**(2010) 11 P&H CK 0014**

**In the Punjab And Haryana At Chandigarh**

**Case No :** ITA No. 67 of 2004 (A.Y. 1995-96)

Haryana State Industrial Development Corporation APPELLANT

Vs

CIT RESPONDENT

**Date of Decision :** 23-11-2010

**Acts Referred:**
Income Tax Act, 1961 — Section 143(3), 260A, 28, 36, 36(1)(vii)

**Citation :** (2012) 344 ITR 460

**Hon'ble Judges :** Ajay Kumar Mittal, J;A.K. Goel, J

**Bench :** Division Bench

**Advocate :** Pankaj Jain, for the Appellant; Yogesh Putney, Senior Standing, for the Respondent

**Final Decision :** Dismissed

## Judgement

Ajay Kumar Mittal, J.—This appeal u/s 260A of the income tax Act, 1961 (for short "the Act"), has been filed by the assessee against the order dated 20-8-2003, passed by the income tax Appellate Tribunal, Chandigarh Bench (B), Chandigarh (in short "the Tribunal"), in I.T.A. No. 316/Chandi/98 relating to the assessment year 1995-96. The assessee has claimed the following questions for determination by this court :

(a) Whether, under the facts and circumstances of the case and on the true and correct interpretation of the provisions of section 36(1)(vii), 36(1)(viia), the Tribunal is justified in upholding the disallowance of deduction of Rs. 19,77,535 whereas both the sections are separate, distinct and operate independently?

(b) Whether, under the facts and circumstances of the case, the Tribunal is justified in upholding the disallowance of deduction of Rs. 19,77,535 whereby when there is no judgment against the assessee the view favouring on the basis of true and correct interpretation of the provisions of law, objects of introduction of the section, circulars of the Central Board of Direct Taxes favouring the assessee be adopted?

 

2. The facts necessary for adjudication, as narrated in the appeal, are that the assessee is a corporation and an undertaking of the Haryana State and is engaged in development of industrial estates and infrastructural facilities. The assessee filed its return for the assessment year 1995-96 declaring an income of Rs. 3,71,78,674 on 29-11-1995. The assessee had created a provision for bad and doubtful debts u/s 36(1)(viia) of the Act amounting to RS. 19,77,535. Besides this, there was already a credit balance in the provision for bad and doubtful debts for the assessment years 1993-94 and 1994-95, totalling Rs. 9,88,844. The assessing officer allowed bad debts to the extent of Rs. 1,10,53,000 but made disallowance of Rs. 19,77,535 and Rs. 9,88,844. The Assessing Officer, thus, disallowed the deduction claimed by the assessee u/s 36(1) (viia) of the Act. The assessment was completed by the assessing authority u/s 143(3) of the Act, vide order dated 7-2-1997, annexure A 3, at the income of Rs. 4,35,03,060.

3. Aggrieved by the order of the assessing authority, the assessee filed appeal. This claim of the assessee in appeal was dismissed by the Commissioner of income tax (Appeals) (for short "the CIT(A)"), vide order dated 5-1-1998, annexure A 2, which was affirmed by the Tribunal, vide order dated 20-8-2003, annexure A 1.

4. This is how the assessee has filed the present appeal.

5. We have heard learned counsel for the parties and have perused the record.

6. The claim of the assessee was that the provision which was made by the assessee during the year amounting to Rs. 19,77,535, was admissible as deduction.

7. In order to effectively adjudicate the controversy, the provisions of section 36(1)(vii), the proviso thereto, section 36(1)(viia) and section 36(2)(v) have to be analysed. The provisions as they existed at the relevant time are reproduced as under :

36. Other deductions.--(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--...

(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.

(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, 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 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.

(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).

(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 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.

