□□□□ □□□□□□ □□□□□□□, '□□' □□□□□□, □□ ई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH, CHENNAI

□ □□□□□□ □□, □□□ य □□□ □ □□□□□□□. □□, □□□□ □□ □ □□ सम

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND SHRI MANJUNATHA.G, ACCOUNTANT MEMBER

□□□□□□□□□□./ITA No.: 981/CHNY/2020

□□□□□□ वष /Assessment Year: 2008-09

The ACIT, Circle - 1, Cuddalore	The Villupuram District vs. Central Co-operative Bank Ltd., No.2, Hospital Road, Villupuram – 605 602.
PAN: AAAJV 0332Q	
(□□□□□□ /Appellant)	(यथ /Respondent)

&

□□□□ □□□□□□./ITA Nos.: 854, 855, 856, 857 & 858/CHNY/2020

□□□□□□ वष /Assessment Years: 2010-11, 2011-12, 2012-13, 2008-09 & 2009-10

The Villupuram District Central Co-operative Bank Ltd., No.2, Hospital Road, Villupuram – 605 602.	The DCIT / ACIT, vs. Circle - 1, Cuddalore
PAN: AAAJV 0332Q	
(□□□□□□ /Appellant)	(यथ /Respondent)

&

□□□□ □□□□□□./ITA No.: 2645/CHNY/2019

□□□□□□ वष /Assessment Years: 2016-17

The Cuddalore District Central Co-operative Bank Ltd., No.1, Beach Road, Cuddaore – 607 001.	The DCIT, vs. Cuddalore Circle, Cuddalore
PAN: AAAAT 7716R	
(□□□□□□ /Appellant)	(यथ /Respondent)

&

□□□□ □□□□□□./ITA No.: 3154/CHNY/2019

□□□□□□ वष /Assessment Years: 2014-15

The Tiruvannamalai District Central Co-operative Bank Ltd., Collectorate Master Complex, Vengikkal, Tiruvannamalai – 606 604.	The ACIT, vs. Circle-1, Vellore.
PAN: AAATT 4448F	
(□□□□□□ /Appellant)	(यथ /Respondent)

□□□□ □□□ □ □□ □□/Assessee by : Shri K. Ravi, Advocate □□□

□□ ओर □□ /Revenue by : Shri N.B. Som, CIT

□□□□□□ □ □□□□□/Date of Hearing : 14.09.2023 □□□□□

□ □□□□□/Date of Pronouncement : 18.10.2023

□□□□/O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

The appeal by the Revenue in ITA No.981/CHNY/2020 is arising out of order of the Commissioner of Income Tax (Appeals), Puducherry in ITA No.47,48/CIT(A)-PDY/2017-18 dated 31.08.2020.

The assessment was framed by the DCIT, Villupuram Circle, Villupuram, for the assessment year 2008-09 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 26.03.2015.

ITA No.981/CHNY/2020

2. At the outset, it is noticed that this appeal by Revenue is barred by limitation by 37 days. The Revenue received the impugned appellate order on 18.09.2020 as per Form 36 and appeal was to be filed on or before 17.11.2020 but actually it was filed on 24.12.2020, thereby there was a delay of 37 days. The Revenue has filed condonation petition stating that this delay is due to pandemic period of Covid 19 and subsequent events. We noted that the Hon'ble Supreme Court in Miscellaneous Application No.665 of 2021 vide order dated 23.03.2020 has given directions that the delay are to be condoned during this period 15.03.2020 to 14.03.2021 and they have condoned the delay up to 28.02.2022 in Miscellaneous Application No.21 of 2022 vide order dated 10.01.2022. Since the Hon'ble Supreme Court has condoned the delay during the said period, respectfully following the same we condone the delay and admit the appeal.

3. The only issue in this appeal of Revenue is as regards to the order of CIT(A) quashing the reopening initiated u/s.147 r.w.s. 148 of the Act, according to CIT(A) the Revenue could not establish failure on the part of the assessee to disclose fully and truly the material facts required for the assessment of the relevant assessment year in view of the proviso to section 147 of the Act.

For this, Revenue has raised following ground nos. 2 & 3:-

> 2. The Ld.CIT(A) erred in quashing the proceedings u/s.147 without appreciating that the reopening does not fall within the 1st proviso of section 147, therefore not requiring the AO to establish failure on the part of assessee to fully and truly disclose the material and facts required for correct assessment of income.
>
> 3. The Ld.CIT(A) has erred in quashing the reassessment by holding that the reasons recorded by the AO do not indicate as to how and why there is an escapement of income and the reasons recorded do not have the required ingredients for invoking the jurisdiction u/s.147.

4. Briefly stated facts are that the assessee is a co-operative bank and it files its return of income originally i.e. e-return for the relevant assessment year 2008-09 on 29.09.2008. This return of income was processed u/s.143(1) of the Act. The assessee's case was selected for scrutiny assessment under CASS and accordingly notice u/s.143(2) of the Act was issued on 17.08.2009. Accordingly, assessment was completed by the AO u/s.143(3)(ii) of the Act vide order dated 28.12.2010. The AO made certain additions by making disallowance of inadmissible items and also recomputed the claim of deduction u/s.36(1)(viia) of the Act. The assessee is in appeal

against this assessment order before CIT(A) i.e., separate proceedings pending. In the mean time, the reassessment proceedings was initiated vide notice issued u/s.148 of the Act dated 20.03.2014 and served on the assessee. The AO for issuance of notice recorded reasons as under:-

> "2. I. The assessee bank had claimed the following deductions while computing its total income during the previous year 2007-08 relevant to A.Y.2008-09.
>
> Provision for Standard Assets released: Rs. 2,99,56,443
>
> Non Statutory reserve released :Rs. 47,44,730
>
> Total : Rs.3,47,01, 173
>
> The release of above amounts during the previous year relevant to assessment year 2008-09 related to reserves created in earlier years. Prior to assessment year 2008-09 i.e. upto assessment year 2007-08 the bank was entitled to claim deduction under Section 80P of the I.T. Act, 1961. From the assessment year 2008-09 onwards the deduction under Section 80P was withdrawn for Co-operative Banks. Since the claim deduction of Rs.3,47,01,173 towards of release of reserves and standard assets related to exempted periods, the same is not allowable deduction and has to be withdrawn.
>
> II) Further it was noticed that the assessee had claimed deductions of Rs.14,95,14,257/- under Section 36(1) (viia) of the Act towards creation of bad and doubtful doubts. However it was noticed that the assessee had not created any reserve for bad debts in its books of account during the previous year 2007-08 relevant to assessment year 2008-09.
>
> III) Further it was noticed that entire advances of rural branches taken into account while determining 109% of aggregate average advances which resulted in excess deduction of Rs.2,60,64,200/-.
>
> IV) Without prejudice to above as per the explanation to provisions of section 36(1)(via) of the Act with regard to "rural branch" it has been explained that" Rural branch means only rural branches of a Scheduled bank or non scheduled bank are eligible for the 10% of aggregate average advances of its rural branches . Since the assessee is Co-operative bank and not a

> scheduled or non scheduled it is not entitled for 10% of aggregate average advances amounting to Rs.14,19,77,700/-. "

These reasons are reproduced in para 2 of the assessment order. Accordingly, reassessment was framed u/s.143(3) of the Act vide order dated 26.03.2015 by making disallowance of deduction of Rs.3,47,01,173/- towards release of provisions and non-statutory reserves. Another disallowance was made on account of deduction claimed u/s.36(1)(viia) of the Act on account of non-creation of reserve and doubtful debts amounting to Rs.9,78,37,443/-.

