

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
INDORE BENCH, INDORE  
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.386/Ind/2017  
Assessment Year: 2012-13**

Jila Sahakari Kendriya Bank Maryadit, Mhow-Neemuch Road, Mandsaur (M.P)	Vs.	DCIT, Ratlam
(Appellant)		(Respondent )
PAN No.AAATJ2383F		

Revenue by	Shri Lalchand, CIT
Assessee by	Shri S.S. Deshpande, CA
Date of Hearing	<b>25.7.2018</b>
Date of Pronouncement	<b>17.8.2018</b>

**ORDER**

**PER MANISH BORAD, AM.**

This appeal filed by the assessee pertaining to the A.Y. 2012-13 is directed against the order of Id. Commissioner of Income-tax (Appeals), Ujjain dated 06.02.2017 which is arising out of the order u/s 143(3) of the Income Tax Act dated 11.03.2015 passed by DCIT, Ratlam.

2. Assessee filed has raised following grounds of appeal;

- 1. That Ld. CIT(A) has erred in maintaining the addition of Rs.1,42,00,000/- being the special reserve created by the Bank.*
- 2. It was submitted before the Ld. CIT(A) that the reserve is to be considered u/s 36(1)(viii) and the assessee is entitled to deduction of Rs. 21.70 crores against which this reserve may be considered. The reserve be considered having been made u/s 36(1)(viii) and hence the deduction may please be allowed.*
3. Briefly stated facts relating to the grounds raised in this appeal, as culled out from the records are that the assessee is a cooperative society doing the business of banking in the district of Mandsaur. The return of income was filed declaring the income of Rs.5,72,83,218/-. The accounts are audited. While preparing the P&L a/c, the bank has made the provision for Bad and Doubtful Debts of Rs.3,00,00,000/- and Special Reserve Fund of Rs.1,42,00,000/-. During the course of assessment it was submitted before the Ld.AO that the Special Reserve Fund is made for the claim u/s 36(1)(viii) of the Income Tax Act (In short referred as the Act). The same was @20% of the profit (5,76,38,168/- + 1,42,00,000/- = 7,18,38,168/-). While framing the assessment the Ld. AO observed that the assessee is not entitled to a deduction u/s 36(1)(viii) since the bank has not given the long term finance for

development of agriculture. On this ground he made the addition of Rs.1,42,00,000/- while computing the total income. In appeal it was submitted before the Ld.CIT(A) that Rs.1,42,00,000/- has been disallowed treating it to be a claim u/s 36(1)(viii) but the same should be considered u/s 36(1)(viia). It was submitted before the Ld.CIT(A) that the assessee is entitled to claim the deduction u/s 36(1)(viia) of Rs.9.2 crores and as such the special reserve created be considered as a reserve for bad and doubtful debts and the claim should be allowed u/s 36(1)(viia) of the Act. The Ld. CIT(A) dismissed the appeal on the ground that the deduction would be limited only to the extent of the reserve created for bad and doubtful debts and it is mandatory to prepare the account as provision for bad and doubtful debt and as the assessee has not made the provision under this head in the P&L account, as such the assessee is not entitled to a claim u/s 36(1)(viia).

4. Ld. Counsel for the assessee submitted that the section 36(1)(viia) of the Act provides for the deduction in respect of the provision for bad and doubtful debt to the extent of 7.5% of the profit and the amount not exceeding 10% of the aggregate average

advances made by the rural branches. As per this limit the total deduction allowable to the assessee is Rs.21.7 crores out of which there is a reserve of Rs.12.5 crores which is already allowed. Thus the assessee is entitled to a further deduction of Rs.9.2 Crores. Section 36(1)(viii) of the Act prescribes the deduction for special reserve created for long term finance to agricultural development. The assessee is not entitled to this deduction since there is no long term finance for agricultural development. It was through mistake the reserve is created under the head special reserve and it was claimed during the course of the assessment proceedings that the same is made u/s 36(1)(viii) of the Act. However, the same should have been claimed u/s 36(1)(viia) of the Act and should have been considered and allowed under that section. The Ld.A.O disallowed the same without confronting the assessee about the said disallowance. However, before the Ld. CIT(A) the claim was specifically made u/s 36(1)(viia) of the Act. The special provision made by the assessee is also for bad and doubtful debt. The claim made mentioning the wrong section should not deprive the assessee for allowing the same while computing the income if the same is allowable. It is submitted that the law is very clear that it is the

