefore, is to be allowed as it is laid out wholly and exclusively for the purposes of the business. The Hon'ble ITAT has in this case has observed that provisions of section 40A'7) of the Act would apply only in respect of provision made for gratuity in case of unapproved finds and not actual payments made, which are covered by section 37 of the Act. The similar view has been taken by the Ho 'ble ITAT, Delhi "B" Bench in the case of ITO vs MMTC Ltd, 3 ITD (Del) 305. Further, the Hon'ble ITAT in the case of DCI?', Circle-3(2), Hyderabad Vs Sri Krishna Drugs Ltd., in ITA No. 198/Hyd/2011, dated 16.12.2011,has also held that payment to Group Gratuity Fund of LIC of India is allowable as business expenditure u/s 37(l) of the Act, even though not recognized by the Commissioner of income Tax. The Hon' ble Tribunal has relied on the decision of the Andhra Pradesh High Court in the case of Warner Hindustan Ltd, while allowing the payment of premium to the LIC group Gratuity Fund.

In view of the detailed discussion of the facts and court judgments the payment made to Group Gratuity Fund of LIC of India, is allowable as business expenditure u/s 37(1) of the Act, even though it is not recognized by the Commissioner of Income Tax. Hence, the addition made by the A.O. is deleted and assessee 's ground of appeal is allowed."

In view of the above and considering the decision, the addition made by the Assessing Officer is hereby deleted."

4. Aggrieved by the order of the CIT(A), the revenue filed appeal before the Tribunal. During the appeal hearing the Ld.AR argued that issue is squarely covered in favour of the assessee in the case of Dist. Co-operative Central Bank, Eluru in I.T.A. Nos. 49 & 50/Viz/2012 for the assessment years 2007-08 and 2008-09 dated 25.01.2018. The ITAT in the case supra, allowed the appeal of the asessee, following the decisions of ITAT, Hyderabad and ITAT, Ahmedabad benches. For the sake of clarity and convenience, we extract relevant para No.8 to 10 of the ITAT order which reads as under.

> *8. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The assessee is a cooperative bank and created the group gratuity fund/trust of the District Co-operative Central Bank Employees but the same was not yet approved by the CIT. Pending receipt of approval, the assessee had made application to LIC of India under pension and group schemes, and taken policy under Master proposal for group for payment of gratuity on 1.7.2003, and is contributing the sums to the LIC of India towards the group gratuity on actuarial basis. The assessee has not made any provision and made the payment before filing the return of income. On happening the event, the assessee bank is receiving the gratuity payment from the LIC which is being paid to the employee concerned and no further deduction is being claimed by the assessee as expenditure. Thus no double deduction is claimed. The expenditure claimed by the assessee under group gratuity scheme to LIC of India was allowed in the earlier years prior to 2007-08. During the previous year relevant to the assessment year 2007-08, the A.O. disallowed the same since the payment made to LIC of India towards group gratuity scheme is not covered by section 36(1)(v), 40A(7)(b) & 40A(9) of the Act because the assessee has not satisfied the conditions. The argument of the assessee is that since the payments were made to LIC of India in Master policy scheme, the premiums contributed to the LIC of India is allowable deduction and relied on the decisions of coordinate bench of Hyderabad in the case of Capital IQ Information Systems (India) Pvt. Limited (supra). The Hon'ble ITAT Hyderabad Bench while deciding the issue on similar facts held as under:*

8. We have heard the arguments of the parties, perused the material on record and have gone through the orders of the authorities below. We find that the issue is squarely covered by the decision of the ITAT, Hyderabad in the case of M/s. Sri Krishna Drugs Ltd. Vs. Department of Income-tax in ITA No.2126/Hyd/2011 for AY 2007.08 dated 11.4.2012, where the JM was one of the party. The Tribunal in the said case held as follows:

3. The second ground raised by the Revenue is as under:

"The learned CIT(A) erred in holding that unrecognised gratuity fund is allowable u/s. 37(1),when the case is hit by the provisions of section 40A(9) and especially when the assessee failed to comply with the provisions of section 36(1)(v)."

3. After hearing both the sides, we find this issue is covered in favour of the assessee and against the Revenue in I.T.A. No. 198/Hyd/2011 in assessee's own case for A.Y. 2006-07 order dated 16.12.2011 wherein this Tribunal held as follows:

"3. After hearing both the parties, we are of the opinion that similar issue came up for consideration in assessee's own case for assessment year 2002-03 in I.T.A. No. 349/Hyd/2006. The Tribunal decided the issue in favour of the assessee vide its order dated :15.2.2008 by holding as follows:

"4. We have considered rival submissions on either side and also perused the material available on record. Admittedly, the Group Gratuity Scheme was not recognised by the Commissioner of Income-tax. This fact is not in dispute. We have carefully gone through the provisions of sec. 36(1)(v) of the Income-tax Ac. Sec. 36(1)(v) reads as follows:

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

(v) any sum paid by the assessee asan employer by way of contribution towards an approved gratuity fund created by him for the exclusive benefit of his employees under an irrevocable trust".