Aggrieved, assessee preferred appeal before CIT(A).

5. The CIT(A) quashed the reopening by holding that the reopening is beyond four years and assessee's case falls under first proviso to section 147 of the Act as the original assessment was completed u/s 143(3) of the Act and Revenue could not show any failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the relevant assessment year 2008-09. Accordingly, the CIT(A) quashed the reopening by observing in para 3.2 as under:-

> 3.2. I have considered the matter. I have seen the reason recorded for reopening of assessment. In the original order u/s 143(3), the AO had already perused the accounts that were produced before him. He dealt at length on the assessee's claim of deduction u/s 36(1)(viia). Materials for him to form opinion regarding quantum of expenses allowable u/s 36(1) (vii) (a) were already available before him. It is a settled position of law that after the elapse of four years from the end of the relevant assessment year and when order u/s 143(3) was already passed, reopening u/s 147 can be resorted to only if there

was failure on the part of assessee to file return u/s 139(1) or in response to notice u/s 142(1) or u/s 148 or in the event of asscssee's failure to disclose fully and truly, all materials facts necessary for assessment. In case of present assessee, it is seen that return was filed on 29.09.2009. There was no failure to comply with notice u/s 142(1) or u/s 148 of the Act. It is also seen that in the reason recorded itself, the AO stated that subsequent perusal of records revealed wrong claim of deduction only. This implies that facts were figures were already in possession of the AO at the time of original scrutiny assessment. Primary records required for assessment were already before the AO at the time of regular scrutiny assessment. There is nothing to indicate that new facts hidden by the assessee came into the possession of the AO that impelled him to reopen the assessment.

3.2.1. It may be recalled that the Hon'ble ITAT has set aside the orders of my Ld. Predecessor-in-office for fresh decision on whole gamut of deduction u/s 36(1) (vii) (a). But in case of this particular assessment order passed u/s 143(3) r.w.s 147, the Hon'ble Tribunal had quashed the appeal order on the reasoning that the reopening after passage of four years from the end of the assessment year and based on same set of materials was bad in law. Hon'ble Tribunal had delved into the facts and had a conclusive finding that there were no new material or things in possession of the AO in possession of the AO for resorting to provision to section 147 of the Act. For the sake of convenience, relevant part of Hon'ble Tribunal's order is extracted as under:

> "5. We have considered the rival submissions. A perusal of the reasons recorded by the AO for the purpose of re-opening of the assessment clearly shows that re- opening has been done beyond the period of four years from the end of the relevant A.Y. In such cases, it is absolutely required that for the purpose of re-opening, there must be some fresh evidence or information available with the AO, which is the foundation for the formation of opinion that the income of the assessee has escaped assessment. This should be coupled along with the requirement that there was a failure on the part of the assessee to disclose fully and truly of material facts necessary for the assessment. In the present case, for the AY 200809, a perusal o the reasons recorded shows that the neither fresh information was the possession of the AO nor the AO has recorded anywhere that the income of the assessee escaped assessment by the stating the reasons of failure on the parts of the assessee to disclose fully and truly of material facts necessary for his assessment for that AY. This being so, we are of the view that the re-opening by the AO upheld by the Ld.CIT(A) is

> unsustainable and the re-opening has been done only on the basis of a change of opinion, which is impermissible. In these circumstances, the reopening of the assessment is held to be bad in law and consequently quashed. Consequently, the Assessment Order u/s 143(3) dated
> 26.03.2015 stands quashed."

As stated earlier, I have seen the reason recorded for reopening. I have also seen the relevant facts available in the record. Hon ble Tribunal had perused the facts of the case on this particular issue. Thereafter, an order was passed wherein it was held that the reopening was bad in law. This decision, based on merit is squarely binding on me. Even otherwise, the reopening u/s 147 cannot be sustained in view of first proviso to section 147 of the Act. The AO cannot form two distinct views on same set of materials available before him. Hence the re-assessment order stand quashed.

Appeal is allowed.

Aggrieved, now Revenue is in appeal before the Tribunal.

6. We have heard rival contentions and gone through facts and circumstances of the case. The facts are that the relevant assessment year involved is assessment year 2008-09 and assessee for this assessment year filed return of income on 29.09.2008 originally. The assessment was completed by the AO u/s.143(3)(ii) of the Act vide order dated 28.12.2010. Subsequently, notice u/s.148 of the Act was issued dated 20.03.2014. Admittedly, this notice is beyond 4 years and assessee's case falls under proviso to section 147 of the Act. We have gone through the reasons recorded and noticed that the entire premise of the reasons are that on perusal of records i.e., assessment proceedings and from assessment records, they came to know that the deduction on account of provision for standard assets realized, non-statutory reserves realized, deduction u/s.36(1)(viia) of the Act on account of non-creation of any reserve for bad debt

or entire advances of rural branches. From the above reasons, it is clear that the Revenue could not establish anything that there is any failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the relevant assessment year. We notice that this issue is covered by the decision of Hon'ble Supreme Court in the case of CIT vs. Foramer France, (2003) 264 ITR 566, wherein the Supreme Court has affirmed the decision of Hon'ble Allahabad

High Court in the case of Foramer France vs. CIT, (2001) 247 ITR

436 by observing as under:-

14. Having heard learned counsel for the parties, we are of the view that these petitions deserve to be allowed.

15. It may be mentioned that a new Section substituted Section 147 of the Income-tax Act by the Direct Tax Laws (Amendment) Act, 1987, with effect from April 1, 1989. The relevant part of the new Section 147 is as follows :

"147. If the Assessing Officer, has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this Section and in sections 148 to 153 referred to as the relevant assessment year) :

Provided that where an assessment under Sub-section (3) of Section 143 or this Section has been made for the relevant assessment year, no action shall be taken under this Section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under Section 139 or in response to a notice issued

under Sub-section (1) of Section 142 or Section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year."

16. This new Section has made a radical departure from the original Section 147 inasmuch as clauses (a) and (b) of the original Section 147 have been deleted and a new proviso added to Section 147.

17. In Rakesh Aggarwal v. Asst. CIT (1997] 225 ITR 496, the Delhi High Court held that in view of the proviso to Section 147 notice for reassessment under Section 147/148 should only be issued in accordance with the new Section 147, and where the original assessment had been made under Section 143(3) then in view of the proviso to Section 147, the notice under section 148 would be illegal if issued more than four years after the end of the relevant assessment year. The same view was taken by the Gujarat High Court in Shree Tharad Jain Yuvak Mandal v. ITO [2000] 242 ITR 612.

18. In our opinion, we have to see the law prevailing on the date of issue of the notice under Section 148, i.e., November 20, 1998. Admittedly, by that date, the new Section 147 has come into force and, hence, in our opinion, it is the new Section 147 which will apply to the facts of the present case. In the present case, there was admittedly no failure on the part of the assessee to make a return or to disclose fully and truly all material facts necessary for the assessment. Hence, the proviso to the new Section 147 squarely applies, and the impugned notices were barred by limitation mentioned in the proviso."

6.1 In the absence of any failure on the part of the assessee to disclose fully and truly all material facts and assessment framed u/s.143(3) of the Act and now reopening beyond 4 years which is against the provisions of the Act. Hence, we find no infirmity in the order of CIT(A) and the same is confirmed. This appeal of the Revenue is dismissed.

ITA No.857/CHNY/2020, AY 2008-09

7. The appeal by the assessee in ITA No.857/CHNY/2020 is arising out of order of the Commissioner of Income Tax (Appeals),

Puducherry in ITA No.47,48/CIT(A)-PDY/2017-18 dated 31.08.2020.

