

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER

And

SHRI R.C. SHARMA, ACCOUNTANT MEMBER

ITA Nos. 74 & 75/Ind/2012

A.Ys. 2002-03 & 2003-04

State Bank of Indore
(Since merged with State Bank of India)
Indore

PAN – AAECs 7776 C :: Appellant

Vs

ACIT-5(1), Indore :: Respondent

ITA Nos. 69 & 70/Ind/2012

A.Ys. 2002-03 & 2003-04

ACIT-5(1), Indore :: Appellant

Vs

State Bank of Indore
(Since merged with State Bank of India)
Indore

PAN – AAECs 7776 C :: Respondent

Assessee by	Shri Sumit Nema
Department by	Shri Darshan Singh
Date of hearing	06.11.2012
Date of pronouncement	06.11.2012

O R D E R

PER JOGINDER SINGH, judicial member

The assessee as well as the Revenue are in cross-appeals for AYs 2002-03 & 2003-04, respectively, challenging the order of the ld. CIT(A)-II, Indore on the grounds raised in the respective appeals.

2. During hearing of these appeals, the Counsel for the assessee contended that the impugned issue of bad debt u/s 36(1)(vii) is covered by the decision of the Hon'ble Apex Court in the case of Catholic Serian Bank Ltd. vs. CIT (2012) 343 ITR 270 (SC), 206 Taxman 182 (SC). Our attention was also invited to Circular No.258 dated 14.6.1979, Circular No.428 dated 12.6.1985 and Circular No.464 dated 18.7.1986. On the other hand, the ld. CIT/DR placed reliance upon the orders of the Assessing Officer.

2.1 We have considered the rival submissions and perused the material available on record. The facts, in brief, are that during the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee claimed deduction of Rs.9,58,65,019/- u/s 36(viia) of the Act. The assessee was asked for the justification of such claim. The claim of the assessee was that the said deduction is allowable in view of first proviso to sec. 36(1)(viia) of the Act. For ready reference, we are reproducing hereunder the Explanation:-

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.

As per the assessee, additional deduction is available to the bank for five consecutive AYs i.e. from AY 2000-01 to 2004-05 as per the mandate of the legislature to strengthen the financial position of the bank and thus option has been given to the bank in respect of doubtful debt in

accordance with the guidelines issued by Reserve Bank of India (RBI). The Id. Assessing Officer was of the view that such claim has been made by the assessee ignoring the provision to sec. 36(viia) of the Act. The Assessing Officer was of the view that such option can be exercised only in one year out of five AYs at the option of the assessee. Thus, it was opined that since the assessee has already exercised its option in AY 2000-01, therefore, the bank is not entitled to claim the deduction in subsequent AYs, therefore, the claimed deduction of Rs.9,58,65,019/- was disallowed and added to the total income of the assessee. The aggrieved assessee preferred appeal before the Id. CIT(A) who examined the claim of the assessee and out of the total bad debt amounting to Rs.81,07,67,887/-, written off during the FY 2001-02, held that the allowable deduction u/s 36(1)(vii) is Rs.35,58,85,603/- and if the

claimed deduction of Rs.45,54,87,887/- is reduced then the assessee claimed excess deduction of Rs.9,96,02,284/-.

2.2 Before us, the stand of the assessee is that in view of the decision from Hon'ble Apex Court in Catholic Serian Bank Ltd. (supra), the claimed deduction is allowable. In view of the above facts and for more clarity, we are reproducing hereunder the provisions of sec. 36(1)(vii), 36(1)(viia) and 36(2) of the Act:

-(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28 - (i) The amount of any premium paid in respect of insurance against risk of damage or destruction of stocks or stores used for the purposes of the business or profession;

(ia) The amount of any premium paid by a federal milk co-operative society to effect or to keep in force an insurance on the life of the cattle owned by a member of a co-operative society, being a primary society engaged in supplying milk raised by its members to such federal milk co-operative society;

(ib) The amount of any premium paid by cheque by the assessee as an employer to effect or to keep in force an insurance on the health of his employees under a scheme framed in this behalf by the General Insurance Corporation of India formed under section 9 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972), and approved by the Central Government;

(ii) Any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission;

(iia) A sum equal to one and one-third times the amount of the expenditure incurred on payment of any salary for any period of

employment before the 1st day of March, 1984 to an employee who, as at the end of the previous year, - (a) Is totally blind, or (b) Is subject to or suffers from a permanent physical disability (other than blindness) which has the effect of reducing substantially his capacity to engage in a gainful employment or occupation :

Provided that the assessee produces before the Assessing Officer, in respect of the first assessment year for which deduction is claimed in relation to each such employee under this clause, - (i) In a case referred to in sub-clause (a), a certificate as to his total blindness from a registered medical practitioner being an oculist; and

(ii) In a case referred to in sub-clause (b), a certificate as to the permanent physical disability referred to in the said sub-clause from a registered medical practitioner :

Provided further that nothing contained in this clause shall apply in the case of an employee whose income in the previous year chargeable under the head "Salaries" exceeds twenty thousand rupees.

Explanation 1 : In this clause, "salary" includes the pay, allowances, bonus or commission payable monthly or otherwise.

Explanation 2 : For the removal of doubts, it is hereby declared that where a deduction under this clause is allowed for any assessment year in respect of any expenditure, deduction shall not be allowed in respect of such expenditure under any other provision of this Act for the same or any other assessment year; 575]

(iii) The amount of the interest paid in respect of capital borrowed for the purposes of the business or profession.

Explanation : Recurring subscriptions paid periodically by shareholders or subscribers in Mutual Benefit Societies which fulfil such conditions as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause;

(iv) Any sum paid by the assessee as an employer by way of contribution towards a recognised provident fund or an approved superannuation fund, subject to such limits as may be prescribed 579 for the purpose of recognising the provident fund or approving the superannuation fund, as the case may be; and subject to such conditions 580 as the Board may think fit to specify in cases where the contributions are not in the nature of annual contributions of fixed amounts or annual contributions fixed on some definite basis by reference to the income chargeable under the head "Salaries" or to the contributions or to the numbers of members of the fund;

(v) Any sum paid by the assessee as an employer by way of contribution towards an approved gratuity fund created by him for the exclusive benefit of his employees under an irrevocable trust;

(va) Any sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 apply, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date.

Explanation : For the purposes of this clause, "due date" means the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund under any Act, rule, order or notification issued thereunder or under any standing order, award, contract of service or otherwise;

(vi) In respect of animals which have been used for the purposes of the business or profession otherwise than as stock-in-trade and have died or become permanently useless for such purposes, the difference between the actual cost to the assessee of the animals and the amount, if any, realised in respect of the carcasses or animals;

(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 (vii) 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;

(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, an amount not exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VI-A) and an amount not exceeding [585c 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.

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. 585g

(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).

Explanation : For the purposes of this clause - (i) "Non-scheduled bank" means a banking company 585f as defined in clause (c) of

section 5 of the Banking Regulation Act, 1949 (10 of 1949) which is not a scheduled bank;

(a) "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, (38 of 1959) 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), but does not include a co-operative bank;

(iii) "Public financial institution" shall have the meaning assigned to it in section 4A of the Companies Act, 1956 (1 of 1956);

(iv) "State financial corporation" means a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporations Act, 1951 (63 of 1951);

(v) "State industrial investment corporation" means a Government company within the meaning of section 617 of the Companies Act, 1956 (1 of 1956) engaged in the business of providing long-term finance for industrial projects and approved by the Central Government under clause (viii) of this sub-section;

(viii) In respect of any special reserve created and maintained by a financial corporation which is engaged in providing long-term finance for industrial or agricultural development or development of infrastructure facility in India or by a public company formed and 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, an amount not exceeding forty per cent of the profits derived from such business of providing long-term finance (computed under the head "Profits and gains of business or profession" before making any deduction under this clause 590a J) carried to such reserve account :

Provided that the corporation or as the case may be the company is for the time being approved by the Central Government for the purposes of clause :

Provided further 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 general reserves of the corporation or, as the case may be, the company, no allowance under this clause shall be made in respect of such excess;

Explanation : In this clause, - (a) "Financial corporation" shall include a public company and a Government company;

(b) "Public company" 595 shall have the meaning assigned to it in section 3 of the Companies Act, 1956 (1 of 1956);

(c) "Government company" shall have the meaning assigned to it in section 617 of the Companies Act, 1956 (1 of 1956).

(d) "Infrastructure facility" shall have the meaning assigned to it in clause (23G) of section 10;

(e) "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;

(ix) Any expenditure bona fide incurred by a company for the purpose of promoting family planning amongst its employees :

Provided that where such expenditure or any part thereof is of a capital nature, one-fifth of such expenditure shall be deducted for the previous year in which it was incurred; and the balance thereof shall be deducted in equal instalments for each of the four immediately succeeding previous years :

Provided further that the provisions of sub-section (2) of section 32 or sub-section (2) of section 72 shall apply in relation to deductions allowable under this clause as they apply in relation to deductions allowable in respect of depreciation :

Provided further that the provisions of clauses (ii), (iii), (iv) and (v) of sub-section (2) and sub-section (5) of section 35, of sub-section (3) of section 41 and of Explanation 1 to clause (1) of section 43 shall, so far as may be, apply in relation to an asset representing expenditure of a capital nature for the purposes of promoting family planning as they apply in relation to an asset representing expenditure of a capital nature on scientific research;

(x) Any sum paid by a public financial institution by way of contribution towards any fund specified under clause (23E) of section 10.

Explanation : For the purposes of this clause, "public financial institution" shall have the meaning assigned to it in section 4A of the Companies Act, 1956 (1 of 1956).

(xi) Any expenditure incurred by the assessee, on or after the 1st day of April, 1999 but before the 1st day of April, 2000, wholly and exclusively in respect of a non-Y2K compliant computer system, owned by the assessee and used for the purposes of his business or profession, so as to make such computer system Y2K compliant computer system :

Provided that no such deduction shall be allowed in respect of such expenditure under any other provisions of this Act :

Provided further that no such deduction shall be admissible unless the assessee furnishes in the prescribed form, along with the return of income, the report of an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this clause.

Explanation. - For the purposes of this clause, - (a) "Computer system" means a device or collection of devices including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, or more of which contain computer programmes,

electronic instructions, input data and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication and control;

(b) "Y2K compliant computer system" means a computer system capable of correctly processing, providing or receiving data relating to date within and between the twentieth and twenty-first century.

(2) In making any deduction for a bad debt or part thereof, the following provisions shall apply - (i) No such deduction shall be allowed unless 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 is written off or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee;

(ii) If the amount ultimately recovered on any such debt or part of debt is less than the difference between the debt or part and the amount so deducted, the deficiency shall be deductible in the previous year in which the ultimate recovery is made;

(iii) Any such debt or part of debt may be deducted if it has already been written off as irrecoverable in the accounts of an earlier previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year), but the Assessing Officer had not allowed it to be deducted on the ground that it had not been established to have become a bad debt in that year;

(iv) Where any such debt or part of debt is written off as irrecoverable in the accounts of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year) and the Assessing Officer is satisfied that such debt or part became a bad debt in any earlier previous year not falling beyond a period of four previous years immediately preceding the previous year in which such debt or part is written off, provisions of sub-section (6) of section 155 shall apply;

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

2.3 If the aforesaid sections are analysed, sections 36(1)(vii) and 36(1)(vii) provide for such deduction, which

are to be permitted, in accordance with the language of these provisions. A bare reading of these provisions shows that sections 36(1)(vii) and 36(1)(viia) speak about separate items of deduction, being independent provisions, consequently cannot be intermingled or read into each other. Even otherwise, fiscal statutes need to be construed strictly as per the plain language used therein. The provisions of section 36(1)(vii) would come into play while granting deduction subject to the limitations contained in section 36(2) of the Act. Any bad debt or part thereof which is “written off” as irrecoverable in the accounts of the assessee for the previous year is the deduction which the assessee would be entitled to get, provided the requirements of sections 36(2) are satisfied. Allowing of deduction of bad debts is controlled by the provisions of section 36(2) of the Act. Undoubtedly, a statute is not normally construed to provide double deduction/benefit

unless it is specifically so permitted as per the scheme of the Act. So far as the question of double benefit is concerned, the legislature in its wisdom introduced section 36(2)(v) by the Finance Act, 1985 with effect from 1.4.1985 meaning thereby a check for the claim of any double deduction has been provided in section 36(2)(v) which has to be read in conjunction with section 36(1)(va). Circulars are issued by the board to explain or tone down the rigours of law or to ensure fair enforcement of its provisions, thus such circulars are binding on the department and thus cannot be enforced adversely against the assessee. During hearing, the learned CIT DR contended that circulars may not over-ride the provisions of the Act. Broadly we are in agreement with the submissions of the learned CIT DR, however, a circular though may not override or detract from the provisions of the Act but it can seek to mitigate the rigours of the particular provision in certain specified