duty of the AO to allow deduction even though not claimed by the assessee if from the facts investigated at the time of assessment, it is found that the assessee is entitled to a particular relief in law. It is obligatory on the part of the AO to draw attention of the assessee to the lawful relief or deduction. The attention is drawn to the following decision:

1. CIT vs Archana Dhanwate 136 ITR 355 (BOM)
2. CIT vs KN Oil Industries 142 ITR 13 (MP)
3. Nathmal Bankatlal Parikh vs CIT 122 ITR 168
5. Per contra The Ld. Departmental representative submitted that the assessee has not claimed the deduction under the correct section not is a nature of expenditure similar because the assessee has claimed the expenditure towards special reserve fund created for long term finance and now assessee is pleading that it may be allowed deduction for provision for bad and doubtful debts u/s 36(1)(viiia). The Ld. Departmental Representative objecting to the contentions of Ld. Counsel for the assessee referring and relying following judgments;

1. IPCA Laboratory Ltd V/s DCIT (2004) 135 Taxman 594 (SC)

2. CIT V/s N.C. Budhraj & Co. (1993) 70 Taxman 312(SC)

3. Pandian Chemicals Ltd V/s Commissioner of Income Tax  
(2003) 129 Taxman 539 (SC)

6. We have heard the rival contentions, perused the records placed before us and also gone through the judgments referred and relied by both the parties carefully. Assessee's sole grievance relates to the addition of Rs.1,42,00,000/- maintained by Ld. CIT(A) confirming the view taken by the Ld.A.O. The issue in narrow compass is that the assessee claimed deduction u/s 36(1)(viii) of the Act of the Act towards specific reserve created for the purpose of providing long term finance for agriculture development in India. The amount of specific reserve was calculated at Rs.1,42,00,000/- which was within the permissible limit of 20% of net profit before making deduction for special reserve fund at Rs.7,18,38,168/-. It has been duly reflected in audited balance sheet under the specific head "Special Reserve Fund" placed at page-15 of the paper book. Subsequently during the assessment proceedings as well as before Ld.CIT(A) assessee conceded to the fact that it is not eligible to

claim the deduction u/s 36(1)(viii) of the Act allowing it to create special reserve fund as it has not given any long term finance for development of agriculture and the deduction was wrongly claimed u/s 36(1)(viii) of the Act.

7. Thereafter during the appellate proceedings assessee took the plea that it is eligible for the deduction u/s 36(1)(viiia) which provides for deduction in respect of provisions for bad and doubtful debts to the extent of 7.5% of the profit and the amount not exceeding 10% of the aggregate average advances made by the rural branches. Amount of such provision which the assessee could have claimed is computed at Rs.21.70 crores out of which assessee had already made provision of Rs.12.5 crores (including Rs.3 crores made during the year under appeal in the profit and loss account) leaving behind the remaining amount of Rs.9.2 crores which could be provided. The assessee's plea is that the deduction of Rs.1.42 crores pertaining to specific reserve may be allowed u/s 36(1)(vii) of the Act as there still remains an amount of Rs.9.2 crores which the assessee could have legally claimed. Assessee has referred to

various judgments which in our view do not apply to the facts of the case as the same are distinguishable.

8. To adjudicate this issue relating to special reserve u/s 36(1)(viii) vis-à-vis provision for bad and doubtful debts as provided in section 36(1)(vii) of the Act, we would first like to reproduce relevant provision.