8. Section 36(1)(vii) provides for deduction in the computation of taxable profits of any debt or part thereof, which is proved to have become a bad debt in the previous year subject to the fulfilment of the conditions specified in sub-section (2) of section 36. The proviso to section 36 (1)(vii) stipulates that the amount of deduction relating to any debt or part thereof which is claimed to have become bad debt 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. Section 36(1) (viia) of the Act was introduced with a view to provide for grant of deduction in respect of provision for bad debt made by all the banks and financial institution. In other words, to the extent to which the provision for bad and doubtful debts has been allowed u/s 36(1)(viia), there can be no deduction u/s 36(1)(vii) in view of the provisions of section 36(2)(v) of the Act. The Tribunal held that the assessee had created provision for bad and doubtful debts during the year u/s 36(1)(viia) and the said amount had to be reduced from the actual bad debts claimed u/s 36(1)(vii) in view of the proviso appended thereto. The findings recorded by the Tribunal are as under :

We find that the assessee has created a provision for bad and doubtful debts u/s 36(1) (viia) amounting to Rs. 19,77,535. In addition to that there was already a credit balance in the provision for bad and doubtful debts for the assessment year 1993-94 and for the assessment year 1994-95 totalling to Rs. 9,88,844. The assessee claimed bad debts excluding a sum of Rs. 9 lakhs already stated in the facts of the case amounting to Rs. 1,10,53,000. The Assessing Officer has allowed bad debts to the extent of Rs. 1,10,53,000 but disallowed a sum of Rs. 19,77,535 and Rs. 9,88,844 and thereby reduced the deduction of the bad debts available to the assessee u/s 36(1)(vii). From a bare reading of the provisions of section 36(1)(vii) as stipulated hereinabove, it is clear that the assessee is entitled to deduction in respect of amount of bad and doubtful debts written off for the previous year subject to the provisions of section 36(2). The proviso under the said section laid down that if the assessee is one to whom the provisions of clause (viia) are applicable and the deduction for bad debts shall be restricted to the amount of bad debts as exceeds the credit balance standing in the provision for bad and doubtful debts made under clause (viia). The crucial date, in our opinion, for the claim of deduction is the date when the accounts are closed and books are finalized, i.e., 31-3-1995, in the case of the assessee. The assessee has written off bad debts only in the account ending on 31-3-1995. The assessee had the provision for bad and doubtful debts in his books of account at the fag end of 31-3-1995, detailed as under :

Thus, as on 31-3-1995, the credit balance in the previous year for bad and doubtful debts consists of not only the provision made for the year ending 31-3-1993, and 31-3-1994, but also the provision made for the year 1995. The proviso does not distinguish the time when the bad debt was written off or when the provision for bad and doubtful debts has been made for the previous year. The income tax is leviable on the income computed for a previous year. The deduction allowable to the assessee also relate to the previous year. The deduction available u/s 36 (1) (vii) is also available to the assessee only for the previous year, i.e., at the time when taxable income of the assessee is computed. Since the taxable income is computed for the year ended 31-3-1995, therefore, only logical interpretation which could be given to the proviso relating to section 36(1) (vii) is that the assessee is entitled to the deduction of any bad debt which is written off in its books of account to the extent it exceeds the credit balance in the provision for bad and doubtful debts accounts. Therefore, in our opinion, the provision created by the assessee and claimed as deduction u/s 36(1) (viia) will also be considered while computing the deduction u/s 36(1) (vii) and we, therefore, hold that a sum of Rs. 19,77,535 has to be disallowed in view of the proviso to section 36(1)(vii) and accordingly we confirm the order of the Commissioner of income tax (Appeals). Thus, the first ground of appeal of the assessee is dismissed." The aforesaid finding of the Tribunal clearly shows that the assessee was 11 not entitled to have deduction of the sum of Rs. 19,77,535 which was the provision for bad and doubtful debt made during the current year. The said finding being in conformity with the proviso to section 36(1) (vii) and section 36(2) (v) of the Act has not been shown to be perverse or illegal in any manner by the counsel for the appellant, which may warrant interference by this court. Accordingly, there is no merit in the appeal and the same is dismissed.

 