circumstances. So long as the circular is in force, it aids in uniform and proper administration and application of the provisions of the Act. The provisions were introduced in order to promote rural banking and assist the scheduled commercial banks for making adequate provision for their current profit and to provide for risk in relation to rural advances. A rural branch for the purposes of the Act means a branch of the scheduled Bank, situated in a place with a population not exceeding 10,000 or as applicable from time to time according to the relevant published figures. The scheduled commercial bank would continue to get benefit of write off of irrecoverable debts u/s 36(1)(vii) in addition to the benefit of deduction of the provision for bad and doubtful debts u/s 36(1)(vii).

2.4 In the appeals of the assessee, the issue to be adjudicated by us is whether deduction u/s 36(1)(vii) of the Act for bad and doubtful debts written off is restricted to

the amount in excess of the provision for bad and doubtful debts created in the books of accounts u/s 36(1)(vii) or is to be restricted to the excess of the amount of provision claimed in the return whereas in the appeal of the revenue, the issue is whether deduction u/s 36(1)(vii) for bad and doubtful debt is restricted to the amount in excess of closing value as on 31st March of the account for provision for bad and doubtful debt or is to be restricted to the opening value of the account of provision for bad and doubtful debts as on 1st April at the beginning of the year.

2.5 In the appeal of the revenue by ground no. 2, the department has challenged the conclusion of the learned CIT(A) regarding deduction u/s 36(1)(vii) for bad and doubtful debts written off restricted to the amount in excess of the provision for bad and doubtful debts created in the books of accounts u/s 36(1)(vii) of the Act or it is restricted to the excess of the amount of provision claimed

in the return. The Assessing Officer has mentioned that deduction u/s 36(1)(vii) is allowable against bad debt but it is subject to the proviso to section 36(1)(viia). He has further mentioned that in section section 36(1)(viia) a proviso has been inserted with effect from 1.4.2000 wherein it is provided that a scheduled bank or non-scheduled bank as referred to in sub-clause shall at its option be allowed deduction in any assessment year in respect of any provision made by non-profit asset/doubtful asset as per the guidelines issues by RBI for an amount not exceeding 5% of the amount of such asset in the books of accounts as on the last day in the previous year. The learned CIT DR, Shri Darshan Singh, very forcefully submitted that the “relevant assessment year” has been defined in the Explanation by further contending that the learned CIT(A) has not appreciated the fact that such amount in the first proviso is applicable only for one year

out of 5 assessment years beginning from 1st day of 2000 and ending before the 1st day of April, 2005. The learned CIT DR also relied upon the decision in the case of Catholic Syrian Bank (supra) by submitting that sub-clause (viiia) to section 36(1) only speaks about rural branches, therefore, it is not applicable to urban branches. It was contended that the assessee bank as well as the learned CIT(A) have not given any reason or finding whether such non-profit asset or loss asset have been worked out as per guidelines of RBI and failed to distinguish the rural as well as urban branches. It was also pleaded that the assessee has already availed the benefit of the proviso in earlier year, therefore, further deduction is not allowable.

2.5 If the issues are analysed in the light of the decision from Hon'ble Apex Court in the case of Catholic Syrian Bank (supra) and the arguments advanced by the learned respective counsel, it is expected that normally the banks

maintain separate books for rural and urban branches so that the bad debts can be segregated for rural and urban branches. In the impugned order, neither there is bifurcation of rural and urban branches nor there is a recording whether such non profit asset or loss asset have been worked out as per RBI guidelines, therefore, in the interest of justice, the Assessing Officer is directed to examine the claim of both the learned representatives and after considering the facts/bifurcation, decide the issue in the light of the aforesaid decision of the Hon'ble Apex Court in the case of Catholic Syrian Bank (supra), therefore, all these appeals are remanded back to the file of the learned Assessing Officer. Needless to mention here that due opportunity of being heard be provided to the assessee. The assessee is also permitted to furnish evidence, if any, in support of its claim.

Finally, these appeals are allowed for statistical purposes.

This order was pronounced in the open Court in the presence of ld. representatives from both sides at the conclusion of the hearing on 6.11.2012.

Sd
(R.C.SHARMA)
ACCOUNTANT MEMBER

sd
(JOGINDER SINGH)
JUDICIAL MEMBER

Dated: 08.11.2012

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