आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No.455/Ind/2018
Assessment Year: 2014-15

ACIT Khandwa	बनाम/ Vs.	M/s. Jila Sahakari Kendriya Bank, Khandwa Road, Khargone
(Appellant /Revenue)		(Respondent / Assessee)
PAN: AAATJ 0529 K		
Revenue by	Shri P.K. Mishra, CIT-DR	
Assessee by	Shri Subhash Jain & Milind Wadhwani, ARs	
Date of Hearing	01.02.2023	
Date of Pronouncement	28.04.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 02.02.2018 passed by learned Commissioner of Income-Tax (Appeals)-II, Indore **["Ld. CIT(A)"]**, which in turn arises out of assessment-order dated 23.12.2016 passed by learned ACIT, Khandwa **["Ld. AO"]** u/s 143(3) of Income-tax Act, 1961 **["the Act"]** for Assessment-Year **["AY"]** 2014-15, the revenue has filed this appeal on following effective grounds:

> *"(1). The ld. CIT(A) has erred in deleting the disallowance made in respect of provisions for standard assets made by the assessee at Rs.5,00,00,000/-.*

(2). The Ld. CIT(A) has erred in deleting the addition holding that the provision for standard assets is provision for NPA even though no details in this regard has been filed by the assesse either during the course of assessment proceedings or during the appellate proceedings.

(3). The Ld. CIT(A) has erred in deleting the disallowance made in respect of provision claimed u/s 36(1)(viii) of the I.T. Act of Rs.5,75,94,958/-.

(4). The Ld. CIT(A) has erred in deleting the addition of Rs.5,75,94,958/- by holding that the provisions made u/s 36(1)(viii) of the I.T. Act 1961 under various heads are allowable as deduction as the same has been used to promote the business interest of the assesse, ignoring the facts that there were provisions and not real expenditure, therefore the same was allowable only to the 20% of profit of the business."

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Briefly stated the facts are such that the assessee is a registered co-operative society engaged in banking business. The assessee is governed by the provisions of its parent law relating to co-operative societies as well as Banking Regulations Act. The assessee filed return of income of the relevant AY 2014-15, which was subjected to scrutiny-assessment by issuing statutory notices u/s 143(2) and 142(1). Finally, the Ld. AO completed assessment after making certain disallowances. Being aggrieved, the assessee went in first-appeal and succeeded partly. Now, the revenue has come in this appeal assailing the order of first-appeal. We proceed to decide various grounds, as reproduced earlier, in seriatim.

Ground No. 1 and 2:

4. In ground No. 1, the revenue claims that the CIT(A) has erred in deleting the disallowance of Rs. 5,00,00,000/- made by AO in respect of "provision for bad-debts". Thereafter, in ground No. 2, the revenue claims that the CIT(A) has erred in deleting the impugned disallowance even though no details were filed by assessee during assessment or appellate proceedings. Both of these grounds relate to the same issue; therefore considered together for adjudication.

5. During assessment-proceeding, Ld. AO observed that the assessee has claimed a total deduction of Rs. 10,00,00,000/- u/s 36(1)(viia) under two captions, namely (i) provision for NPA - Rs. 5,00,00,000/- and (ii) provision for standard assets – Rs. 5,00,00,000/-. Ld. AO analysed section 36(1)(viia) and framed a view that "Provision for NPA" is a provision for bad-debt and therefore allowable as deduction; but "Provision for standard assets" is not a provision for bad-debt and therefore not allowable. Finally, Ld. AO disallowed "Provision for standard assets" of Rs. 5,00,00,000/-.

6. During first-appeal, the assessee submitted that it is engaged in banking business and it has to follow the guidelines issued by Reserve Bank of India (RBI). It was further submitted that the assessee had created provision for bad debts and the whole provision i.e. 5,00,00,000/- on account of NPA plus Rs. 5,00,00,000/- on account of standard-assets, though made under two nomenclatures, is a provision for bad debts in terms of RBI guidelines. The assessee also submitted that section 36(1)(viia) allows deduction of the "provision for bad debts" made as per RBI guidelines; therefore the entire provision of Rs. 10,00,00,000/- (including the provision of Rs. 5,00,00,000/- *qua* standard assets) is entitled for deduction. The assessee also placed reliance on the decision of **ITAT, Jodhpur in Nagaur Urban Co-operative Bank Ltd. Vs. ACIT, ITA No. 240/Jodh/2013** wherein the "provision for standard assets" was held to be a provision for bad debts allowable u/s 36(1)(viia). Ld. CIT(A) accepted assessee's submission and allowed deduction.

