IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No.1077 of 2010
With
TAX APPEAL No.1078 of 2010
With
TAX APPEAL No.1079 of 2010
With
TAX APPEAL No.1080 of 2010

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COMMISSIONER OF INCOME TAX-I - Appellant(s)
Versus
UTI BANK LTD - Opponent(s)
===
Appearance:
MR MR BHATT, SR. COUNSEL with MRS MAUNA M BHATT for Appellant(s): 1,
MR MANISH J SHAH for Opponent(s): 1,
===

CORAM : HONOURABLE MR. JUSTICE AKIL KURESHI

and

HONOURABLE MS. JUSTICE HARSHA DEVANI

Date : 25/06/2012

COMMON ORAL ORDER
(Per : HONOURABLE MR. JUSTICE AKIL KURESHI)

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1. Leave to amend the question of law framed in the respective appeals.

2. In all these appeals arising between the Income-Tax Department and UTI Bank Limited - the assessee, a common question of law is involved. We have, therefore, heard these appeals together and propose to dispose them off by this common order. For the purpose of this order, we may notice the facts as arising in Tax Appeal No.1077/2010.

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3. The respondent assessee is a bank and is regularly assessed to tax. For the assessment year 1998-99, the assessee filed its return of income on 30th November, 1998. The return was taken in scrutiny by the Assessing Officer. He passed his order of assessment on 27th December, 2000. The assessee had claimed a deduction of Rs.13,36,61,936/- under section 36(1)(vii) of the Income Tax Act, 1961 (hereinafter to be referred to as 'the Act') by way of bad debt in following manner:-

CRB Advance write off	Rs. 6,47,57,546
CRB Shares write off	Rs. 1,66,87,200
Write off of OD to Vishwanath	Rs. 37,658
Loan write off	Rs. 5,21,79,532

	Rs.13,36,61,936
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4. The assessee had also simultaneously claimed deduction under section 36(1)(vii)(a) of the Act for provision for bad and doubtful debts of Rs.1,36,09,550/-.

5. The Assessing Officer questioned the claim of deduction under section 36(1)(vii) and called upon the assessee to justify the same. In response to such objection of the Assessing Officer, the assessee contended that in the computation, entire NPA provision has been added back and only the bad debts actually written off have been claimed as a deduction. The assessee pointed out that the deduction of Rs.1.36 crores (rounded off) formed part of the NPA provision of

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Rs.8.39 crores (rounded off).

6. The Assessing Officer, however, did not accept the stand of the assessee observing that from the details furnished in respect of Bad Debt Reserve Account, it emerges that the account had an opening balance of Rs.75.84 lakhs which has been set off against the CRB advance and the net figure is taken at Rs.6.47 crores (rounded off). Therefore, the closing balance in the reserve account is Rs.1.36 crores. This credit balance in the reserve account should first be set off against the bad debt of Rs.13.36 crores as per the provision of section 36(1)(vii) of the Act. He accordingly worked out the deduction allowable to the assessee under section 36(1)(vii) at Rs.12 crores (rounded off).

7. The assessee approached the Commissioner (Appeals) against such order of the Assessing Officer. The Commissioner (Appeals) by his order dated 10th February, 2003 gave partial relief to the assessee. Before the Commissioner, the assessee contended that:

THE HIGH COURT OF GUJARAT

> "From the above facts, it is clear that for the year under consideration, an amount of Rs.1412.45 lacs has been written off as bad debts in the books of accounts and considering opening credit balance in bad debs provision account of Rs.75.84 lacs, amount of Rs.1336.62 lacs (1412.45 – 75.84) has been claimed as deduction in Income Tax Return u/s. 36(1)(vii) r.w.s. 36(2), as per details furnished on page 34 of the paper book. Therefore, under the provisions of Section 36(1)(vii) r.w.s. 36(2), total amount of Rs.13,36,61,936/- being the amount written off in the books of accounts as bad debts, limited by opening balance in the provision for Doubtful Debts under I.T. Act account, was available and should have been allowed by the A.O. As against this, the A.O. has allowed deduction of

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Rs.12,00,06,881/- (i.e. Rs.13,36,61,936 minus Rs.1,36,55,055). Thus, deduction allowed u/s.36(1)(vii) is short by Rs.1,36,55,055/- and the same requires to be allowed as deduction."