The assessment was framed by the ACIT, Circle-II, Cuddalore, for the assessment year 2008-09 u/s.143(3)(ii) of the Income Tax Act,

1961 (hereinafter the 'Act') vide order dated 28.12.2010.

8. The first issue in this appeal of assessee is as regards to the order of CIT(A) enhancing the assessment u/s.251(2) of the Act on the issue other than the income from other sources which is already subject matter of assessment is invalid and void. For this, assessee has raised the following grounds of appeal:-

> VALIDITY OF THE USE OF POWEROF ENHANCEMENT US.251(2)
>
> 2. CIT(A) held that deduction u/s.36(1)(viia) is available only to the extent of least of the following:
>
> a) Amount of provision for bad and doubtful debts debited in the books of accounts
> b) Amount as computed at 7.5% of total income plus 10% of aggregate average rural advances made by the assessee.
>
> The plain reading of Section 36(1)(viia) does not suggest such a comparative restriction. The assessing officer taking into consideration the Section has allowed the deduction without such comparative restriction.
>
> The CIT(A) appeals cannot use his powers of enhancement to deny or restrict a claim granted by the assessing officer. The CIT(A)'s powers of enhancement can be used to enhance the income from a source which is

already the subject matter of an assessment. Restricting or denying a claim will not be within the ambit of enhancement powers of the CIT(A).

9. Brief facts are that the AO on perusal of audit report and income and expenditure statement of assessee for the year ending 31.03.2008 noted that the assessee has created reserves under various heads and other miscellaneous expenditure for an amount of Rs.12,64,37,360/- whereas in the statement of total income an amount of Rs.12,12,06,212/- was added back to the net profit. The AO accordingly recomputed the claim of deduction u/s.36(1)(viia)(a) of the Act only to the extent of provision made for bad and doubtful debts and claimed in the books of accounts by computing the same as under:-

Less:	Deduction u/s.36(viia)(a):		
i) 7.50% of the profit Rs.1,78,68,90,000/-	: Rs.75,36,557/-	Aggregate of Advances	Average :
Less : Advances relating to Non-rural branches (as discussed above)	: Rs. 36,71,13,000/-		
Rs.1,41,97,77,000/-	ii) 10% of	Aggregate	Average
Rs.14,19,77,700/-			
Advances			
Total Deduction u/s.36(viia)(a)			14,95,14,257/-
Taxable Income (determined)		Loss	Rs.4,90,26,827/-

Aggrieved, assessee preferred appeal before CIT(A).

10. The CIT(A) noted that the claim of deduction u/s.36(1)(viia) of the Act in respect of 10% of aggregate deposits of rural branch but in the appeal proceedings, he noted

that there was excess claim of deduction under this section as in the original appellate order already issued show-cause notice for enhancement of claim of deduction to the extent of Rs.3,62,07,301/-. The CIT(A) has reproduced the set aside order in its appellate order decided in ITA No.187/2013-14 against the assessment order passed u/s.143(3) of the Act and the relevant reads in para 5.5 as under:-

> "5.5 It can be recalled here that the Provision for bad and doubtful debts (Reserve for NPAs made and debited in the accounts during the year is Rs.11,33,06,946; whereas, the assessee has claimed deduction u/s.36(1)(viia) towards bad and doubtful debts at Rs.18,35,33,849 in the statement of Total income (STI); and the AO in the assessment u/s.143(3) allowed the said deduction at Rs.14,95,14,257. But the deduction allowable to the assessee u/s.36(1)(viia) r.w.r. 6ABA is only Rs.10,53,74,000 as arrived at in para 5.4.3 above. Hence, the assessee was issued an enhancement notice u/s.251(2) requiring it to show-cause as to why the deduction u/s.36(1)(viia) should not be restricted as above:"

The assessee contested the issue of enhancement now by stating that there is no expressed limitation that the deduction u/s.36(1)(viia) of the Act is to be restricted to the amount of provisions made in the books of accounts and assessee before CIT(A) cited the provisions of section 36(1)(vii) of the Act wherein it is clearly laid down that bad debts should be written off as irrevocable in the accounts of the assessee and therefore according to him, there are two different provisions in the statute book i.e., 36(1)(viia) and 36(1)(vii) both are of different footings. It was submitted the CIT(A) cannot enhance the assessment when the AO has adopted the plain interpretation of section 36(1)(viia) of the Act and moreover bare reading of provision of section 36(1)(viia) of the Act does not indicate that the deduction is to be restricted as per the

provisions made in the books of accounts. It was argued that even this is a new source for which CIT(A) want to make disallowance and CIT(A) is not empowered to discover new source for making disallowance under the powers of enhancement given to him. But, CIT(A) stated that the AO has considered this issue in the assessment order as regards to claim of deduction u/s.36(1)(viia) of the Act but only dispute is quantum of deduction, which is very much part of the assessment order and hence, the CIT(A) has every power to enhance the very source of income which is examined by the AO. For this, the CIT(A) recorded this fact and his adjudication in para 4.4.2 as under:-

> 4.4.2. From a plain reading of the Act, it is clear that the CIT (A) has the power to confirm, reduce, enhance or annul the assessment. The only requirement is that before enhancing an assessment, the appellant has to be given a reasonable opportunity of representation against the proposed enhancement. In case of present assessee, after due consideration of facts in the record, it was felt that the deduction claimed was higher than what was mandated by the statute, Thereafter, the assessee was given opportunity of being heard by issue of notice. Detailed reason for enhancement was incorporated in the notice itself. It is a settled position of law that the power of CIT(A) is co-terminus with that of the AO[(l991) 187 ITR 688 (SC) (Jute Corporation of India vs CIT). Enhancement can be made on any issue which was touched upon by the AO in the assessment order. The CIT(A) cannot go beyond the assessment record and impose a new source of income for enhancement. But as long as an item of income or let us say, deduction is touched upon by the AO, the CIT(A) can step into the shoes of the AO and enhance the income. In case of present assessee, the quantum of deduction u/s 36(viia) was very much part of assessment order, Hence, the CIT (A) can very well proceed towards enhancement if the assessment order was found wanting. It is also seen that in connection with the correctness of proposal for enhancement, the appellant had raised certain perceived and inherent illogicality. Certain doubts were raised by the appellant at para 2(c) of the submission. Such apprehension of assessee on the matter is unfounded. Banks are eligible to claim deduction for bad debt u/s 36(1) (vi) in respect of advances and also claim provision for bad and doubtful debt u/s 36(1) (viia). Section 36(1) (vii) and 36(1) (viia) of the Act operate in their respective

> fields. Bad debt written off other than for which provision is made u/s 36(1)(viia) will he covered by section 36(1)(vii). In case of present assessee, we are dealing with issue of provision for bad doubtful debt u/s 36(1) (viia) of the Act. Hence, there is no room for absurdity apprehended by the assessee.

11. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the decision of Hon'ble Supreme Court in the case of Jute Corporation of India vs. CIT, [1991] 187 ITR 688 categorically held that the power of the CIT(A) is co-terminus with that of the AO and enhancement can be made on any issue which was touched upon by the AO in the assessment order. According to Hon'ble Supreme Court, the CIT(A) cannot go beyond the assessment record and discover a new source of income for enhancement. In the present case before CIT(A), the claim of deduction u/s.36(1)(viia) of the Act was very much before the AO and he has gone into the claim of deduction and only the issue before CIT(A) is in connection with the correctness of proposal of enhancement of assessment order. We find that the CIT(A) has not adverted to new issue rather this issue is very much under discussion of AO and he has utilized his power of enhancement to correct the assessment order and enhance the income to the extent of claim of deduction u/s.36(1)(viia) of the Act. The assessee has claimed more than what was provision created in the books of accounts. Hence, we confirm the enhancement and dismiss this issue of assessee's appeal.