We have also carefully gone through the provisions of sec. 37 of the Income-tax Act. Sec. 37 provides for deduction of expenditure not being in the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenditure of the assessee, but laid out and expended wholly and exclusively for the purposes of the business or profession, while computing income chargeable to tax. The main contention of the Revenue is that under sec. 36(1)(v), the payment made by the assessee as employer could be allowed only in respect of approved gratuity fund. Since the Group Gratuity Scheme is not approved by the CIT, according to the Revenue, it cannot be allowed. However, the contention of the assessee is that in view of the judgement of the Madras High Court in the case of Premier Spinning Mills Ltd. (supra) and the judgement of the jurisdictional High Court in the case of Warner Hindustan Ltd. (supra), it has to be allowed.

5. We have carefully gone through the judgement of the jurisdictional High Court in the case of Warner Hindustan Ltd. (supra). In the case before the jurisdictional High Court, the Provident Fund was not approved by the CIT. The Andhra Pradesh High Court after referring to the judgement of the Bombay High Court in Tata Iron & Steel Co. Ltd. v. D. V. Bapat, ITO (1975) 101 ITR 292, and the judgement of the Supreme Court in Metal Box Company of India Ltd. vs. The Workmen (1969) 73 ITR 53, held that the amount paid towards an unapproved gratuity fund can be deducted under sec. 37 of the I.T. Act, though not under sec. 36(1)(v). In view of this judgment of the jurisdictional High Court, in our opinion, even if any payment is made to an unapproved gratuity fund, it has to be allowed under sec. 37. By respectfully following the binding judgement of Andhra Pradesh High Court in the case of warner Hindustan Ltd. (supra), we uphold the order of the CIT(A).

In view of the above discussion, we dismiss the ground taken by the Revenue."

5. In view of the above decision of this Tribunal, the ground raised by the Revenue is dismissed."

9. Since the issue under consideration is materially identical to the one decided by the ITAT in the case of M/s. Sri Krishna Drugs Ltd. (supra), respectfully following the same, we set aside the order of the CIT(A) and allow the ground of appeal of the assessee."

9. Similarly, ITAT Ahmedabad Bench in the case of Baroda Gujarat Grameen Bank cited (supra) held that the payment made to LIC of India is not a provision but it is actual expenditure claimed under the gratuity contribution. Hon'ble ITAT Ahmedabad Bench held that since assessee has not claimed the provision and claimed on actual basis, the expenditure is allowable deduction. For ready reference, we reproduce para Nos.4 & 5 of the order of the Hon'ble ITAT Ahmedabad Bench which reads as under:

"4. We have considered the rival submissions and material available on record. Section 40A (7) of the IT Act provides that subject to provision of clause (b), no deduction shall be allowed in respect of any provision made by the assessee for payment of gratuity to his employer on their retirement or on termination of their employment for any reason. It is clear from the above provision that section 40A (7) of the IT Act would apply in respect of the provision only. However, in the case of the assessee, the assessee claimed deduction of the expenditure on account of actual expenses claimed under the head gratuity contribution. ITAT Ahmedabad Bench in the case of New Bharat Engineering Works (Jam) Ltd. (supra) held ***"Disallowance under s. 40A(7) - Gratuity – Actualpayment of funds to LIC and not mere provision - Not hit by s. 40A(7) - CIT vs Gujarat Machine Tools (ITA 666/A hd/1985) followed".*** *Hon'ble Punjab & Haryana High Court in the case of CIT Vs Bitoni Lamps Ltd. 144 Taxman 33 held that* ***"Section 40A(7) of the Income-tax Act, 1961 - Business disallowance - Gratuity - Assessment year 1979-80 - Assessee-company claimed deduction under section 40A(7) (b) (i) on account of gratuity actually deposited in fund created by it - Whether such a claim could only have been disallowed if it had been proved that gratuity, in respect of which said payment had been made, had not become payable during previous year - Held, yes - Whether in absence of such a case made out by revenue, Tribunal was right in holding that grant of approval of gratuity fund was not relevant for purpose of instant case as said deduction was not being claimed on account of any provision and amount of gratuity was an allowable deduction - Held, yes".***

5. Considering the above aspects, we do not find any infirmity in the order of the learned CIT(A) in deleting the addition. There is no merit in the departmental appeal. Same is accordingly dismissed."