8. The Commissioner was of the opinion that the opening balance of Rs.75.84 lakhs was set off against CRB advance and the assessee had taken a net figure of Rs.6.47 crores. Therefore, clearly the debts which have been written off in the year under consideration are Rs.14.12 crores and not Rs.13.36 crores as stated by the Assessing Officer. Therefore, under the provisions of section 36(1)(vii), the amount of bad debts which have been written off in the books of accounts are eligible for deduction. He further observed that under the provision of section 36(1)(vii), the assessee is eligible for deduction of Rs.1.36 crores being the amount calculated at the rate of 5% of the total income for provision for bad and doubtful debts made by the bank. Such claim has been made and rightly allowed by the Assessing Officer. He, therefore, was of the opinion that since the deduction is available to the bank under section 36(1)(vii), the proviso to section 36(1)(vii) will be applicable and the deduction under section 36(1)(vii) would be limited to the amount by which the said debt or part thereof exceeds the credit balance in the provision for bad and doubtful debt account. In short, he was of the opinion that the claim of deduction towards bad debt under section 36(1)(vii) against the written off debt at Rs.14.12 crores should be restricted by 1.36 crores (separately claimed and allowed under section 36(1)(viia) of the Act) and the net amount of Rs.12.75 crores (written off) would be allowable deduction of the assessee under section 36(1)(vii) of the Act.

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9. Such order of the Appellate Commissioner was challenged by the assessee before the Income Tax Appellate Tribunal ('the Tribunal', for short). Against such judgment of the Commissioner, revenue as well as the assessee preferred separate appeals. The Tribunal by the impugned judgment dated 7th November, 2008 allowed the assessee's appeal and rejected the revenue's. The Tribunal in the order came to the conclusion that to work out the proviso to section 36(1)(vii), the amount of deduction claimed by the assessee in respect of bad debts was not required to be reduced by the closing balance for the doubtful debts account but by the opening balance thereof. The Tribunal referred to and relied upon the decision of Mumbai Bench of the Tribunal in the case of **Oman International Bank SAOG vs. DCIT** reported in (2005) 92 ITD 76.

10. The revenue, therefore, in the present appeal has raised the following question for our consideration:-

> "Whether the appellate Tribunal is right in law and on facts in holding that for the purpose of sec.36(1)(vii) only the closing credit balance in the provision account of the earlier years is to be considered, despite the provision of sec. 36(2)(v) of the Act?

11. The counsel for the revenue vehemently contended that the Tribunal erred in its interpretation of the applicable statutory provisions particularly those contained in section 36(1)(vii) and 36(1)(viia) of the Act. He submitted that proviso to section 36(1)(vii) had not been given its full effect. Drawing our attention to clause (v) of sub-section (2) of section 36, he contended that for claiming bad debt under section 36(1)(vii),

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it is necessary that the amount should have been first debited to the provision for bad and doubtful debts account. Referring to the decision of the Apex Court in the case of **Catholic Syrian Bank Ltd. vs. Commissioner of Income-tax** reported in (2012) 343 ITR 270, the counsel submitted that the correct interpretation of this statutory provision involved would lead to only one conclusion namely that the bad debt claim of the assessee which is otherwise covered under section 36(1)(vii) of the Act, would have to be reduced by the closing balance in the bad and doubtful debt account maintained by the assessee under section 36(1)(viia) of the Act.

12. On the other hand, learned counsel Mr. J.P. Shah for the assessee opposed the appeals contending that the interpretation adopted by the Tribunal is correct. He also placed reliance on the decision of the Apex Court in the case of Catholic Syrian Bank Ltd. (supra) to contend that the statute envisages two separate deductions in case of rural banks on the rural advances, one for doubtful advances under section 36(1)(viia) and another for the actual bad debt for which provisions have been made by bank under section 36(1)(vii) of the Act. The counsel submitted that the issue is clarified by the CBDT in its circular dated 26-11-2008 wherein clause (ii) of Para 2 puts the entire issue beyond any pale of controversy.

13. Having thus heard learned counsel for the parties and having perused the record, we may notice the statutory provisions involved. Relevant portion of section 36 reads as under:-

36. Other deductions.- (1) The deduction provided for in the

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following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28 -

(vii) 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;]

[Explanation.- 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;]

(viia) 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 five 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

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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;]

(2) In making any deduction for a bad debt or part thereof, the following provisions shall apply -

(v) where such debt or part of debt relates to advances made by an assessee to which clause (viia) of sub-section (1) applies, no such deduction shall be allowed unless the assessee has debited

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the amount of such debt or part of debt in that previous year to the provision for bad and doubtful debts account made under that clause.

14. From the above statutory provisions, it can be seen that in addition to the deduction available to an assessee under section 36(1)(vii) for bad debts, in case of special class of banks mentioned in clause (viia), deductions subject to fulfilment of certain conditions is available in respect of any provision for bad and doubtful debts. One of the restrictions is of limiting such deduction to a maximum of a specified percentage of total income of the assessee computed before making any deduction under this clause and not exceeding prescribed percentage of aggregate average advance made by the rural branches of such bank. From the decision of the Apex Court in the case of Catholic Syrian Bank Ltd. (supra), it can be gathered that under clause (vii) of sub-section (1) of section 36, deduction is made available in computation of taxable profits of all scheduled commercial banks in respect of provisions made by them for bad and doubtful debts relating to advances made by them in the rural branches. Such deduction is limited to a specified percentage of the aggregate average advances made by the rural branches. The Apex Court held that the deduction on the account of provision for bad and doubtful debts is distinct and independent of the provisions of section 36(1)(vii) relating to allowance of the bad debts. Contention of the Revenue that the Banks covered by clause (viia) were not entitled to deduction under section 36(1)(vii) was rejected. The Court held that proviso to section 36(1)(vii) would ensure that there would be no double benefit of deduction in such cases.

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15. In the present case, however, the question of method of operation of proviso to section 36(1(vii) arises. Such proviso as noted, provides that in case of an assessee to which clause (viia) applies, the amount of 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. The revenue's contention is that by virtue of such proviso, the claim of the assessee for deduction for debts written off, should be reduced by the closing balance of the assessee in his account for the provision of bad and doubtful debts. On the other hand, the assessee contends that such diminution should be limited to the opening balance of such account.

16. We notice that in this respect the provision is silent. We may therefore record that the interpretation adopted by the Tribunal in the impugned judgment would ordinarily give rise to a question of law particularly when it is pointed out that there is no previous decision of any High Court on the subject. However, the issue has been made sufficiently clear by the CBDT Circular No.17/2008 dated 26-11-2008. In the said circular, this very issue has been examined and clarified in the following manner:-

> “2. In a recent review of assessment of Banks carried out by C&AG, it has been observed that while computing the income of banks under the head 'Profit and Gains of Business & Profession', deductions of large amounts under different sections are being allowed by the Assessing Officers without proper verification, leading to substantial loss of revenue. It is, therefore, necessary that

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assessments in the cases of banks are completed with due care and after proper verification. In particular, deductions under the provisions referred to below should be allowed only after a thorough examination of the claim on facts and on law as per the provisions of the I.T. Act, 1961.

(i) Under section 36(1)(vii) of the Act, deduction on account of bad debts which are written off as irrecoverable in the accounts of the assessee is admissible. However, this should be allowed only if the assessee had debited the amount of such debs to the provision for bad and doubtful debt account under section 36(1)(viia) of the Act, as required by section 36(2)(v) of the Act.