7. Before us, Ld. DR representing the revenue argued that the "standard assets" are those assets which are adequately serviced by the borrowers; those assets can't be said to be "bad debts". Therefore, the assessee has wrongly characterized them as "bad debt", made provision and claimed deduction. Ld. DR claimed that in **Nagaur Urban Co-operative Bank Ltd. (supra),** deduction was allowed for NPA and not for standard-assets.

Therefore, the reliance of CIT(A) on that decision is misplaced. Thus, Ld. DR submits, the CIT(A) has wrongly allowed the claim of assessee.

8. Per contra, Ld. AR supported the order of first-appeal and argued that a careful reading of the order of **Nagaur Urban Co-operative Bank Ltd. (supra)** clearly reveals that the ITAT has allowed deduction of "provision for standard-assets" (Para No. 4 and 10 of the ITAT order). He further relied upon following decisions wherein such deduction has been allowed:

(i) ITAT Amritsar Bench in DCIT Vs. The Nawansahar Central Co-operative Bank Ltd, ITA No. 61/Asr/2017 order dated 03.01.2018

(ii) ITAT Mumbai Bench in Model Co-operative Bank Vs. DCIT, ITA No. 5522/Mum/2017 order dated 24.07.2019

(iii) ITAT Indore Bench in Vikramaditya Nagarik Sahakari Bank Vs. ACIT, Ujjain, ITA No. 36/Ind/2017 order dated 20.03.2018

9. We have considered the rival contentions raised by both sides and perused the material held on record in the light of section 36(1)(viia) and the judicial decisions cited above. After a careful consideration, we observe that it has been loudly held in all of the decisions cited above that the provision made by a banking company in respect of standard assets, as per RBI guidelines, is very much allowed as deduction u/s 36(1)(viia). Ld. DR is not able to point out any contrary decision on this issue. We extract below the decision of **ITAT Indore Bench** itself in **Vikramaditya Nagarik Sahakari Bank Vs. ACIT (supra)**:

> *"6. We have heard the rival contentions and perused the material placed on record. The sole grievance of the assessee revolves around the disallowance of Rs. 2 lacs confirmed by both the lower authorities relating to provision for contingency of standard assets claimed by the assessee u/s 36(1)(viia) of the Act. Before proceeding further we would like to reproduce the provision of section 36(1)(viia) of the Act as under :-*
>
> > *"Other deductions.*

36.(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 xxxx xxxx xxxx

(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 99[seven 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

7. On perusal of the above provision and in the given facts of the case, wherein the assessee, which is a cooperative bank carrying on banking business, we find that the assessee is eligible to claim provision for bad and doubtful debts to the extent of 7.5% of the total income before making any deduction under this clause and under Chapter VIA. Further in the profit and loss account except for the alleged provision for Rs. 2 lacs, no other provision for bad and doubtful debts has been claimed. We find force in the contention

of the learned counsel for the assessee that the phrase contingency provision for standard assets is basically a provision for bad and doubtful debts only which is in general a regular feature of the banking business. It is also pertinent to mention that even though the assessee was eligible to claim much higher amount as an expenditure of provision for bad and doubtful debts, it only claimed Rs. 2 lacs. We, therefore, in the facts and circumstances of the case, are of the opinion that in the instant appeal the contingency provision for standard assets is basically in the nature of bad and doubtful debts only and the assessee has rightly claimed the expenditure u/s 36(1)(viia) of the Act. We, therefore, allow the sole ground raised by the assessee."

10. Thus, the impugned issue is settled in favour of assessee by various decisions of ITAT Benches including the co-ordinate bench of ITAT, Indore. Respectfully following the same, we too hold that the provision made by assessee *qua* standard assets is allowable u/s 36(1)(viia) and therefore the Ld. CIT(A) has rightly deleted the disallowance made by AO. However, during hearing, we raised a specific query to Ld. AR that the assessee has claimed a total deduction of Rs. 10,00,00,000/- but the section 36(1)(viia) allows deduction upto a certain limit prescribed therein; whether the AO has verified that the deduction of Rs. 10,00,00,000/- is within permissible limit prescribed in section? Ld. AR fairly agreed that it is not reflected in the orders of lower-authorities. Ld. AR, however, raised a plea that the assessee was entitled to much higher deduction but claimed only Rs. 10,00,00,000/-. In absence of any finding on this aspect by lower-authorities, we are unable to accept such a pleading of Ld. AR. Therefore, in the circumstance, though we agree in principle that the provision made for standard assets is also eligible for deduction yet we are of the view that there is a strong necessity to verify whether the claim made by assessee is within the permissible limit prescribed in section 36(1)(viia) or not; therefore it would be appropriate to refer this issue back to the file of Ld. AO for the limit purpose of such verification. The Ld. AO will verify the permissible limit and allow deduction within such limit. We order accordingly. We also direct the assessee to provide necessary information/calculation to Ld. AO to enable him to make such verification. These grounds are, thus, allowed in terms indicated here.

Ground No. 3 to 4:

11. In ground No. 3, the revenue claims that the CIT(A) has erred in deleting the disallowance of Rs. 5,75,94,958/- in respect of various provisions claimed by assessee. Thereafter, in ground No. 4, the revenue claims that the CIT(A) has erred in deleting the impugned disallowance ignoring the fact that they were provisions and not real expenditure; therefore the same were allowable to the extent of 20% of profit of business in terms of section 36(1)(viii). Both of these grounds relate to the same issue; therefore considered together for adjudication.

12. During assessment-proceeding, Ld. AO observed that the assessee has claimed deduction in respect of following provisions made in accounts, aggregating to Rs. 11,30,00,000/-:

S.No.	Items of provisions	Amount
1.	प्रशिक्षण कोष (बैंकिंग कर्मियों के लिए)	5,00,000
2.	लाभांश समानीकरण निधि	50,00,000
3.	विकास निधि	50,00,000
4.	अन्य सम्पत्ति पर प्रावधान	1,00,00,000
5.	ऋण असंतुलन निधि	6,75,00,000
6.	रिस्क फण्ड	1,00,00,000
7.	एकमुश्त समझौता योजना	50,00,000

Then, the Ld. AO invoked section 36(1)(viii) and observed that the assessee was eligible to claim maximum deduction upto 20% of the eligible profit as mentioned in that section; accordingly Ld. AO made a mathematical working of 20% limit at Rs. 5,54,05,042/-; finally disallowed excess deduction of Rs. 5,75,95,958/- [Rs. 11,30,00,000 (-) Rs. 5,54,05,042].

13. During first-appeal, the assessee made a detailed submission which is reproduced in Para No. 3.1 to 3.3 of the order of Ld. CIT(A). Finally, Ld. CIT(A) accepted the assessee's claim and deleted the disallowance by observing and holding thus:

> *"3.4 The appellant has also relied on the decision of the **Hon'ble ITAT Bench Bangalore in the case of Katnataka State Co-operative Apex Bank Ltd. Vs. DCIT-3(1) ITA No. 1372/Bang/2014 A.Y. 2007-08** which had given decision on the said grounds and given relief to the appellant. The appellant has also relied on the decision of **ITAT Bench of Pune in the case of District Central Co-operative Bank Ltd. Vs. Addl. CIT Range-1, Pune ITA No. 1796/PN/2013 A.Y. 2009-10**.*
>
> *3.5 Similar question came up before **Madhya Pradesh High Court in the case of Keshkal Co-operative Marketing Society Ltd. Vs. CIT 165 ITR 437.** In that case, it was held that the co-operative society was under obligation to create a fund which was to be managed by the Registrar of the Co-operative Societies and in the context, it was held that this fund would not be includible in the income of the assessee.*
>
> *3.6 It is clear that the amounts were spent by the appellant only as a statutory obligation and that amount was used to promote the business interest of the appellant co-operative bank. This fact also gets confirmed from the above mentioned various judicial authorities in his decisions. Thus, in the light of above facts and circumstances, these grounds of appeal are allowed."*

14. Before us, Ld. DR referred to the order of first-appeal and strongly contented that there is a serious infirmity committed by Ld. CIT(A) i.e. the CIT(A) has made a baseless/wrong/unverified finding that the amounts claimed by assessee were "actually spent". Ld. DR strongly contended that there is no material to indicate that the impugned amounts have been "actually spent" by assessee during the previous year relevant to assessment-year under consideration; in fact a cursory look of the P&L A/c and Balance-Sheet of assessee (copies thereof placed in the Paper-Book filed by assessee) itself demonstrates that these are mere provisions/transfer to funds made by assessee by means of accounting entries. Then, the Ld. DR submitted that the AO has rightly observed that the assessee has claimed deduction of mere provisions/transfer to funds which can be allowed only in terms of section 36(1)(viii). Ld. DR submitted that the AO has aptly computed the permissible limit as prescribed in section 36(1)(viii) and

accordingly allowed deduction to the extent allowable and disallowed only excess provision; hence there is no fallacy in AO's action. He submitted that there is nothing wrong in the disallowance of excess deduction made by AO because the provision/transfer to funds made by assessee can be allowed only to the extent of limit permitted in the Income-tax law and not beyond that. With these submissions, Ld. DR submitted that the relief given by CIT(A) is grossly wrong and deserves to be reversed.

15. Per contra, Ld. AR defended the order of CIT(A) and made two-fold contentions as summed up below:

(i) The first contention raised by Ld. AR is such that the assessee is governed by the MP/CG Co-operative Societies Act, 1960, whose section 43A(1)/(1A) prescribes as under:

> *"**43-A. Appropriation of profits.**- (1) A society earning profit shall calculate the net profit by deducting from thegross profits for the year the following:*
>
> *(a) all overdue interest accrued on loan accounts,*
>
> *(b) management charges;*
>
> *(c) interest payable on loans and deposits;*
>
> *(d) audit fee;*
>
> *(e) working expenses, including repairs, rent, taxes;*
>
> *(f) depreciation;*
>
> *(g) bonus payable to employees under the Payment of Bonus Act,1965 (No.21 of 1965)*
>
> *(h) provision for payment of income-tax;*
>
> *(i) provision for payment of subscription to the State/District Cooperative Union as may be notified;*
>
> *(j) provision for development fund, bad debt fund, price fluctuation fund, dividend and equalization fund, investment fluctuation fund and such other funds as may be specified by the Registrar in this behalf,*
>
> *(k) provision for retirement benefits to employees and in the case of societies engaged in consumer goods business, provision for purchase rebate to be paid to the members; and*
>
> *(l) provision for writing off bad debts and losses not adjusted against any fund created out of profits.*

> *(m) provision for non performing assets, as may be specified from time to time by the Registrar in consultation with the Reserve Bank of India and National Bank for Agriculture and Rural Development.*
>
> *43A-(1-A) Every society shall create separate fund to be called "Training fund" in which two percent amount of its profit shall be transferred every year for the purpose of training to members and employees of the society."*

Ld. AR claimed that the assessee is bound to follow these mandatory provisions and accordingly make provisions/transfer to funds. Ld. AR submitted that there is ample authority by judicial rulings that such mandatory provisions/transfer to funds are allowed as deduction u/s 37(1) of Income-tax Act, 1961. Ld. AR cited following decisions:

(a) Hon'ble Madhya Pradesh HC in Keshkal Co-Operative Marketing Society Ltd. vs. CIT 165 ITR 437

(b) Hon'ble Karnataka HC in PCIT vs. Karnataka State Co-operative Apex Bank Ltd [2021] 130 taxmann.com 261

(c) Hon'ble Supreme Court in Rotork Controls India Pvt. Ltd. vs. CIT (2009) 314 ITR 62

(d) ITAT Surat in DCIT vs. Surat Dist. Co-Op Bank Ltd. ITA No. 16/AHD/2015 order dated 17.05.22.

(ii) The second contention made by Ld. AR is that the assessee has not simply made provisions/transfer to funds; it has also incurred actual expenditure and those expenses were for business purposes. Therefore also, the deduction is allowable.

16. In rejoinder, Ld. DR submitted that the provisions of section 43A of MP/CG Co-operative Societies Act, 1960 relied upon by assessee simply prescribe for "appropriate of profits" which is nothing to do with Income-tax Act. Ld. DR submitted that an assessee may be required to appropriate profits for certain purposes by a law, but that does not mean that Income-tax law will allow deduction. Ld. DR also submitted that the decisions relied

upon by Ld. AR or even Ld. CIT(A) during first-appeal are not applicable on the facts of present case.

17. We have considered rival submissions of both sides and perused the material held on record. At first, we would like to analyse the decisions relied upon by Ld. AR before us / Ld. CIT(A) in first-appeal:

(i) Hon'ble Madhya Pradesh High Court - Keshkal Co-operative Marketing Society Ltd. Vs. CIT 165 ITR 437:

In this case, the Hon'ble Court was concerned to decide the following issue:

> *"(ii) Under the facts and circumstances of the case, whether the amount of Rs. 1,66,763 required to be transferred to the reserve fund under section 43(2) of the Madhya Pradesh Co-operative Societies Act, 1960, was an allowable deduction either as a business expenditure or as having been diverted by an overriding title?"*

While adjudicating it in favour of assessee, the Hon'ble Court made following observations:

> *"As far as the second point is concerned the finding reached by the Tribunal that the apportionment of profit for capital redemption was not allowable expenditure and the Societies Act does not even indicate the purpose for which the apportionment is made, appears to have been reached by misconstruing the provisions of sections 28, 36 and 37(1) of the Income-tax Act, 1961, and section 43(2)(a) and (b) and section 44(2) of the Societies Act and against the settled law as laid down in numerous decisions.* ***The reserve fund created under section 43(2) of the Societies Act is a "statutory one" and is created at the instance of the Registrar and further, having once created the reserve fund, the assessee does not have control over it, as under section 44(2) of the Societies Act, the reserve fund of the society shall be invested or utilised only in such manner and on such terms and conditions as may be laid down by the Registrar in this behalf. Therefore, the creation of the reserve fund and the control thereon fully remain with the Registrar and in this respect the assessee, in any manner whatsoever, does not remain the beneficiary of the said reserve fund. This position, being the statutory position, is not disputed****.*
>
> *Income-tax is assessable on the net profit, i.e. real profit. Under section 2(24) of the Act, "income" is defined so as to postulate that the word "income" has to be given a very wide meaning, but certainly it does not mean mere production or receipt of a commodity which may be converted into money, which certainly cannot be construed to be an income in the normal connotation of the term "income" as envisaged under section 2(24) of the Act. Therefore, income-tax is levied on the real income, i.e. profit received in mercantile trade,*

as prescribed under the Income-tax Act, 1961. In accordance with section 28 of the Act, profits and gains of business carried on by an assessee based on purely mercantile principles, should always be amenable to business profits, but not statutory profits. In sum and substance, only the real profits of business are to be taken into account for assessing income-tax, but not notional profits and, therefore, the statutory deposit (reserve fund) in the instant case, as contemplated under section 43(2) of the Societies Act, which after its creation comes within the domain of the Registrar under section 44(2) of the Societies Act, cannot be said to be profit in the real sense.

On this background, learned counsel appearing for the assessee argued that the said amount of Rs. 1,66,763 does not comprise income of the assessee, because the said amount has been diverted under section 43(2) of the Societies Act. In support of his contention, learned counsel relied upon the principle enunciated in Poona Electric Supply Co. Ltd. v. CIT (1965) 57 ITR 521 (SC) wherein it has been held that the reserve fund formed in accordance with the statutory provisions by the amount credited by the appellant during the accounting year to the "Consumers Benefit Reserve Account", being a part of the excess amount paid to it and reserved to be returned to the consumers, did not form part of the appellants real profits and to arrive at the taxable income of the appellant from the business under section 10(1) of the Indian Income-tax Act, 1922, which is in parimateria to sections 28, 37 of the Income-tax Act, 1961, the said amount is liable to be deducted.

Relying upon the ratio laid down in Poona Electric Supply Co.s case (1965) 57 ITR 521 (SC), learned counsel for the assessee argued that the reserve fund has been created under the statutory provisions of section 43(2) of the Societies Act and the said amount having been diverted under the statutory provisions, does not comprise the income of the assessee, being deductible under section 37(1) of the Act.

It is settled law that in order to claim a deduction from income, it must fulfil two essential conditions, viz. (i) that the amount must be laid out wholly and exclusively for the purpose of the business, and (ii) that it should not be expenses of capital nature. Both these conditions must be complied with before the assessee claims deduction from the income. In the instant case, as stated aforesaid, if the said amount of Rs. 1,66,763 does not comprise the income of the assessee on account of its being diverted under the statutory provisions of section 43(2) of the Societies Act, then certainly, in our opinion, the assessee can claim deduction under section 37(1) of the Act which reads as under :

"37. (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and section 80VV and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purpose of the business or profession shall be allowed in computing the income chargeable under the head Profits and gains of business or profession.

The view taken in Poona Electric Supply Co.s case (1965) 57 ITR 521(SC) was followed by the Bombay High Court in Amalgamated Electricity Co. Ltd. v.

CIT (1974) 97 ITR 334 and reiterated by the Supreme Court in CIT v. Travancore Sugars and Chemicals Ltd. (1973) 88 ITR 1. Further, in CIT v. Bombay State Road Transport Corporation (1977) 106 ITR 303 (Bom), it has been held that the contributions made under a legal obligation cast upon a statutory organisation under a statutory provision will have to be allowed as deduction in computing its profits.

Therefore, in the instant case also, the deduction as claimed by the assessee-society amounting to Rs. 1,66,763 is an allowable deduction as the said amount does not comprise income of the assessee because the same having been diverted under the provisions of section 43(2) of the Societies Act, can only be invested or utilised in such manner and on such terms and conditions as may be laid down by the Registrar in this behalf as required under clause (2) of section 44 of the Societies Act. As such, the said amount is not available for the use of the assessee-society at its opinion. Therefore, the real test for such sum to be deductible is that if by making statutory deposits, the assessee loses control over the said amount, being not available for its use, then such amount is certainly deductible from the income as contemplated under section 36 and 37 of the Income-tax Act, 1961.

On behalf of the Revenue, Shri B. K. Rawat, learned counsel relying upon the decision in Vazir Sultan Tobacco Co. Ltd. v. CIT (1981) 132 ITR 559 (SC), argued that the said amount is not liable to deduction. In Vazir Sultan Tobacco Co.s case (1981) 132 ITR 559 (SC), the main question raised was whether amounts retained or appropriated or set apart by the concerned assessee-company by way of making provision(a) for taxation, (b) for retirement gratuity, and (c) for proposed dividends from out of profits and other surpluses, could be considered as "other reserves" within the meaning of rule 1 of the Second Schedule to the Super Profits Tax Act, 1963, for inclusion in the capital computation of the company for the purpose of levying super tax. Their Lordships of the Supreme Court remanded Vazir Sultan Tobacco Co.s case as it was found that there was no sufficient material on record regarding whether the appropriation made by the Vazir Sultan Tobacco Co. towards gratuity reserve was based on any actuarial valuation or whether it was an appropriation of an ad hoc amount. Such is not the position in the instant case wherein section 43(2)(a) of the Societies Act specifically speaks of "transfer of an amount not less than 25% of such profits to the reserve fund" and according to section 44(2), the said amount is not available for the use of the assesses and thus the facts of Vazir Sultan Tobacco Co.s case (1981) 132 ITR 559 (SC) referred to by the Revenue are quite distinguishable from the facts of the instant case and hence of no avail to the Revenue.

From the discussion aforesaid, our answer to question No. (ii) is in the affirmative in favour of the assessee, that the amount required to be transferred to the reserve fund under the statutory provisions is liable to be deducted as business expenditure."

Thus, the Hon'ble Court observed that the amount transferred by assessee to reserve fund was a "statutory one" and is created at the instance of the

Registrar and further, having once created the reserve fund, the assessee does not have control over it and the reserve fund of the society shall be invested or utilised only in such manner and on such terms and conditions as may be laid down by the Registrar in this behalf and the assessee did not remain the beneficiary of the said reserve fund. Taking into account these peculiar facts, the Hon'ble Court applied the test of "real income" and then came to conclude that the income to the extent of transfer to reserve fund was not a "real income" of assessee in terms of regulatory provision; therefore the court allowed deduction of provision/transfer to funds made by assessee.

(ii) Hon'ble Karnataka High Court - PCIT vs. Karnataka State Co-operative Apex Bank Ltd [2021] 130 taxmann.com 261:

In this case, the assessee made contributions to (i) Common Good Fund [CGF], (ii) Special Assistance Fund, (iii) PACS/DCCB Fund, (iv) Rural Farmers Social Economic Fund and claimed deduction. When the matter travelled before ITAT, Bangalore in **Katnataka State Co-operative Apex Bank Ltd. Vs. DCIT-3(1) ITA No. 1372/Bang/2014,** the ITAT allowed deduction on some crucial findings, we extract below the relevant paragraphs of the order of ITAT:

> *"6.1 During the course of hearing, it was submitted on behalf of the assessee-co-operative bank that during the previous year relevant to assessment year under consideration, while adding back the provisions of contribution made to (a)Common Good Fund, (b)Special Assistance Fund, (c)Payment to PACS/DCCB Fund and (d)Rural Farmers Socio Economic Development Fund,* ***the assessee-co-operative bank had claimed deduction of actual amounts spent out of provision created****. It was submitted that it was a statutory obligation to spend money for the above purposes as the provisions of the Karnataka Co-operative Societies Act stipulates that certain percentage of profits should be spent towards the specified purposes. The amounts are spent only as a statutory obligation and it was also further submitted that the amounts were spent only to promote the business interest of the assessee-co-operative bank and therefore, they should be allowed as deduction under the provisions of sec.37(1) of the Act. As regards the additional claim of deduction on account of loss of securities of Rs.8,28,65,052/- it was submitted that it was not a fresh claim but only re-adjustment of the already made claim in the original proceedings. Therefore, the ratio of the decision of the Hon'ble*

Supreme Court in the case of Sun Engineering Works (supra) is not applicable."

"8.5 ***Thus viewed from this angle, the amounts spent cannot be disallowed****.* ***The reliance placed by the Ld. CIT(DR) on the decision of the Hyderabad bench of Tribunal in the case of A.P. Mahesh Co-operative Urban Bank Ltd (supra) rests on the decision of the Hon'ble Supreme Court in the case of Vellore Electric Corporation Ltd. Vs. CIT (227 ITR 557). On perusal of the said decision, it is clear that the decision is relating to creation of reserve fund which always remained with the assessee-corporation.*** *Therefore, the ratio of decision in the case of AP Mahesh Co-operative Urban Bank Ltd (supra) is not applicable to the facts of the case. We, direct the AO to allow the amount spent on the above fund of Rs.10,86,43,782/- as deduction while computing income of the assessee co-operative bank."*

Thus, although the ITAT allowed deduction to assessee but it was based on the finding that the assessee had "actually spent" amounts for the relevant purposes. Notably, the ITAT turned down the revenue's reliance upon the decision of Hyderabad bench in A.P. Mahesh Co-operative Urban Bank Ltd on the footing that the said decision dealt a case of creation of reserve fund which always remained with the assessee.