12. The next issue in this appeal of assessee is as regards to the claim of deduction u/s.36(1)(viia) of the Act, wherein the CIT(A) held that the deduction cannot exceed the

provision made for bad and doubtful debts in the books of accounts. For this, the assessee has raised the following grounds:-

INTERPRETATION OF SECTION 36(1)(viia)

3. The CIT(A) erred in holding that total deduction u/s.36(1) (viia) cannot exceed the provision made for bad and doubtful debts.

4. The CIT(A) erred in holding that 7.5% of the total income must be computed after adjusting brought forward loss.

Without prejudice to the stand that deduction u/s.36(1) (viia) is not restricted to the provision made in the books of account, in case such ground is held against the appellant, the following grounds should also be considered:

5. CIT(A) erred in holding that provision for standard assets cannot be taken into account for determining the provision made for bad and doubtful debts in the books of account.

6. CIT(A) erred in rejecting the argument that increase or decrease of provisions must be viewed as reversal of old provision and creation of new provision.

13. Briefly stated facts are that the CIT(A) while adjudicating the appeal proceedings noted that the assessee has created provision for bad and doubtful debts and debited in the accounts during the year at Rs.11,33,06,946/- whereas assessee has claimed deduction u/s.36(1)(viia) of the Act towards bad and doubtful debts at Rs.18,35,33,849/- in the statement of total income. The AO in the assessment u/s.143(3) of the Act allowed the said deduction of Rs.14,95,14,257/-. According to CIT(A) the deduction allowed to the assessee u/s.36(1)(viia) r.w.rule 6ABA of the Income Tax Rules, 1962 is only to the extent of Rs.10,53,74,000/-. Hence, the CIT(A) issued enhancement notice

u/s.251(2) of the Act and directed the AO to enhance by a sum of Rs.3,62,07,301/- by observing in para

8.1 as under:-

> "8.1 Deduction u/s.36(1)(viia) is computed as under
> The only ground taken by the assessee in this appeal is that the Assessing Officer while calculating deduction u/s 36(1)(viia) has erred in concluding that Vanur Branch of the Bank is a non-rural branch whereas the Vanur Branch is eligible for deduction u/s 36(1)(viia) as the population was below 10,000/-. This ground of the assessee is deemed partly allowed as the rural advances made during the year by Vanur branch is being taken into account in calculating the deduction u/s 36(1)(viia) of the Act but restricted to limit of provision made. In the original appeal order, 7.5% of profit was arrived at Rs.75,36,557/-. Computation of 10% of rural advance came to Rs.97,83,743/- However, in this order, it is held that 10% of average rural advance is to be calculated the aggregate average of cumulative advance.
> The average rural advance, inclusive of Kachirappalayam is Rs.18,28,02,400/-. After reducing the advance from Kachirapallayam amounting to Rs.2,22,07,900/- the average rural advance is Rs.16,05,94,500/-. Total of 7.5% profit and 10% of rural advance comes Rs.16,81,31,057/-. But the provision is only Rs.11,33,06,946/-. Hence, deduction u/s 36(1)(viia) is restricted to Rs.11,33,06,946/-. There is an enhancement of Rs.3,62,07,301/-."

Aggrieved, assessee is now in appeal before the Tribunal.

14. We have heard rival contentions and gone through facts and circumstances of the case. We find that the facts are undisputed and the issue is covered bythe decision of Chennai Bench of ITAT in the case of Cuddalore District Central Co-operative Bank Ltd. in ITA No.739/CHNY/2020 for Assessment Year 2009-10 which holds that the deduction u/s 36(1)(viia) of the Act is to be restricted to the extent of actual provision made in the books of

accounts. In our view, the issue before ITAT, Chennai, 'A' Bench in the case of Cuddalore District Central Co-operative Bank Ltd., supra, dealt with interpretation of section 36(1)(viia) of the Act, wherein it has been held by the Bench that deduction u/s.36(1)(viia) cannot exceed the actual provisions made in the books of accounts. This decision follows decision rendered by another bench in the same assessee for AY 2014-15, ITA No.1921/Chny/2018 on 09.04.2021. The earlier decision relied on the decision of Hon'ble Punjab & Haryana High Court in the case of State Bank of Patiala vs. CIT (143 TXMANN 196) and also the decision of Tribunal in Nazareth Urban Coperative Bank Ltd. vs DCIT in ITA Nos. 513 & 514/Chny/2018 dated 24.06.2019 as well as in The Salem District Central Co-operative Bank Ltd., in ITA No.1168/CHNY/2016 for the Asst. Year 2008-09, dated 07.06.2017. We noted that CBDT instruction No.17/2008 dated 26.11.2008 provide that the deduction of provision for bad and doubtful debts should be restricted to the amount of such provision actually created in the books of accounts of the assessee in the relevant year or the amount calculated as per the provisions of section 36(1)(viia) of the Act, whichever is less. The assessee relied on the decision of Delhi Tribunal in DCIT vs Prathma Bank. However, the bench preferred the decision of Hon'ble Punjab & Haryana High Court and allowed the appeal of the revenue.

14.1 As regards to the decision of Delhi Tribunal in the case of Prathma Bank, supra, We find that there is no discussion about the issue raised by assessee. In the decision of Delhi Tribunal in the case of Prathma Bank, supra, it followed earlier year order in

the case of Prathma Bank vs. CIT reported in (2015) 52 ITR (Trib) 454 (Del), wherein the Assessing Officer has allowed the claim of deduction u/s. 36(1)(viia) of the Act as claimed in the books of accounts at 10% of average agricultural advances. The Tribunal recorded the facts as under:-

> 17. The assessee also furnished the details of monthly average of agricultural advances outstanding in rural branches (copy of which is placed at page no. 14 of the assessee's paper book) which read as under:
>
> | S. No. | Region | Monthly average of agricultural advances outstanding in rural branches F.Y. 2008-09 |
> |---|---|---|
> | | | AMT IN '000' |
> | 1. | Moradabad | 1104553 |
> | 2. | Rampur | 1389390 |
> | 3. | Thakurdwara | 847040 |
> | 4. | Amroha | 1729725 |
> | 5. | Sambhal | 1662607 |
> | 6. | A.P. Chopla | 1282308 |
> | | Total | 8015623 |
>
> 18. In the present case, the assessee had given the break-up of each branch (copies of which are placed at page nos. 15 to 28). In the instant case, the assessee in its computation of revised total income/loss (copy of which is placed ate page no. 1 of the assessee's paper book) clearly mentioned that deduction u/s 36(1)(viia) of the Act was claimed @ 10% of average agricultural advances of Rs.801.56 crores. Thereafter, the AO after examining the aforesaid details came to the conclusion that the claim of the assessee was allowable and he accordingly allowed the claim of the assessee u/s 36(1)(viia) of the Act. The said claim was in accordance with law and as provided in the provisions of Section 36(1)(viia) of the Act.