(ii) While considering the claim for bad debts u/s 36(1)(vii), the assessing officer should allow only such amount of bad debts written off as exceeds the credit balance available in the provision for bad & doubtful debt account created u/s 36(1)(viia) of the Act. The credit balance for this purpose will be the opening credit balance i.e., the balance brought forward as on 1st April of the relevant accounting year.”

17. As already noted, in absence of such clarification by CBDT, we would have been inclined to admit the appeals. However, when such circular issued under section 119(2) of the Act clarifies the position beyond any doubt, we have no reason to entertain the revenue's appeals. As already noted, the statutory provision is silent on the precise method of working out the deduction. It is by now well-settled that such circulars issued by the Board in exercise of its statutory powers under section 119(2) of the Act, may have the effect of relaxing the rigours of a statutory provision. In the case of Catholic Syrian Bank Ltd. (supra) itself, the Apex Court touched on the effect of the circular issued by the Board. It was observed as under:-

“Now, we shall proceed to examine the effect of the circulars which are in force and are issued by the Central Board of Direct Taxes (for short, “the Board”) in exercise of

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the power vested n it under section 119 of the Act. Circulars can be issued by the Board to explain or tone down the rigours of law and to ensure fair enforcement of its provisions. These circulars have the force of law and are binding on the income-tax authorities, though they cannot be enforced adversely against the assessee. Normally, these circulars cannot be ignored A circular may not override or detract from the provisions of the Act but it can seek to mitigate the rigour of a particular provision for the benefit of the assessee in certain specified circumstances. So long as the circular is in force, it aids the uniform and proper administration and application of the provisions of the Act. (Refer to UCO Bank v. CIT [1999] 4 SCC 599)."

18. In case of **UCO Bank v/s. Commissioner of Income Tax** reported in 237 ITR 889 the Supreme Court in connection with effect of circulars issued by the Board under section 119 of the Act observed:

"Such instructions may be by way of relaxation of any of the provisions of the sections specified there or otherwise. The Board, thus, has powers, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under section 119 which are binding on the authorities in the administration of the Act. Under section 119(2)(a), however, the circulars as contemplated therein cannot be adverse to the assessee. Thus, the authority which wields the power for its own advantage under the Act is given the right to forgo the advantage when required to wield it in the manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorised as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities."

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19. In the result, bearing in mind the circular issued by CBDT dated 26-11-2008, no further controversy should arise. In the result, the tax appeals are dismissed.

(Akil Kureshi, J.)

(Harsha Devani, J.)

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CORAM : HONOURABLE MR. JUSTICE AKIL KURESHI

and

HONOURABLE MS. JUSTICE HARSHA DEVANI

Date : 27/06/2012

COMMON ORAL ORDER
(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. Leave to amend the question of law framed in the respective appeals.

2. In all these appeals arising between the Income-Tax Department and UTI Bank Limited - the assessee, a common question of law is involved. We have, therefore, heard these appeals together and propose to dispose them off by this common order. For the purpose of this order, we may notice the facts as arising in Tax Appeal No.1077/2010.

3. The respondent assessee is a bank and is regularly assessed to tax. For the assessment year 1998-99, the assessee filed its return of income on 30th November, 1998. The return was taken in scrutiny by the Assessing Officer. He passed his order of assessment on 27th December, 2000. The assessee had claimed a deduction of Rs.13,36,61,936/- under section 36(1)(vii) of the Income Tax Act, 1961 (hereinafter to be referred to as 'the Act') by way of bad debt in following manner:-

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5. The Assessing Officer questioned the claim of deduction under section 36(1)(vii) and called upon the assessee to justify the same. In response to such objection of the Assessing Officer, the assessee contended that in the computation, entire NPA provision has been added back and only the bad debts actually written off have been claimed as a deduction. The assessee pointed out that the deduction of Rs.1.36 crores (rounded off) formed part of the NPA provision of

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Rs.8.39 crores (rounded off).

6. The Assessing Officer, however, did not accept the stand of the assessee observing that from the details furnished in respect of Bad Debt Reserve Account, it emerges that the account had an opening balance of Rs.75.84 lakhs which has been set off against the CRB advance and the net figure is taken at Rs.6.47 crores (rounded off). Therefore, the closing balance in the reserve account is Rs.1.36 crores. This credit balance in the reserve account should first be set off against the bad debt of Rs.13.36 crores as per the provision of section 36(1)(vii) of the Act. He accordingly worked out the deduction allowable to the assessee under section 36(1)(vii) at Rs.12 crores (rounded off).

7. The assessee approached the Commissioner (Appeals) against such order of the Assessing Officer. The Commissioner (Appeals) by his order dated 10th February, 2003 gave partial relief to the assessee. Before the Commissioner, the assessee contended that:

> "From the above facts, it is clear that for the year under consideration, an amount of Rs.1412.45 lacs has been written off as bad debts in the books of accounts and considering opening credit balance in bad debs provision account of Rs.75.84 lacs, amount of Rs.1336.62 lacs (1412.45 – 75.84) has been claimed as deduction in Income Tax Return u/s. 36(1)(vii) r.w.s. 36(2), as per details furnished on page 34 of the paper book. Therefore, under the provisions of Section 36(1)(vii) r.w.s. 36(2), total amount of Rs.13,36,61,936/- being the amount written off in the books of accounts as bad debts, limited by opening balance in the provision for Doubtful Debts under I.T. Act account, was available and should have been allowed by the A.O. As against this, the A.O. has allowed deduction of

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Rs.12,00,06,881/- (i.e. Rs.13,36,61,936 minus Rs.1,36,55,055). Thus, deduction allowed u/s.36(1)(vii) is short by Rs.1,36,55,055/- and the same requires to be allowed as deduction."

8. The Commissioner was of the opinion that the opening balance of Rs.75.84 lakhs was set off against CRB advance and the assessee had taken a net figure of Rs.6.47 crores. Therefore, clearly the debts which have been written off in the year under consideration are Rs.14.12 crores and not Rs.13.36 crores as stated by the Assessing Officer. Therefore, under the provisions of section 36(1)(vii), the amount of bad debts which have been written off in the books of accounts are eligible for deduction. He further observed that under the provision of section 36(1)(vii), the assessee is eligible for deduction of Rs.1.36 crores being the amount calculated at the rate of 5% of the total income for provision for bad and doubtful debts made by the bank. Such claim has been made and rightly allowed by the Assessing Officer. He, therefore, was of the opinion that since the deduction is available to the bank under section 36(1)(vii), the proviso to section 36(1)(vii) will be applicable and the deduction under section 36(1)(vii) would be limited to the amount by which the said debt or part thereof exceeds the credit balance in the provision for bad and doubtful debt account. In short, he was of the opinion that the claim of deduction towards bad debt under section 36(1)(vii) against the written off debt at Rs.14.12 crores should be restricted by 1.36 crores (separately claimed and allowed under section 36(1)(viia) of the Act) and the net amount of Rs.12.75 crores (written off) would be allowable deduction of the assessee under section 36(1)(vii) of the Act.

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9. Such order of the Appellate Commissioner was challenged by the assessee before the Income Tax Appellate Tribunal ('the Tribunal', for short). Against such judgment of the Commissioner, revenue as well as the assessee preferred separate appeals. The Tribunal by the impugned judgment dated 7th November, 2008 allowed the assessee's appeal and rejected the revenue's. The Tribunal in the order came to the conclusion that to work out the proviso to section 36(1)(vii), the amount of deduction claimed by the assessee in respect of bad debts was not required to be reduced by the closing balance for the doubtful debts account but by the opening balance thereof. The Tribunal referred to and relied upon the decision of Mumbai Bench of the Tribunal in the case of **Oman International Bank SAOG vs. DCIT** reported in (2005) 92 ITD 76.

10. The revenue, therefore, in the present appeal has raised the following question for our consideration:-

> "Whether the appellate Tribunal is right in law and on facts in holding that for the purpose of sec.36(1)(vii) only the closing credit balance in the provision account of the earlier years is to be considered, despite the provision of sec. 36(2)(v) of the Act?

11. The counsel for the revenue vehemently contended that the Tribunal erred in its interpretation of the applicable statutory provisions particularly those contained in section 36(1)(vii) and 36(1)(viia) of the Act. He submitted that proviso to section 36(1)(vii) had not been given its full effect. Drawing our attention to clause (v) of sub-section (2) of section 36, he contended that for claiming bad debt under section 36(1)(vii),

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it is necessary that the amount should have been first debited to the provision for bad and doubtful debts account. Referring to the decision of the Apex Court in the case of **Catholic Syrian Bank Ltd. vs. Commissioner of Income-tax** reported in (2012) 343 ITR 270, the counsel submitted that the correct interpretation of this statutory provision involved would lead to only one conclusion namely that the bad debt claim of the assessee which is otherwise covered under section 36(1)(vii) of the Act, would have to be reduced by the closing balance in the bad and doubtful debt account maintained by the assessee under section 36(1)(viia) of the Act.

12. On the other hand, learned counsel Mr. J.P. Shah for the assessee opposed the appeals contending that the interpretation adopted by the Tribunal is correct. He also placed reliance on the decision of the Apex Court in the case of Catholic Syrian Bank Ltd. (supra) to contend that the statute envisages two separate deductions in case of rural banks on the rural advances, one for doubtful advances under section 36(1)(viia) and another for the actual bad debt for which provisions have been made by bank under section 36(1)(vii) of the Act. The counsel submitted that the issue is clarified by the CBDT in its circular dated 26-11-2008 wherein clause (ii) of Para 2 puts the entire issue beyond any pale of controversy.

13. Having thus heard learned counsel for the parties and having perused the record, we may notice the statutory provisions involved. Relevant portion of section 36 reads as under:-

36. Other deductions.- (1) The deduction provided for in the

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following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28 -

(vii) 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;]

[Explanation.- 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;]

(viia) 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 five 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

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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;]

(2) In making any deduction for a bad debt or part thereof, the following provisions shall apply -

(v) where such debt or part of debt relates to advances made by an assessee to which clause (viia) of sub-section (1) applies, no such deduction shall be allowed unless the assessee has debited

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the amount of such debt or part of debt in that previous year to the provision for bad and doubtful debts account made under that clause.

14. From the above statutory provisions, it can be seen that in addition to the deduction available to an assessee under section 36(1)(vii) for bad debts, in case of special class of banks mentioned in clause (viia), deductions subject to fulfilment of certain conditions is available in respect of any provision for bad and doubtful debts. One of the restrictions is of limiting such deduction to a maximum of a specified percentage of total income of the assessee computed before making any deduction under this clause and not exceeding prescribed percentage of aggregate average advance made by the rural branches of such bank. From the decision of the Apex Court in the case of Catholic Syrian Bank Ltd. (supra), it can be gathered that under clause (vii) of sub-section (1) of section 36, deduction is made available in computation of taxable profits of all scheduled commercial banks in respect of provisions made by them for bad and doubtful debts relating to advances made by them in the rural branches. Such deduction is limited to a specified percentage of the aggregate average advances made by the rural branches. The Apex Court held that the deduction on the account of provision for bad and doubtful debts is distinct and independent of the provisions of section 36(1)(vii) relating to allowance of the bad debts. Contention of the Revenue that the Banks covered by clause (viia) were not entitled to deduction under section 36(1)(vii) was rejected. The Court held that proviso to section 36(1)(vii) would ensure that there would be no double benefit of deduction in such cases.