10. In the case of Verizon Data Services India Pvt. Ltd. (supra) the coordinate bench of Madras held that payment made to gratuity fund maintained with LIC has no control over the irrevocable trust created exclusively for the benefit of employees and deduction shall be allowed. The coordinate bench of Madras while deciding the appeal relied on the decision of Hon'ble Madras High court in the case of Textool India Pvt. Limited (supra) (civil appeal No.447 of 2003). In the instant case the assessee has made the payments to the LIC towards group gratuity scheme directly in approved schemes. The assessee has also obtained the policy in favour of the bank. The assessee has no control over the funds contributed to LIC towards the gratuity. The assessee is receiving the gratuity payment directly from the LIC of India as per the scheme which is paid to the employee on happening of the event i.e. retirement or death or resignation. Therefore, the facts of the assessee's case are squarely covered by the decisions cited supra. The coordinate bench of Hyderabad while delivering the ruling relied on the decision of jurisdictional High Court in the case of Warner Hindustan Ltd. Since the facts are identical, respectfully following the view taken by the coordinate benches, we hold that the assessee is entitled for the deduction for payment of gratuity to LIC and accordingly, we set aside the order of the lower authorities and allow the appeal of the assessee.

8.1 Since the facts are identical, respectfully following the view taken by this Tribunal in the case cited, we hold that the actual payment made to Group Gratuity Fund of LIC needs to be allowed as deduction. Accordingly, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue.

9. For the assessment year 2014-15, apart from payment of LIC Group Gratuity, there is one more issue on the addition of provision for standard assets. The assessee has debited an amount of Rs.37 lakhs towards standard assets. The AO disallowed the same u/s 37(1) since the provision for standard assets is not an allowable deduction.

10. Aggrieved by the order of the AO, the assessee went on appeal before

the CIT(A) and the Ld.CIT(A) deleted the addition made by the AO following the decision of ITAT Cuttack Bench in the case of Mayurbhanj Central Cooperative Bank Ltd.

11. Aggrieved by the order of the CIT(A), the revenue filed appeal before the Tribunal. During the appeal hearing, Ld.DR submitted that on identical facts, this Tribunal considered the issue of provision for standard assets in detail in the case of ACIT, circle-2(1) vs Chaitanya Godavari Grammena Bank in ITA No.326 and 327/2016 dated 04/05/2018and decided the issue against the assessee. Since the facts are identical, the Ld.DR argued that the case is squarely covered by the decision of this Tribunal against the assessee. The Ld.AR did not bring any other case law of higher judiciary to controvert the decision relied upon by the Ld.DR.

12. We have heard both the parties and perused the material placed on record and gone through the orders of the authorities below. This Tribunal has considered the issue on identical facts in the case of Chaitanya Godavari Grameena Bank supra and decided the issue against the assessee and in favour of the revenue. For the sake of clarity and convenience, we extract relevant part of the Tribunal which reads as under :

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)(viia) 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)(viia) 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)(viia) 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)(viia) 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 (viia) 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 section36(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. <u>ASSET CLASSIFICATION</u>

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 <u>Substandard Assets</u>

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) Theprovisions 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 cent[1]

(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)(viia)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)(viia) 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)(viia). 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 a side 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.

13. Since the facts are identical, respectfully following the view taken by the Coordinate Bench, we hold that the provision for standard assets is not

allowable deduction and accordingly we set aside the order of the Ld.CIT(A) and restore the order of the AO. The appeal of the revenue is allowed on this ground.

14. Cross Objections (CO) of the assessee are supportive of the orders of the Ld.CIT(A).CO No. 27 for the assessment year 2013-14 stands allowed as per the discussion made in the appeal No.77/Viz/2018. CO No.28 for the assessment year 2014-15 is partly allowed.

15. In the result, the revenue's appeal for the assessment year 2013-14 is dismissed and the CO of the assessee is allowed, the appeal for the assessment year 2014-15 of the revenue is partly allowed and the CO of the assessee is partly allowed.

The above order was pronounced in the open court on 31st July, 2018.

Sd/-	Sd/-
(वी.दुर्गाराव)	**(डि.एस. सुन्दरसिंह)**
(V. DURGA RAO)	**(D.S. SUNDER SINGH)**
न्यायिकसदस्य/JUDICIAL MEMBER	**लेखासदस्य/ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam
दिनांक /Dated : 31.07.2018
L.Rama, SPS

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

1. निर्धारिती/ The Assessee- The Guntur District Cooperative Central Bank Ltd., Tenali, Guntur
2. राजस्व/ The Revenue –Income Tax Officer, Ward-3, Rajahmundry
3. The Pr.Commissioner of Income Tax, Guntur
4. The Commissioner of Income Tax(Appeals)-1, Guntur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM