

## Claim disallowed u/s 36(1)(viii) couldn't be allowed u/s 36(1)(vii) in absence of provision made for bad debts

**Summary – The Indore ITAT in a recent case of Jila Sahakari Kendriya Bank Maryadit., (the Assessee) held that Claim disallowed under section 36(1)(viii) could not be allowed under section 36(1)(vii) in absence of provision made for same in P-L account under head bad debt**

### Facts

- The assessee was a co-operative society doing the business of banking. It had made the provision for Bad and Doubtful Debts and Special Reserve Fund (SRF) under section 36(1)(viii).
- While framing the assessment, the Assessing Officer observed that the assessee was not entitled to deduction under section 36(1)(viii) since the bank had not given the long term finance for development of agriculture. On this ground he made the addition (SRF) while computing the total income.
- In appeal, it was submitted before the Commissioner (Appeals) that SRF should be considered under section 36(1)(vii).
- The Commissioner (Appeals) dismissed the appeal on the ground that the deduction would be limited only to the extent of the reserve created for bad and doubtful debts and since the assessee had not made the provision under this head in the profit and loss account, it was not entitled to a claim under section 36(1)(vii).
- On appeal:

### Held

- The assessee's plea is that the deduction of Rs. 1.42 crores pertaining to specific reserve may be allowed under section 36(1)(vii) as there still remains an amount of Rs. 9.2 crores which the assessee could have legally claimed.
- Provision of section 36(1)(vii) relates to provision for bad and doubtful debts which, certain category of assessee's have been referred in the section are allowed to claim the expenditure as in the nature of business as they engaged in to, regular bad debts occur.
- Now of section 36(1)(viii) is in respect of specific reserve which is created by the financial institutions for providing long term finance. Specific reserve is not an expenditure but it is an apportionment of the income and statute in order to promote long term finance in various sectors for the benefit of general public of the country gives the benefit of deduction to claim 20 per cent of the available profits to be accumulated under the head special reserve and the claimant is duty bound to use such specific reserves only for the aforesaid purpose for which it has been made and in case of any default the same needs to be brought to tax. Both the section 36(1)(vii) and 36(1)(viii) deals with two distinct items, namely, an expenditure in the name of provision for bad and doubtful debts

under section 36(1)(viiia) and in the nature of income under section 36(1)(viii) which is set apart for a specific purpose. Both the items expressed in these two section *i.e.* 36(1)(viiia) and 36(1)(viii) are different and cannot be equated to each other.

- In view of above discussion about the nature of items dealt in both the section *i.e.* 36(1)(viiia) and 36(1)(viii) and examining them in the light of the facts as well as the findings of Commissioner (Appeals) there is merit in the finding of Commissioner (Appeals) for the reason that the assessee made an intentional and well thought after claim under section 36(1)(viii) and made necessary accounting entries in the books of account and also depicting it under the 'Special Reserve Fund' head in the audited balance sheet. After becoming aware of the fact that it was not eligible for such deduction under section 36(1)(viii), it changed its stand and now pleaded that the set off may be given under section 36(1)(viiia) relating to provision for bad and doubtful debts giving the reason that it still had unutilized limit of Rs. 9.2 crores. How an item of income can be equated to an item of expenditure. By no canon can be given such set, off more so section 36(1)(viiia) only provides a cap but nowhere gives the blanket permission to claim the expenditure for provision to the extent mentioned therein. The assessee or any other person being eligible for such deduction under the provision of section 36(1)(viiia) may make provision for bad doubtful limits within the limit prescribed in this section. The assessee in the instant case has made a certain amount of provision after making necessary calculations which have been duly certified by the auditors based on the debts given by the assessee and the probability of the debts becoming paid. At this juncture the assessee cannot be allowed to add some more amount to the amount calculated at the time of finalizing the financial statement just for taking the benefit of the provision. Benefits and deductions/exemptions provided in the statute *i.e.* Income-tax Act are not in the nature of 'charity' that anyone can come forth and claim. A person needs to prove with evidences, facts and corroborative action to prove that it is entitled to a benefit/deduction/exemption provided in the Act. In the instant case the assessee has tried to equate the apportionment of profit against an expenditure for provision for bad and doubtful debts which is not possible.
- Therefore, there is no infirmity in finding of CIT (A).