**Section 36(1)(vii)** 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 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 <sup>3</sup>[*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:

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);
- (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) :

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;

- <sup>4</sup>[(d) a non-banking financial company, 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 (23 of 1955), a subsidiary bank as

defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);

- (iii) "public financial institution" shall have the meaning assigned to it in section 4A<sup>5</sup> 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<sup>6</sup> 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](#);
- <sup>7</sup>[(vii) "non-banking financial company" shall have the meaning assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);]

**Section 36(1)(viii)** in respect of any special reserve created and maintained by a specified entity, an amount not exceeding twenty per cent of the profits derived from eligible business computed under the head "Profits and gains of business or profession" (before making any deduction under this clause) carried to such reserve account:

Provided that where the aggregate of the amounts carried to such reserve account from time to time exceeds twice the amount of the paid up share capital and of the general reserves of the specified entity, no allowance under this clause shall be made in respect of such excess.

*Explanation.*—In this clause,—

(a) "specified entity" means,—

- (i) a financial corporation specified in section 4A<sup>8</sup> of the Companies Act, 1956 (1 of 1956);
- (ii) a financial corporation which is a public sector company;
- (iii) a banking company;

- (iv) a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank;
  - (v) a housing finance company; and
  - (vi) any other financial corporation including a public company;
- (b) "eligible business" means,—
  - (i) in respect of the specified entity referred to in sub-clause (i) or sub-clause (ii) or sub-clause (iii) or sub-clause (iv) of clause (a), the business of providing long-term finance for—
    - (A) industrial or agricultural development;
    - (B) development of infrastructure facility in India; or
    - (C) development of housing in India;
  - (ii) in respect of the specified entity referred to in sub-clause (v) of clause (a), the business of providing long-term finance for the construction or purchase of houses in India for residential purposes; and
  - (iii) in respect of the specified entity referred to in sub-clause (vi) of clause (a), the business of providing long-term finance for development of infrastructure facility in India;
- (c) "banking company" means a company to which the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in section 51 of that Act;
- (d) "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;
- (e) "housing finance company" means a public company formed or registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes;
- (f) "public company" shall have the meaning assigned to it in section 3<sup>9</sup> of the Companies Act, 1956 (1 of 1956);
- (g) "infrastructure facility" means—
  - (i) an infrastructure facility as defined in the *Explanation* to clause (i) of sub-section (4) of section 80-IA, or any other public facility of a similar nature as may be notified by the Board in this behalf in the Official Gazette and which fulfils the conditions as may be prescribed<sup>10</sup>;
  - (ii) an undertaking referred to in clause (ii) or clause (iii) or clause (iv) or clause (vi) of sub-section (4) of section 80-IA; and

- (iii) an undertaking referred to in sub-section (10) of section 80-IB;
- (h) "long-term finance" means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than five years;

9. Provision of section 36(1)(viia) relates to provision for bad and doubtful debts which, certain category of assessee's have been referred in the section are allowed to claim the expenditure as in the nature of business as they engaged in to, regular bad debts occur.

10. Now from the perusal of section 36(1)(viii) of the Act, we find that it is in respect of specific reserve which is created by the financial institutions for providing long term finance. Specific reserve is not an expenditure but it is an apportionment of the income and statue in order to promote long term finance in various sectors for the benefit of general public of the country gives the benefit of deduction to claim 20% of the available profits to be accumulated under the head special reserve and the claimant is duty bound to use such specific reserves only for the aforesaid purpose for which it has been made and in case of any default the same needs to be brought to tax. From above discussions we are of the view that both the section 36(1)(viia) and 36(1)(viii) of the Act deals with two distinct items namely an expenditure in the name of

provision for bad and doubtful debts u/s 36(1)(viia) of the Act and in the nature of income u/s 36(1)(viii) of the Act which is set apart for a specific purpose. In our view both the items expressed in these two sections i.e. 36(1)(viia) and 36(1)(viii) of the Act are different and cannot be equated to each other.

11. Now coming to the issue raised in the instant appeal we find that the Ld.CIT(A) has sustained the disallowance observing as follows;

*“4.2 Ground No.2: Through this ground of appeal the appellant has challenged the addition of Rs.1,42,00,000/- on account of disallowance of deduction u/s 36(1)(viii) of the I.T. Act. The appellant had claimed deduction of Rs.1,42,00,000/- on account of special reserve u/s 36(1)(viii) of the I.T. Act. The provision is in expenditure relating to a particular account period but not falling due on the date of filing financial statements. Since the expenditure relates to particular financial year, a provision was made against revenue generated in said accounting period failing which financial statement could not be shown free and fair view. The provision of expenditure could be allowed as deduction only if liability accrued as on date of making provision and it is not a contingent liability. The*

*deduction under the section would be entitled only in case of provision for bad and doubtful debts made by the bank. The deduction under the section is to be allowed by way of provision for bad and doubtful debts which need to be created and reflected in balance sheet. The deduction would be limited only to extend of the reserve created by way of such provision. It is therefore mandatory to prepared the account “provision for bad and doubtful debts accounts” which automatically would need to the reserve on account of such provision in the balance sheet. The appellant has not made any provision for bad and doubtful debts and P&L account. The appellant has made the provision as special reserve fund which is meant for long term finance. The appellant is engaged in the short term finance. Therefore, the appellant is not entitled for deduction u/s 36(1)(viii) of the I.T. Act. Therefore, the appellant is not entitled for deduction u/s 36(1)(viii) of the I.T Act. Therefore, the addition made by the AO amounting to Rs.1,42,00,000/- is confirmed. The appeal on this ground is dismissed”.*

12. In view of above discussion about the nature of items dealt in both the sections i.e. 36(1)(viia) and 36(1)(viii) and examining them in the light of the facts as well as the findings of Ld.CIT(A) we find

merits in the finding of Ld.CIT(A) for the reason that the assessee made an intentional and well thought after claim u/s 36(1)(viii) of the Act and made necessary accounting entries in the books of accounts and also depicting it under the “Special Reserve Fund” head in the audited balance sheet. The assessee after becoming aware of the fact that it is not eligible for such deduction u/s 36(1)(viii) of the Act, it changed its stand and now is pleading that the set off may be given u/s 36(1)(viia) of the Act relating to provision for bad and doubtful debts giving the reason that it still has unutilized limit of Rs.9.2 crores. We fail to understand how an item of income can be equated to an item of expenditure. By no canon can be given such set off more so section 36(1)(viia) of the Act only provides a cap but nowhere gives the blanket permission to claim the expenditure for provision to the extent mentioned therein. The assessee or any other person being eligible for such deduction under the provision of section 36(1)(viia) may make provision for bad doubtful limits within the limit prescribed in this section. The assessee in the instant case has made a certain amount of provision after making necessary calculations which have been duly certified by the auditors based on the debts given by the assessee

and the probability of the debts becoming paid. At this juncture the assessee cannot be allowed to add some more amount to the amount calculated at the time of finalizing the financial statement just for taking the benefit of the provision. Benefits and deductions/exemptions provided in the statute i.e. Income Tax Act are not in the nature of “charity” that anyone can come forth and claim. A person needs to prove with evidences, facts and corroborative action to prove that it is entitled to a benefit/deduction/ exemption provided in the Act. In the instant case the assessee has tried to equate the apportionment of profit against an expenditure for provision for bad and doubtful debts which in our view is not possible.

13. We therefore in the facts and given circumstances of the case are unable to accept the contentions of Ld. Counsel for the assessee and therefore are not inclined to make any interference in the findings of Ld.CIT(A). In the result Ground No.1 & 2 raised by the assessee are dismissed.

14. Ground No.3 is general in nature which needs any adjudication.

15. In the result appeal of the assessee is dismissed.

The order pronounced in the open Court on 17.8.2018.

Sd/-

Sd/-

**( KUL BHARAT)**  
**JUDICIAL MEMBER**

**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

दिनांक /**Dated : 17 August, 2018**

**/Dev**

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/  
DR, ITAT, Indore/Guard file.

By order

**Private Secretary/DDO, Indore**