

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
'B' BENCH, MUMBAI**

BEFORE SHRI M.BALAGANESH, AM

&

SHRI RAVISH SOOD, JM

**ITA No.3473/Mum/2019
(Assessment Year : 2015-16)**

M/s. Bank of India 8 th Floor, Taxation Department, Star House, C-5, G Block Bandra-Kurla Complex, Bandra (E) Mumbai – 400 051	Vs.	The Asst. Commissioner of Income Tax-2(1)(1) Mumbai
PAN/GIR No. AAACB0472C		
(Appellant)	..	(Respondent)

Assessee by	Shri C. Naresh
Revenue by	Shri Rahul Raman, CIT DR
Date of Hearing	05/11/2020
Date of Pronouncement	08/12/2020

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.3473/Mum/2019 for A.Y.2015-16 preferred by the order against the revision order of the Id. Pr. Commissioner of Income Tax (Appeals)-2, Mumbai u/s.263 of the Act dated 15/03/2019 for A.Y.2015-16.

2. The only issue to be decided in this appeal is as to whether the Id. Pr. Commissioner of Income Tax (PCIT) was justified in invoking his revisionary jurisdiction u/s.263 of the Act in the facts and circumstances of the instant case with regard to provision for bad and doubtful debts u/s. 36(1)(viiia) of the Act.

3. We have heard rival submissions. We find that the Id. DR placed reliance on the order of the Id. Pr.CIT u/s.263 of the Act. We find that assessee had filed its return of income for A.Y.2015-16 on 30/11/2015 declaring total income of Rs.1124,60,27,095/- and book profit of Rs.973,05,87,429/-. The revised return of income was filed by the assessee on 25/03/2017 revising the total income to Rs.1149,86,91,658/- and book profit of Rs.937,00,35,558/-. In the revised return of income the assessee bank has claimed deduction u/s.36(1)(viiia) of the Act to the tune of Rs.2926,41,40,303/-. We find that assessee had filed detailed notes to the computation of total income alongwith return of income wherein in para 1.1, a detailed note was given with regard to deduction in respect of bad debts written off u/s.36(1)(vii) of the Act which also contained a tabulation stating the details of opening balance claimed u/s.36(1)(viiia), bad debts written off and closing balance of provision for bad and doubtful debts for the period from A.Y.1995-96 to A.Y.2015-16. Apart from that the assessee had also filed a separate note justifying its claim of deduction u/s.36(1)(viiia) of the Act alongwith return of income. These details are enclosed in pages 14 & 15 of the paper book filed before us. We also find that the Id. AO vide notice u/s.142(1) of the Act had issued a questionnaire dated 16/11/2017 to the assessee during the course of assessment proceeding wherein in question No.5 & 6 thereon, he had raised query as under:-

“Question No.5 note on provision for bad debts calculations as to how the claim is made. Details of claim of bad debts written off u/s.36(1)(vii), non-performing investments written off, business loss written off alongwith relevant calculations. Explain its allowability.”

“Question No.6 – “Branches considered as “rural branch” alongwith documents justifying the same. Provide details of rural advances against which deduction u/s.36(1)(viii) is made (if any) alongwith relevant calculations.”

3.1. Pursuant to these questionnaires, the assessee had filed a reply vide authorized representative letter dated 28/02/2018 in point 1 d wherein in Annexure-4, the assessee had filed a detailed note with regard to the query raised by the Id. Assessing Officer. These detailed notes are enclosed in pages 36 and 37 of the paper book filed before us. For the sake of brevity, the same are not reiterated herein. The Id. Assessing Officer after examining these details and the reply given by the assessee and considering the prevailing legal position with regard to allowability of deduction u/s.36(1)(vii) and 36(1)(viii) of the Act, allowed the deduction to the assessee and completed the assessment.

3.2. We find that the Id. PCIT wanted to impose another view on the same subject matter in the revision proceedings u/s.263 of the Act. Infact, the same reply which was already filed before the Id. Assessing Officer was again filed before the Id. PCIT. We find that Id. PCIT held in his order passed u/s.263 as under:-

“5.3 In view of the above discussion, the assessee's claim of debit balance in PBDD account and the computation given is not correct and the same is reworked as under. Opening balance for A.Y. 2013-14 is the amount of deduction allowed to bank u/s 36(1)(viii) in A.Y. 2012-13.