14.2 Moreover, before Tribunal the issue was revision proceedings u/s.263 of the Act, initiated by the CIT. The case law of Southern Technologies Ltd., vs. JCIT, [2010] 320 ITR 577 (SC) has dealt with the issue as under:-

> Analysis of Section 36(1)(viia)
> Section 36(1)(vii) provides for a deduction in the computation of taxable profits for the debt established to be a bad debt.
>
> Section 36(1)(viia) provides for a deduction in respect of any provision for bad and doubtful debt made by a Scheduled Bank or Non- Scheduled Bank in relation to advances made by its rural branches, of a sum not exceeding a specified percentage of the aggregate average advances by such branches. Having regard to the increasing social commitment, Section 36(1)(viia) has been amended to provide that in respect of provision for bad and doubtful debt made by a scheduled bank or a non-scheduled bank, an amount not exceeding a specified per cent of the total income or a specified per cent of the aggregate average advances made by rural branches, whichever is higher, shall be allowed as deduction in computing the taxable profits.
>
> Even Section 36(1)(vii) has been amended to provide that in the case of a bank to which Section 36(1)(viia) applies, the amount of bad and doubtful debt shall be debited to the provision for bad and doubtful debt account and that the deduction shall be limited to the amount by which such debt exceeds the credit balance in the provision for bad and doubtful debt account.
>
> The point to be highlighted is that in case of banks, by way of incentive, a provision for bad and doubtful debt is given the benefit of deduction, however, subject to the ceiling prescribed as stated above. Lastly, the provision for NPA created by a scheduled bank is added back and only thereafter deduction is made permissible under Section 36(1)(viia) as claimed.

The above decision of Hon'ble Supreme Court in the case of

Southern Technologies Ltd., supra, basically bring out the fact that

NBFCs are not allowed to get the benefit of section 36(1)(viia) and 43D of the Act, but

it does not at any place deals with the limit upto which this deduction has to be restricted

to. Another case law of

Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd., vs.
CIT, 343 ITR 270 (SC) deals with the issue of deduction on account of provisions for

bad and doubtful debts u/s.36(1)(viia) and also deduction u/s.36(1)(vii) of the Act. This

case basically deals with the interplay of deduction between the provisions of section 36(1)(vii) for bad debts and deductions provided in respect of provision for bad and doubtful debts u/s.36(1)(viia) of the Act.

14.3 The Chennai Tribunal in the case of The Cuddalore District Central Co-operative Bank Ltd., in ITA No.739/CHNY/2020 dated 04.11.2022 has considered the decision of Hon'ble Punjab & Haryana High Court in the case of State Bank of Patiala vs. CIT, (2005) 272 ITR 54 (P&H), wherein the Hon'ble High Court has dealt with exactly identical issue and held as under:-

> "6. A bare perusal of the above shows that the deduction allowable under the above provisions is in respect of the provision made. Therefore, making of a provision for bad and doubtful debt equal to the amount mentioned in this section is a must for claiming such deduction. The Tribunal has rightly pointed out that this issue stands further clarified from the proviso to clause (vii) of Section 36(1) of the Act, which reads as under :
>
> > "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."
>
> 7. This also clearly shows that making of provision equal to the amount claimed as deduction in the account books is necessary for claiming deduction under Section 36(1)(viia) of the Act. The Tribunal has distinguished various authorities relied upon by the assessee wherein deductions had been allowed under various provisions which also required creation of reserve after the assessee had created such reserve in the account books before the completion of the assessment. It has been correctly pointed out that in all those cases, reserves/provisions had been made in the books of account of the same assessment year and not of the subsequent assessment year.
>
> 8. In the present case, the assessee has not made any provision in the books of account for the assessment year under consideration, ie., 1985-86, by making

supplementary entries and by revising its balance-sheet. The provision has been made in the books of account of the subsequent year.

9. We are, therefore, satisfied that the Tribunal was right in holding that since the assessee had made a provision of Rs. 1,19,36,000 for bad and doubtful debts, its claim for deduction under Section 36(1)(viia) of the Act had to be restricted to that amount only. Since the language of the statute is clear and is not capable of any other interpretation, we are satisfied that no substantial question of law arises in this appeal for consideration by this court."

14.4 We noted that the ratio of the judgment of Hon'ble Punjab & Haryana High Court in the case of State Bank of Patiala directly applies to the current controversy raised by assessee. Even the recent decision of Hon'ble Karnataka High Court in the case of CIT vs. Syndicate Bank, [2020] 422 ITR 460 (Karn) has explained the provisions and held that the condition precedent for claiming deduction under section 36(1)(viia) is that a provision for bad and doubtful debts should be made in the accounts of the assessee. The language employed in the section is clear and ambiguous. In the absence of any provision, the assessee is not entitled to deduction. However, the assessee is entitled to deduction to the extent provision is made in the accounts subject to the limit mentioned in section 36(1)(viia) of the Act.

14.5 We have gone through the decision of Delhi Tribunal in the case of Prathma Bank, supra and noted that this controversy of placing restriction on claim of deduction dealing with the limits of deduction does deal with the issue, prima facie it seems that it does not deal with the issue that deduction will be restricted to the extent of provision made in the books of accounts.

14.6 The direct decision available on the issue is only one High Court decision i.e., the Hon'ble Punjab & Haryana High Court in the case of State Bank of Patiala, supra and that of Hon'ble Karnataka High Court in the case of CIT vs. Syndicate Bank, supra has explained the provisions and held that the condition precedent for claiming deduction under section 36(1)(viia) is that a provision for bad and doubtful debts should be made in the accounts of the assessee. The language employed in the section is clear and ambiguous. In the absence of any provision, the assessee is not entitled to deduction. However, the assessee is entitled to deduction to the extent provision is made in the accounts subject to the limit mentioned in section 36(1)(viia) of the Act. Hence, this issue is squarely covered by these two decisions of Hon'ble High Court of Karnataka and Hon'ble Punjab & Haryana High Court and accordingly decided against the assessee. Therefore, this appeal of the assessee is dismissed.

Assessee's Appeals in ITA Nos. 858, 854, 855 & 856/CHNY/2020, AYs 2009-10, 2010-11 2011-12 & 2012-13

15. The appeals by the assessee in ITA Nos.858, 854, 855 & 856/CHNY/2020 are arising out of common order of the Commissioner of Income Tax (Appeals), Puducherry in ITA No.49,50,42,52/CIT(A)-PDY/2017-18 dated 31.08.2020. The assessments were framed by the DCIT, Villupuram Circle, Villupuram, for the assessment years 2009-10, 2010-11 & 2011-12

u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter the 'Act') vide orders dated 26.03.2015, 12.03.2015 & 12.03.2015 respectively and for assessment year 2012-13 u/s.143(3) vide order dated 12.03.2015.

16. The first common issue in these four appeals of assessee is as regards to the order of CIT(A) enhancing the assessment u/s.251(2) of the Act on the issue other than the income from other sources which is already subject matter of assessment is invalid and void.

Since, we have already decided this issue for the assessment year 2008-09 in ITA No.857/CHNY/2020 in preceding para 11, taking a consistent view we confirm the enhancement and dismiss this issue of assessee's appeal in all these years.

17. The next common issue in these four appeals of assessee is as regards to the claim of deduction u/s.36(1)(viia) of the Act, wherein the CIT(A) held that the deduction cannot exceed the provision made for bad and doubtful debts in the books of accounts. Since, we have already decided this issue for the assessment year 2008-09 in ITA No.857/CHNY/2020 in preceding paras 14 to 14.6, taking a consistent view we dismiss this common issue of all these appeals of assessee.