Thereafter, when the revenue went in next appeal, the Hon'ble High Court confirmed the order of ITAT by holding thus:

"7. ***The tribunal while dealing with the claims of the assessee for allowance as an expenditure under section 37 of the Act, has held that the funds contributed by the assessee neither remains with the Apex Co-operative Bank nor comes back to the assessee bank in any other form****. The amounts have been spent only out of the statutory obligation. It has further been held that Section 37(1) of the Act makes an exception in case of capital expenditure or personal expenditure of the assessee or expenditure of the nature described in other Sections of Chapter IV of the Act. The case of the revenue is not that the contribution made by the assessee to the fund is capital expenditure or is in the nature of personal expenses or expenditure described in any other Sections of Chapter IV of the Act. It has further been held that assessee has incurred the expenditure for the purposes of business and therefore, the same is an admissible expenditure under section 37 of the Act. This court in Karnataka State Co-operative Apex Bank Ltd. Case (supra), of assessee in respect of Assessment Year 2009-10 has allowed the payments made to Primary Agricultural Cooperative Societies and District Central Co-operative Banks as an admissible expenditure under section 37 of the Act. The other amounts are expended for the purposes of business of the assessee and therefore, the same are allowable expenditure under section 37 of the Act.* ***The decisions relied upon by learned counsel***

> ***for the respondent pertain to cases of reserve fund, which are not applicable to the fact situation of the case.*** *For the aforementioned reasons, the substantial question of law framed in the appeal is answered against the revenue and in favour of the assessee."*

Thus, the Hon'ble High Court approved the finding of ITAT that the funds contributed by assessee neither remained with the assessee nor came back to assessee in any manner. Again it can be seen that the Hon'ble High Court turned down the reliance of revenue on the decisions against assessee on the footing that those decisions dealt with cases of "reserve fund" which do not apply to the facts of assessee.

(iii) Hon'ble Supreme Court - Rotork Controls India Pvt. Ltd. vs. CIT (2009) 314 ITR 62:

In this case, the Hon'ble Court approved deduction of provision made by assessee for "product-warranties" committed at the time of sale of product. This decision has no application to present case.

(iv) ITAT Surat - DCIT vs. Surat Dist. Co-Op Bank Ltd. ITA No. 16/AHD/2015 order dated 17.05.22:

This decision relates to the deduction of provision for bad debts u/s 36(1)(viia) and does not have application to present case.

(v) ITAT Pune - District Central Co-operative Bank Ltd. Vs. Addl. CIT Range-1, Pune ITA No. 1796/PN/2013 A.Y. 2009-10:

This decision deals with the deduction of amortization of premium expenditure of HTM securities, provision for investment depreciation, investment fluctuation fund, claims of debt waiver scheme, depreciation on assets, etc. which are on separate footing. The decisions is not applicable to present case.

18. Thus, from a bare reading of above decisions, it is quite clear that the provisions/transfer to funds are allowable as deduction u/s 37(1) only if at least one of the conditions exists i.e. (i) there is an over-riding statute by which the amounts transferred to funds do not remain with / under the

control of assessee; or (ii) if the assessee has "actually spent" moneys for the relevant purposes during the previous year. In the present case, the provisions of section 43A of MP/CG co-operative Societies Act relied upon by Ld. AR talks of "appropriate of profits" only. There is no material available on record by which it can be verified that either of the two conditions, as narrated earlier, is satisfied. During the course of hearing, we tried to ascertain the position of each individual item comprised in Rs. 11,30,00,000/-, mentioned in the table in foregoing Para No. 12 of this order, from available documents in Paper-Book but could not reach to any conclusion. Therefore, the matter requires a complete verification at the stage of AO. Being so, we are of the view that this issue should be remanded to the file of Ld. AO who will make necessary verification with regard to existence of the conditions, after calling for the relevant details from assessee and thereafter take a final call in the matter. This ground is thus allowed in terms indicated here.

19. Resultantly, all grounds of this appeal are allowed for statistical purpose in terms mentioned above.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 28/04/2023.
Order pronounced in the open court on ……/……/2023.

Sd/- Sd/-

(SUCHITRA KAMBLE) (B.M. BIYANI)
JUDICIAL MEMBER ACCOUNTANT MEMBER

Indore
दिनांक /Dated : 28.04.2023
Patel/Sr. PS

Copies to: *(1)* *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	