A.Y.	OPENING BALANCE	CLAIM U/S 36(1)(viia)	Bad Debts written off	Deduction allowable u/s 36(1)(vii)	Closing balance
	A	B	C	D	E
2013-14	1141.34	2039.28	4550.5	3409.16	2039.28
2014-15	2039.28	2078.7	3834.29	1795.01	2078.70
2015-16	2078.7	2926.41	2619.63	540.93	2619.63

5.4 The department's stand that the assessee's claim results in double deduction can also be proven as under. As per the assessee's own calculation the bad debt written off amount for A.Y. 2013-14, 2014-15 and 2015-16 is

(Rs.in Crs.)

2013-14	4550.50
2014-15	3834.29
2015-16	2,619.63
Total write off claims	11004.42

The assessee would have been allowed following deduction u/s 36(1)(viia) and 36(1)(vii), as per Its calculation given in its submission reproduced In para 4 above.

(Rs.in Crs.)

AY	36(i)(vii)(a)	36(i)(vii)	Total
2013-14	2039.28	4550.50	6589.78
2014-15	2,078.70	3834.29	5912.99
2015-16	2,926.41	2619.63	5546.04
Total	7044.39	11004.42	18048.81

Therefore, against the bad debt written off of Rs. 11004.42 crore, the assessee claims Rs. 18048.81 crore, that is nothing but the same amount of bad debt written off is being claimed twice under section 36(i) (vii) as well as 36(1)(viia).

In contrast, as per the correct computation proposed by the Department, the allowable deduction under section 36(1)(vii) shall change, taking the figures given in Table incorporated in para 5.3 above.

(Rs.in Crs.)

AY	36(l)(vii)(a)	36(i)(vii)	Total
2013-14	2039.28	3409.16	
2014-15	2078.70	1795.01	
2015-16	2926.41	540.93	
Total	7044.39	5745.1	12789.49

Therefore, against the actual bad debt written off of Rs. 11004.42 crores, correct computation comes out to be Rs. 12789.49 crores allowable u/s 36(1)(vii) and 36(1)(viia).

Thus, the correct computation rightly removes the double deductions claimed by the assessee and keeps the total deduction available within correct range of actual bad debt written off.

3.3. Accordingly, the Id. PCIT had held that the assessee had claimed excess bad debts u/s.36(1)(vii) of Rs.2619,63,00,000/- without reducing the opening credit balance of Rs.2078,70,00,000/- (that is the amount of deduction allowed u/s.36(1)(viia) in the A.Y.2014-15) and the same was wrongly allowed by the Assessing Officer. The Id. PCIT further proceeded to hold that actually deduction allowable u/s.36(1)(vii) works out to Rs.540,93,00,000/- (Rs.2619,63,00,000 – 2078,70,00,000). Accordingly, he held assessment order passed by the Id. Assessing Officer is erroneous and prejudicial to the interest of the revenue and directed the

Assessing Officer to restrict the addition u/s.36(1)(vii) to Rs.540,93,00,000/- and determining the total income accordingly.

4. Aggrieved by this direction, the assessee is in appeal before us.

5. We find that the impugned issue in dispute is squarely covered by the order of this Tribunal in assessee's own case for A.Y.2014-15 in ITA No.3699/Mum/2018 dated 05/10/2020 which is also an appeal filed by the assessee against the order passed by the PCIT u/s.263 of the Act. In A.Y.2014-15, PCIT had sought to revise the order passed by the Id. Assessing Officer on several issues which includes the issue before us for A.Y.2015-16. We find that this Tribunal in A.Y.2014-15 had held the action of the Id. PCIT in invoking revisionary jurisdiction in respect of the impugned issue before us as incorrect and decided the same in favour of the assessee. The relevant operative portion of the said order of this Tribunal for A.Y.2014-15 dated 05/10/2020 are as under:-

“D) The next issue relates to allowance of bad debts under clause (vii) of Sub-section (1) of [Section 36](#) of the Act. As per the applicable provisions of law for the assessment year under consideration, the proviso to [Section 36\(1\)\(vii\)](#) requires maintenance of Provision for Bad and Doubtful Debts (in short 'PBDD') account under [Section 36\(1\)\(viia\)](#) of the Act. The deduction in respect of PBDD allowed under [Section 36\(1\)\(viia\)](#) of the Act is required to be credited to this account. [Section 36\(1\)\(vii\)](#) of the Act requires bad debts written off to be debited to this account. The proviso to [Section 36\(1\)\(vii\)](#) of the Act states that opening credit balance in this account as on 1st day of previous year should be reduced from the amount of bad debts written off during the previous year and excess of bad debts written off, if any, shall be allowed as deduction under [Section 36\(1\)\(vii\)](#) of the Act. The Id. PCIT observed that assessee has claimed that the opening balance of PBDD is negative and has given the computation of opening balance as on 31.03.2013, which is the opening balance for the assessment year under consideration. It is further observed that the computation given by the assessee is not correct. In the assessment year 2013-14, the PBDD is required to be debited to opening balance only and the remaining PBDD is allowed under [Section 36\(1\)\(vii\)](#) of the Act. He