18. The next issue in this appeal of assessee in assessment year

2009-10 in ITA No.858/CHNY/2020 is as regards to the order of CIT(A) holding the notice of issue u/s.143(2) of the Act as valid and not barred by limitation. For this, assessee has raised the following ground Nos.10 to 12:-

> 10.The Commissioner of Income Tax (Appeals) erred in holding that the Notices u/s.143(2) dated 14/08/2014 and 15/09/2014 which were issued in connection with return of income filed On 28/09 /2009 are not barred by limitation.
>
> 11.The Commissioner of Income Tax (Appeals) erred in holding that wrong mention of the dated of filing of a return will be cured by the operation of Section 292B. (In both the notices issued u/s. 143(2), the date of filing of return is mentioned only as 28/09/2009 and therefore, it cannot be viewed as a mere mistake, but it may also indicate non application of mind in assuming jurisdiction.)
>
> 12.The CIT(A) erred in relying also on the Order of this Hon'ble Tribunal in the 1st round of appeal to hold that notice u/s. 143(2) was valid. This could not have been done when the entire matter was remitted back to the CIT(A) for de novo adjudication of all issues by the Hon'ble Madras High Court.

19. At the time of hearing, the ld.counsel for the assessee has not argued anything on validity of notice u/s.143(2) of the Act or limitation in issuance of notice u/s.143(2) of the Act. However, we have gone through the facts of the case as noted by the CIT(A) and noted that the CIT(A)has adjudicated this issue vide para 5.4.2 &

5.4.3 as under:-

> "5.4.2. I have considered the matter In this case. notice u/s 148 dated 20.3.2014 was issued and served on assessee. In response to that, the assessee filed an application dated 17.04.2014 asking the AO to treat the return already filed on 28.09,2009 as return filed in response to notice u/s 148 of the Act. Subsequently, notices u/s 143(2) & 142 (2) were issued and served on

assessee. The notice u/s 143(2) was much within the period of six month from the end of the month in which assessee's letter asking for treatment of return filed earlier as return u/s 148 of the Act. It is rather surprising how assessee can take up this ground. Assessee did not file separate return in response to notice u/s 148 of the Act. The time period for issuing of notices has to be reckoned with from the date on which assessee's letter requesting for treatment of regular return as return in response to notice u/s 148 of the Act was received by the AO.

5.4.3. On this particular issue, the Hon'ble Tribunal, before setting aside the matter, had gone into the merit of appellants objection. After duly considering the matter, the Hon'ble Tribunal had dismissed the case of the appellant. Relevant part of the Hon'ble Tribunal's order is extracted as under:

> "A perusal of the assessment order clearly shows that the assessee has filed original return of income on 28.09.2009. When the assessee was served with the notice u/s 148, the assessee had responded vide a letter dated 17.04.2014 requesting to treat the return already filed on 28.09.2009 as return filed in response to the notice issued u/s.148 of the Act. This being so, the assessee vide his letter dated 17.04.2014 had requested for the treatment of the return dated 28 09.2009 as return to the response to the notice issued u/s 148 of the Act. Only after that the AO has issued the notice u/s. 143(2) on 16.09.2014. In the said notice, as the return was dated
> 28.09.2009, he had referred to the said date. In fact the said return dated 28.09.2019 is the return which is to be considered for the purpose of assessment as the same has been treated as the return, in response to the notice u/s. 143 by the assessee by the 1ssuance of letter dated 17.04.2014 This being so, we are of the view that the notice issued u/s. 143 (2) is not barred by limitation. "

Considering the facts of the case as well as biding decision of the Hon’ble Tribunal, the objections of assessee in this ground are dismissed.”

We noted that the notice u/s.143(2)of the Act dated 14.08.2014 and 15.07.2014 was issued after return filed u/s.148 of the Act. The assessee in response to notice u/s.148 of the Act dated 20.03.2014 filed an application dated 17.04.2014 asking the AO to treat the return filed on 28.09.2009 as the return filed in response to notice u/s.148 of the Act. This means that the notice u/s.143(2) of the Act dated 15.07.2014 is within limitation

and hence, this issue of assessee does not survive and hence, accordingly dismissed. The assessee has raised similar issue in assessment years 2010-11 & 2011-12 in ITA Nos.854 & 855/CHNY/2020, facts being identical as admitted by the counsel for assessee and hence, taking a consistent view, we dismiss this common issue in all these years.

20. The next issue in this appeal of assessee in ITA No.858/CHNY/2020, AY 2008-09 is as regards to the order of CIT(A) upholding the validity of reopening of assessment. For this, assessee has raised following ground Nos.2 to 9 :-

> 2. The CIT(A) erred in relying on the inaccuracy in respect of claiming Kacharapalayam Branch as rural branch, which has been set right by making disallowance in the original assessment proceedings to overcome the hurdle provided in terms of 1st proviso to Section 147, (i.e. failure to disclose fully and trully all material facts)
> 3. The CIT(A) erred in holding that sanction of higher officer is not required if notice was issued within a period of four years from the end of the assessment year.
> 4. The CIT(A) erred in rejecting the challenge to the re-opening also on the ground that it was not raised during the assessment proceedings.
> 5. The CIT(A) erred in relying also on the Order of this Hon'ble Tribunal in the 1st round of appeal to hold that re-opening is valid. This could not have been done when the entire matter was remitted back to the CIT(A) for de novo adjudication of all issues by the Hon'ble Madras High Court.
> 6. The CIT(A) erred in upholding the re-assessment and more particularly without appreciating the fact that the reason recorded by the assessing officer for initiating proceeding u/d. 147 did not survive in the assessment.
> 7. The Commissioner of Income Tax(Appeals) erred in upholding the reopening of the assessment u/s. 147 when there was no fresh material.
> 8. The Commissioner of Income Tax (Appeals) erred in upholding the reopening of the assessment u/s. 147 which is based on a mere change of opinion.

9. The Commissioner of Income Tax(Appeals) erred in holding that the appellant had failed to disclose material facts necessary for the assessment during the original assessment proceedings.

21. Brief facts are that the assessee, a co-operative bank engaged in the business of banking filed its return of income electronically for the assessment year 2009-10 on 29.09.2008 admitting income of Rs.6,45,28,433/- after claiming deduction u/s.36(viia)(a) of the Act. The assessee's case was selected for scrutiny assessment and assessment was completed u/s.143(3) of the Act vide order dated 28.10.2010. Subsequently, the AO issued notice u/s.148 of the Act dated 20.03.2014 (this notice is within 4 years and proviso to section 147 of the Act does not apply to the facts of the case) and for this, the AO recorded the reason that the assessee has claimed deduction of Rs.21,96,81,180/- u/s.36(1)(viia) of the Act towards creation of bad and doubtful debts. The AO while completing assessment u/s.143(3) of the Act, order dated 28.10.2010 allowed deduction to the extent of Rs.17,52,57,980/-. The AO recorded reason that the assessee has not made any provision in the books of accounts as regards to reserves for bad and doubtful debts and even then, the AO allowed deduction which is not at all allowable and even the view taken by the AO is not sustainable. Hence, the AO after recording reason issued notice u/s.148 of the Act. The assessee challenged the reopening before CIT(A). The CIT(A) after considering submissions of the assessee confirmed the action of the AO in reopening the assessment on the issue of change of opinion as well as permission granted by CIT. The CIT(A) also noted that the Tribunal has already upheld the reopening of assessment u/s.148 of

the Act as valid and this cannot be challenged again because that order of Tribunal has become final. The CIT(A) noted these facts in para 5.3.4 to 5.3.7 as under:-

> "5.3.4. I have carefully considered the matter. In A.Y, 2008-09, since four years have elapsed from the end of the assessment year and since scrutiny order u/s 143(3) was already passed in that year, I had taken a view, in consonance with order of Hon'ble Tribunal that the reopening was invalid in that particular year. The decision taken was also due to the reason that even the Hon'ble Tribunal went into the merit of reopening, for A.Y. 200809 and found it fit to quash the reopening proceeding. The reopening was hit by mischief of explanation to section 147 of the Act. But with regard to A.Yrs 2009-10 onwards, four years have not elapsed from the end of relevant assessment years on the dates on which notices u/s 148 of the Act were issued. Therefore, specific failure, of assessee like failing to furnish return or failure to disclose all material facts that were required for assessment of income need not come into play. Suffice it to say that the AO detected certain defects in the claim of seduction u/s 36(1) (viia) of the Act. Even if one goes by the fact, in the original assessment, the branch of the bank located at Kachirappalayam was claimed to be a rural branch. But the same was found to be an urban branch. Thus, material facts supplied by appellant were inaccurate for computation of income. Thus, reopening was justifiable on this score also.
>
> 5.3.5. The assessee also objected to the fact that permission of Commissioner was not obtained for issuance notice u/s 148 of the Act. The objection is unfounded. The notice u/s 148 was issued by an officer of the rank of Assistant Commissioner of income-tax. Within a period of four years from the end of the assessment year, the officer reopening the assessment was not required to obtain permission of the Commissioner for issuing of notice u/s 148 of the Act.
>
> 5.3.6. It is also pertinent to note that after notice u/s 148 was issued, the assessee requested the AO to treat the return filed earlier as return in response to notice u/s 148 of the Act. Thereafter, the assessee asked for copy of reason recorded for reopening of assessment. The same was supplied to assessee. Afterwards, there was no objection to the reopening from the side of assessee. It cooperated with the AO in course of reassessment proceeding. In this connection, it may be recalled that in the case of GKN Driveshaft's (India) ltd vs ITO (259 ITR 19) Hon'ble Apex Court laid down important procedures to be followed in matter of reopening. In the procedure so laid down, it is clear

that once a notice u/s 148 is served on assessee, the assessee can apply for the reason recorded for such reopening. Once an application for reason recorded is received, the AO is to forthwith supply the reason recorded to assessee. Thereafter, the assessee may raise objection against the reason recorded. Such objection, if any, has to be disposed by the AO by way of passing a speaking order. In case of present assessee, no objection was raised against reason recorded. Therefore, it is not proper to raise objection at this late stage after the lapse of so many years. Hence, objection raised & consequently, the ground taken is dismissed.

5.3.7. There is another vital point on the matter that cannot be ignored. In the order passed by the Hon'ble Tribunal in case of appeal of the assessee in this year, it is seen that the Hon'ble Tribunal had gone into the merit of validity of reopening u/s 147 of the Act. Relevant parts of the order for A.Y. 2009-10 are extracted as under.

> " We have considered the rival submissions. For the A.Y. 2009-10, being the year under appeal the notice u/s 148 has been issued on 28.03.2014 and consequently the same it is within the period of four years. A perusal of the reason recorded for the purpose of reopening clearly shows that there has been an error in the computation of the deduction u/s 36(1)(viia). Admittedly, the reopening for the purpose of restricting the allowance which has been granted in excess has resulted in income chargeable to tax escaping assessment. In view of the Explanation-1 and also Explanation -2 (2) to sec. 147, the re-opening has been done within four years from the end of the relevant A.Y, we are of the view that the re-opening is valid"

In view of the decision of the Hon'ble Tribunal also, which is binding on me, the reopening u/s 147 in this year and subsequent two years are held to be valid. Ground No. 3 is dismissed.

Aggrieved, now assessee is in appeal before the Tribunal.

22. We have heard rival contentions and gone through facts and circumstances of the case. The ld.counsel for the assessee has not made serious arguments on this issue. Going through the facts, we noted that the AO detected that there is

escapement of income in the claim of deduction u/s.36(1)(viia) of the Act in regard to amount claimed by assessee is in excess of provision made in the books of accounts in regard to provision for bad and doubtful debts. Hence, the AO formed the belief that there is escapement of income qua that income while framing original assessment by the AO u/s.143(3) of the Act. In our view, there is sufficient material placed on record which shows the existence of income chargeable to tax and which originally ought to have been included in the taxable income while framing assessment but was not so included. Hence, it is sufficient and it itself provide a cause or justification for a belief to the AO that such income had escaped assessment and the AO in such cases would be ex-facie justified in initiating the proceedings u/s.147 of the Act. It is the case of non-assessment of an item on account of claim of deduction u/s.36(1)(viia) of the Act in regard to the amount for which no provision for bad or doubtful debt have been created in the books of accounts of the assessee. Hence in our view, the nonassessment of an item of income chargeable to tax would warrant formation of requisite belief to initiate the proceedings within four years from the end of the relevant assessment year even yet where full disclosure was made and income chargeable to tax had escaped assessment from being included in the final assessment order in which taxable income was worked out. Hence according to us, this ground of the assessee does not succeed and hence, dismissed.

23. Similar issue of validity of reopening of assessment has been raised by the assessee in AYs 2010-11 & 2011-12 in ITA Nos.854 & 855/CHNY/2020. Since, we have already decided this issue for the assessment year 2008-09 in ITA No.858/CHNY/2020 in preceding para 22, facts being identical as admitted by the ld.counsel for the assessee and hence, taking a consistent view, we dismiss this issue of assessee's appeal in all these years. Therefore, the appeals filed by the assessee in ITA Nos.858, 854 & 855/CHNY/2020 are

dismissed.

24. The next issue in the appeal of assessee in ITA No.856/CHNY/2020, assessment year 2012-13 is as regards to the order of CIT(A) confirming the action of AO upholding the addition towards add back of non-statutory reserve. For this, assessee has raised the following ground No.7:-

> "7. The Commissioner of Income Tax (Appeals) erred in upholding the addition of Rs.41,61,359/- towards creation of Non statutory reserve on the basis that it was not added back to the net profit in the memo for computation of total income, when in fact an amount of Rs.27,00,633/- forming part of the Non statutory reserve was added back under the heading "Depreciation debited to P&L A/c" in the memo for computation of Income."

25. Briefly stated facts are that the assessee is a co-operative bank engaged in the business of banking. The AO during the course of assessment proceedings noticed from the accounts of the assessee for the year ended 31.03.2012 that the assessee has created non-statutory reserve of Rs.41,61,359/- and adopted the

same to profit & loss account. According to AO, this is not allowable deduction as per Income-tax Act and the assessee has not added back the same to the net profit while computing its total income for income-tax purposes. Accordingly, this addition was made by the AO and as agreed by the bank vide order sheet noting dated

12.02.2015. Aggrieved, assessee preferred appeal before CIT(A).

26. At the outset, it is noticed that the CIT(A) has not adjudicated this issue and the assessee before AO agreed for this addition. Therefore, nothing survives for our adjudication and hence, the same is dismissed. Therefore, the appeal filed by the assessee in

ITA No.856/CHNY/2020 is dismissed.

ITA No.2645/CHNY/2019

27. The appeal by the assessee in ITA No.2645/CHNY/2019 is arising out of order of the Commissioner of Income Tax (Appeals),

Puducherry in ITA No.440/CIT(A)-PDY/2018-19 dated 30.07.2019. The assessment was framed by the DCIT, Circle-1, Cuddalore, for the assessment year 2016-17 u/s.143(3) of the Income Tax Act,

1961 (hereinafter the 'Act') vide order dated 17.12.2018.