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15. In the present case, however, the question of method of operation of proviso to section 36(1(vii) arises. Such proviso as noted, provides that in case of an assessee to which clause (viia) applies, the amount of 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. The revenue's contention is that by virtue of such proviso, the claim of the assessee for deduction for debts written off, should be reduced by the closing balance of the assessee in his account for the provision of bad and doubtful debts. On the other hand, the assessee contends that such diminution should be limited to the opening balance of such account.

16. We notice that in this respect the provision is silent. We may therefore record that the interpretation adopted by the Tribunal in the impugned judgment would ordinarily give rise to a question of law particularly when it is pointed out that there is no previous decision of any High Court on the subject. However, the issue has been made sufficiently clear by the CBDT Circular No.17/2008 dated 26-11-2008. In the said circular, this very issue has been examined and clarified in the following manner:-

> “2. In a recent review of assessment of Banks carried out by C&AG, it has been observed that while computing the income of banks under the head 'Profit and Gains of Business & Profession', deductions of large amounts under different sections are being allowed by the Assessing Officers without proper verification, leading to substantial loss of revenue. It is, therefore, necessary that

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assessments in the cases of banks are completed with due care and after proper verification. In particular, deductions under the provisions referred to below should be allowed only after a thorough examination of the claim on facts and on law as per the provisions of the I.T. Act, 1961.

(i) Under section 36(1)(vii) of the Act, deduction on account of bad debts which are written off as irrecoverable in the accounts of the assessee is admissible. However, this should be allowed only if the assessee had debited the amount of such debs to the provision for bad and doubtful debt account under section 36(1)(viia) of the Act, as required by section 36(2)(v) of the Act.

(ii) While considering the claim for bad debts u/s 36(1)(vii), the assessing officer should allow only such amount of bad debts written off as exceeds the credit balance available in the provision for bad & doubtful debt account created u/s 36(1)(viia) of the Act. The credit balance for this purpose will be the opening credit balance i.e., the balance brought forward as on 1st April of the relevant accounting year."

17. As already noted, in absence of such clarification by CBDT, we would have been inclined to admit the appeals. However, when such circular issued under section 119(2) of the Act clarifies the position beyond any doubt, we have no reason to entertain the revenue's appeals. As already noted, the statutory provision is silent on the precise method of working out the deduction. It is by now well-settled that such circulars issued by the Board in exercise of its statutory powers under section 119(2) of the Act, may have the effect of relaxing the rigours of a statutory provision. In the case of Catholic Syrian Bank Ltd. (supra) itself, the Apex Court touched on the effect of the circular issued by the Board. It was observed as under:-

"Now, we shall proceed to examine the effect of the circulars which are in force and are issued by the Central Board of Direct Taxes (for short, "the Board") in exercise of

> the power vested n it under section 119 of the Act. Circulars can be issued by the Board to explain or tone down the rigours of law and to ensure fair enforcement of its provisions. These circulars have the force of law and are binding on the income-tax authorities, though they cannot be enforced adversely against the assessee. Normally, these circulars cannot be ignored A circular may not override or detract from the provisions of the Act but it can seek to mitigate the rigour of a particular provision for the benefit of the assessee in certain specified circumstances. So long as the circular is in force, it aids the uniform and proper administration and application of the provisions of the Act. (Refer to UCO Bank v. CIT [1999] 4 SCC 599)."

18. In case of **UCO Bank v/s. Commissioner of Income Tax** reported in 237 ITR 889 the Supreme Court in connection with effect of circulars issued by the Board under section 119 of the Act observed:

> "Such instructions may be by way of relaxation of any of the provisions of the sections specified there or otherwise. The Board, thus, has powers, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under section 119 which are binding on the authorities in the administration of the Act. Under section 119(2)(a), however, the circulars as contemplated therein cannot be adverse to the assessee. Thus, the authority which wields the power for its own advantage under the Act is given the right to forgo the advantage when required to wield it in the manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorised as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities."

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19. In the result, bearing in mind the circular issued by CBDT dated 26-11-2008, no further controversy should arise. In the result, the tax appeals are dismissed.

(Akil Kureshi, J.)

(Harsha Devani, J.)

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