observed that the amount of PBDD claimed under [Section 36\(1\)\(viia\)](#) of the Act will remain as closing balance even when the whole opening balance is reduced to Nil on account of debit of PBDD during the assessment year 2013-14 and the unadjusted or excess PBDD will be allowed under [Section 36\(1\)\(vii\)](#) of the Act. Thus, for the assessment year under consideration, i.e. assessment year 2014- 15, the minimum opening balance shall be Rs.2039.28 crores which has been Bank of India claimed as deduction under [Section 36\(1\)\(viia\)](#) of the Act during the preceding assessment year, i.e. 2013-14. Thus, excess claim of PBDD to the extent of Rs.2039.28 crores has been allowed. This has rendered the assessment order erroneous insofar as it is prejudicial to the interests of the Revenue.

8. Further, he observed that the contention of the assessee is that the Assessing Officer passed the assessment order after examining the details of the aforesaid issues and such order cannot be revised. In this regard, the ld. PCIT observed that the assessment order is found to be erroneous insofar as it is prejudicial to the interests of the Revenue on law as well as on facts as discussed in the above paragraphs. Accordingly, he invoked the provisions of [Section 263](#) of the Act and held that the order passed by the Assessing Officer is erroneous and prejudicial to the interests of the Revenue.

18. With regard to the issue of deduction under [Section 36\(1\)\(vii\)](#) of the Act, he submitted that the issue was examined by the Assessing Officer at the time of original assessment under [Section 143\(3\)](#) of the Act. He brought to our notice, pages 48 to 50 of the paper book as per which it is evident that full details of the claim were furnished by the assessee in the note forming part of the return of income and that during the assessment proceedings, the Assessing Officer asked the assessee to file a detailed note justifying the above claim and assessee has submitted the same taking into consideration that there was no opening credit balance in PBDD under [Section 36\(1\)\(vii\)](#) of the Act. The Assessing Officer after examining the details submitted before him satisfied himself to allow the claim of bad debts written off by the assessee. Further, he submitted that the decision of the Assessing Officer to allow the claim cannot be held to be erroneous or prejudicial to the interests of the Revenue just because in his order he does not make any elaborate discussion in respect of the claim. He submitted that merely because the Commissioner has a different opinion in the matter, it cannot render the order of Assessing Officer erroneous and prejudicial to the interests of the Revenue. In this regard, he relied on the following case laws :-

A) [CIT vs Gabriel India Ltd.](#), 203 ITR 108(Bom.)

B) [Anil Shah vs ACIT](#), (2007) 162 taxman 39 (Mum.)

C) *Reliance Money Inf Ltd. vs PCIT*, [2017] 88 taxmann.com 871 (Mumbai Trib.)

19. With regard to the third issue of disallowance under [Section 14A](#) of the Act in computing book profits, he submitted that the ld. PCIT in his order under [Section 263](#) of the Act had not directed any revision in respect of this issue, therefore, the order of Assessing Officer is neither erroneous and prejudicial to the interests of the Revenue. Further, he submitted that even on merits, the directions of ld. PCIT to make reference/additions in order under [Section 263](#) of the Act is not valid for the above reasons. He submitted that subsequently during the revision proceedings, ld. PCIT issued a show cause notice on the issue of reference to the TPO. He submitted that an issue which does not form part of show cause notice under [Section 263](#) of the Act cannot be a matter which can be decided in order under [Section 263](#) of the Act. For this purpose, he relied on the decision of Hon'ble Bombay High Court in the case of Maharashtra Hybrid Seeds Co. Ltd.,[2019] 102 taxmann.com 48 (Bombay).