28. The only issue in this appeal of assessee is as regards to the claim of deduction u/s.36(1)(viia) of the Act, wherein the CIT(A) held that the deduction cannot exceed the provision made for bad and doubtful debts in the books of accounts. Since the issue and facts are identical in the case of The Villupuram District Central Cooperative Bank Ltd.,in ITA No.857/CHNY/2020 and we have decided the issue in preceding paras 14 to 14.6, taking a consistent view, we dismiss this issue of assessee. Accordingly, the appeal of the assessee is dismissed.

ITA No.3154/CHNY/2019

29. The appeal by the assessee in ITA No.3154/CHNY/2019 is arising out of order of the Commissioner of Income Tax (Appeals), Puducherry in ITA No.68/2018-19/AY 2014-15/CIT(A)-13 dated
30.08.2019. The assessment was framed by the ACIT, Circle-1,
Vellore, for the assessment year 2014-15 u/s.143(3) of the Income
Tax Act, 1961 (hereinafter the 'Act') vide order dated 19.12.2016.
The impugned rectification order under dispute is framed by the ACIT, Circle-1, Vellore u/s.154 of the Act, vide order dated
19.11.2018.

30. The first issue on assumption of jurisdiction by the AO and confirmed by CIT(A) holding that the rectification order passed u/s 154 of the Act by the AO is as per law and consequently holding the restricting of claim of deduction u/s.36(1)(viia) of the Act

for an amount of provision for bad and doubtful debts made in the books of accounts, as the issue is highly debatable and cannot be done while acting u/s.154 of the Act. For this assessee has raised ground

Nos. 2 & 3 as under:-

> "2. The Commissioner of Income Tax (Appeals) erred in upholding the rectification order passed by the assessing officer, ignoring the fact that it is the assessing officer who has issued a notice u/s.154 and that the appellant had not requested for any rectification.
>
> Without prejudice to the above,
>
> 3. The Commissioner of Income Tax (Appeals) erred in upholding the restriction of claim u/s.36(1)(viia) to the amount of provision for bad & doubtful debts made in the books of account instead of allowing the claim u/s.36(1)(viia) as per the computation prescribed in that section."

31. Brief facts are that the assessee filed its return of income for the relevant assessment year 2014-15 on 27.09.2013. The original assessment was completed u/s.143(3) of the Act vide order dated 19.12.2016. The assessee preferred appeal against the original assessment order before CIT(A)-13, Chennai, who vide its order in ITA No.166/CIT(A)-13/AY2014-15 dated 18.07.2017 allowed relief to the assessee on this issue and directed the AO to allow deduction u/s.36(1)(viia) r.w.s. 6ABA of the IT Rules. Accordingly, the AO vide order dated 08.09.2017 gave effect to the order of CIT(A)-13,

Chennai. In the said order, the deduction u/s.36(1)(viia) of the Act was allowed for Rs.33,42,28,494/- instead of RS.20,00,18,732/- as claimed by the assessee in the return of income filed as well as in the provision made in the income and expenditure statement

under the head' provisions for bad and doubtful assets' for the relevant assessment year. The mistake being apparent from records, a notice u/s.154 of the Act dated 24.08.2018 was issued to the assessee. The AO after considering the provisions of section 36(1)(Viia) of the Act held that these provisions makes it amply clear that any deduction can be allowed on the basis of income determined in the books of accounts maintained by the assessee for the purpose of claiming deduction u/s.36(1)(viia) of the Act. The assessee should have debited the provision bad and doubtful debts in the income and expenditure statement and credited the same to the current liabilities and provisions in the liabilities side of the balance sheet. Therefore according to AO, he rectified the mistake apparent from record u/s.154 of the Act. Aggrieved, assessee preferred appeal before CIT(A).

32. The CIT(A) confirmed the action of the AO by observing in para 4 & 5 as under:-

> "4. I have gone through the assessment order, the subsequent rectification passed u/s 154 and also perused the material on record.
>
> 5. Now, before coming to the merits of the case, firstly it has to be noted that the impugned appeal is against the order passed under section 154 as per Form No. 35 which is basically for rectification of mistakes apparent from record and does not involve issues which has to be established by the process of reasoning on points where there are more than one opinion and which involves a debatable point of law. Whether the provision for bad and doubtful debts has to be allowed u/s 36(1) (viia) or u/s 36(1)(vi) and whether the same is independent of 36(1) or not as argued by the AR is clearly not a patent mistake apparent from records and is clearly a debatable issue as evidenced by the contradictory case laws relied upon by the AO and AR on this issue.
>
> Now, the Supreme Court in the case of T.S. Balaram, ITO v Volkart Bros (1971) 82 ITR 40, held that "a mistake apparent on the record must be an

obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from record."

A look at the records must show that there has been an error and that error may be rectified; Reference to documents outside the records and the law is impermissible when applying the provisions of Section 154 (CIT v Keshri Metal Pvt. Ltd. (1999) 237 ITR 165(SC)]

5.1 In view of the above discussion and taking into account the totality of facts and circumstances of the case and the ratio of the Hon'ble SC quoted supra, the impugned appeal is therefore not maintainable and hence dismissed."

Aggrieved, assessee is in appeal before the Tribunal.

33. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the AO wanted to rectify the claim of deduction u/s.36(1)(viia) of the Act which was allowed by AO and consequently while giving effect to the order of CIT(A) dated 18.07.2017 at Rs.33,42,28,494/- instead of Rs.20,00,18,732/-. According to AO, deduction u/s.36(1)(viia) of the Act is allowable only to the extent of claim made in the books of accounts i.e., provision for bad and doubtful debts made in the books of accounts and it cannot be claimed in the computation simpliciter. We noted that there is a lot of debate and it is highly debatable issue and it cannot be decided while acting u/s.154 of the Act as there is a limitation in the provisions of section 154 of the Act that only the mistake apparent from record which can be rectified but where two views are possible or there is a debate available, it cannot be rectified u/s.154 of the

Act. Here is the case where the AO has allowed this claim while giving effect to the order of CIT(A) dated 18.07.2017 and that cannot be rectified while acting u/s.154 of the Act. Hence the very issue on assumption of jurisdiction, we allow in favour of assessee and against Revenue. This issue of assessee's appeal is allowed.

34. Coming to the issue on merits, since we have adjudicated the issue on jurisdiction in favour of assessee, the issue on merits has become academic. Hence, we need not go into the same.

Therefore, this appeal of the assessee is allowed.

35. In the result, the appeal filed by the Revenue in ITA No.981/CHNY/2020 is dismissed and the appeals filed by the assessees in ITA No. 2645/CHNY/2019 & ITA Nos. 854, 855, 856, 857 & 858/CHNY/2020 are dismissed and the appeal filed by the assessee in ITA No.3154/CHNY/2019 is allowed

Order pronounced in the open court on 18th October, 2023 at Chennai.

Sd/-	Sd/-
(□□□□□□□. □□)	(□□□□□□ सह)
(MANJUNATHA.G)	(MAHAVIR SINGH)
□□□□ सद य/ACCOUNTANT MEMBER	□□□ य /VICE PRESIDENT

□□ ई /Chennai,
□□□□□/Dated, the 18th October, 2023

RSR □□□□ □ □□□□□□

□ □□□□/Copy to:

1. □□□□□□ /Appellant 2. यथ /Respondent 3. □□□□ □□□ /CIT

4. □□□□□□□ □□□□□□/DR 5. □□□□□□□/GF.