20. With regard to disallowance of deduction under [Section 36\(1\)\(vii\)](#) of the Act, he submitted that ld. PCIT erred in concluding that deduction allowed under [Section 36\(1\)\(viiia\)](#) of the Act for the preceding assessment year has to be considered as opening credit balance in provision for bad and doubtful debts opened under [Section 36\(1\)\(viiia\)](#) of the Act. Ld. PCIT failed to appreciate that there is no such provision in the [Income Tax Act](#) which deems the deduction allowed under [Section 36\(1\)\(viiia\)](#) of the Act for the preceding assessment year as opening credit balance. He submitted that assessee has computed the opening credit balance by considering the deduction allowed under [Section 36\(1\)\(viiia\)](#) of the Act and bad debts written off in each of the assessment years in which the said section became applicable to it and accordingly arrived at the balance in the provision account. Since the bad debts written off was in excess of the deduction allowed under [Section 36\(1\)\(viiia\)](#) of the Act, there was a debit balance of Rs.2388.11 crores. Since there was no opening credit balance, but only a debit balance of Rs.2388.11 crores, the opening credit balance was considered as Nil and the entire amount was written off correctly and allowed in the order under [Section 143\(3\)](#) of the Act.

21. He further submitted that without prejudice to the above submissions, even considering the credit balance of Rs.123.12 crores as per the assessment order for assessment year 2013-14, the opening credit balance for assessment year 2014-15 was only debit balance of Rs.2388.11 crores as stated in page 5 of ld. PCIT order and hence there is no opening credit balance to be set off against the bad debts written off during the year. Accordingly, the entire bad debts written off has been correctly allowed in the order under [Section 143\(3\)](#) of the Act. In this regard, he relied on the

decision of ITAT Mumbai Benches in the case of SIDBI in ITA No. 743/Mum/2008 dated 15.02.2012 in which it was held that when there is no opening credit balance in provision for bad and doubtful debts account under [Section 36\(1\)\(viia\)](#) of the Act, the entire bad debts written off has to be allowed as deduction.

24. Considered the rival submissions and material placed on record, we notice that ld. PCIT initiated the proceedings under [Section 263](#) of the Act by issuing show cause notice and the reasons mentioned in the show cause notice was that in computing the book profits under [Section 115JB](#) of the Act, the profits of foreign branches was wrongly excluded and certain provisions were omitted to be added back, deduction under [Section 36\(1\)\(vii\)](#) of the Act in respect of bad debts written off was incorrectly allowed and disallowance made as per Rule 8D was not considered in computing the book profits. After careful consideration of the submissions of both the parties, we observe that the issue of applicability of book profits to the nationalised banks was agitated by the assessee before the ld. CIT(A) and the ld. CIT(A) has already passed an order on 21.06.2017 in favour of the assessee that the provisions of [Section 115JB](#) of the Act does not apply to the assessee. Now, in the show cause notice, similar issue was raised by ld. PCIT and passed an order on 27.03.2018, therefore, in our considered view, ld. PCIT cannot invoke the provisions of [Section 263](#) of the Act in this matter. **With regard to issue of deduction claimed under [Section 36\(1\)\(vii\)](#) and [36\(1\)\(viia\)](#) of the Act, assessee has filed detailed submissions before the Assessing Officer and the Assessing Officer has considered the submissions even though he has not discussed it in his order under [Section 143\(3\)](#) of the Act. The material submitted before us clearly indicate that assessee has made elaborate submissions on this issue and the Assessing Officer has satisfied himself that assessee is eligible to claim deduction under [Section 36\(1\)\(vii\)](#) and [36\(1\)\(viia\)](#) of the Act and, therefore, in our considered view, ld. PCIT cannot form another view on the same issue in which the Assessing Officer has already satisfied himself and passed an order which clearly indicates that the Assessing Officer has verified and investigated the matter in detail. Therefore, even in this issue, the provisions of [Section 263](#) of the Act cannot be invoked. (emphasis supplied by us herein).** With regard to the third issue raised in the show cause notice, i.e. disallowance under Rule 8D which was not considered in computing the book profits, we notice that the ld. PCIT himself dropped this issue and has not directed any revision to the Assessing Officer. From the above discussion, it is clear that the issues raised in the show cause notice issued under [Section 263](#) of the Act do not survive. Therefore, in our considered view, the order passed under [Section 263](#) of the Act deserves to be quashed.

5.1. Respectfully following the aforesaid decision, in view of the identical facts and circumstances except with variance in figures, we hold that ld.

PCIT had erred in invoking revisionary jurisdiction in the facts and circumstances of the instant case and accordingly, the order passed by the Id. PCIT u/s.263 stands hereby quashed. Accordingly, the grounds raised by the assessee are allowed.

6. In the result, appeal of the assessee is allowed.

Order pronounced on 08/12/2020 by way of proper mentioning in the notice board.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 08/12/2020
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai