Form J(2)

In The High Court at Calcutta

Special Jurisdiction (Income Tax)
Original Side

Reserved On : 06.10.2026
Pronounced On :13.10.2026

Coram: The Hon'ble Justice Rajarshi Bharadwaj
&
The Hon'ble Justice Sudip Deb

ITA 8 of 2018

Indian Bank

....Appellant

-vs-

Commissioner of Income Tax-II, Kolkata

....Respondent

Present:

Mr. C. Bhaskaran, Adv.
Ms. Swapna Das, Adv.

. . .for the appellant.

Mr. Prithu Dudhoria, Adv.
Ms. Sukanya Dutta, Adv.

.. .for the respondent

Rajarshi Bharadwaj, J :-

1. This appeal under section 260A of the Income-tax Act, 1961 ("the Act") is directed against the order passed by the Income-tax Appellate Tribunal,

Kolkata Bench, concerning the assessment year 2004–05. The appellant-bank, now merged with Indian Bank, challenges the refusal of a deduction claimed under the first and consequential provisos to section 36(1)(viia)(a) of the Act.

2. The substantial question of law admitted for consideration is:

"Whether, on a true and proper interpretation of section 36(1)(viia)(a) of the Income-tax Act, 1961, including the first proviso thereto, the Tribunal was justified in law in holding that deduction under the first proviso was alternative to that under sub-clause (a), and that no deduction under the first proviso was allowable if deduction had been allowed under sub-clause (a), thereby rejecting the appellant's claim for deduction of Rs.96,65,00,000/- under the first proviso?"

3. The appellant is engaged in the business of banking. For the relevant assessment year, it claimed deduction under section 36(1)(viia)(a) in respect of provision for bad and doubtful debts. It also claimed a deduction of Rs.96,65,00,000/- in respect of provision made for assets classified by the Reserve Bank of India as doubtful assets or loss assets, invoking the first proviso and the applicable succeeding proviso to section 36(1)(viia)(a).

4. The Assessing Officer disallowed the additional claim on the ground that, in the absence of taxable income and after allowance of deduction under the main provision, the appellant could not separately invoke the first proviso. The

Commissioner of Income-tax (Appeals) and the Tribunal affirmed that view, treating the proviso as an alternative, and not an additional, avenue of deduction. Hence this appeal.

5. Learned counsel for the appellant submits that the expression "at its option" confers a statutory choice on the assessee-bank. The proviso is a special provision relating to specified assets classified under the RBI guidelines and operates in its own field. It cannot be read as an alternative deduction merely because the main clause has also been applied. The words "at its option" would be rendered substantially otiose if the Assessing Officer could determine which statutory route the assessee must adopt.

6. Learned counsel for the Revenue submits that the statutory scheme permits only one deduction within the prescribed limits. The first proviso is said to provide an optional mode of computing the benefit, not a cumulative deduction over and above the deduction under the main clause. Reliance is placed upon the orders of the Tribunal in the appellant's earlier assessment years and upon the distinction between the language applicable to banks and the language considered in cases concerning public financial institutions.

7. The controversy turns upon the true meaning and effect of section 36(1)(viia)(a), read with its first proviso and the proviso applicable to the relevant assessment year. The main provision grants a deduction to a

scheduled or non-scheduled bank in respect of provision for bad and doubtful debts, subject to the statutory ceiling. The first proviso addresses provision made in respect of assets classified by the RBI as doubtful assets or loss assets in accordance with its guidelines. The later proviso, applicable to the period in question, modifies the percentage or quantum specified for the relevant assessment years.

8. A proviso ordinarily qualifies or carves out an exception from the principal enactment; however, its effect must be determined from the text, context and legislative purpose. The first proviso contains the material expression "at its option". That expression cannot be treated as surplus age. It indicates that the choice whether to claim the special deduction, and the manner in which the statutory benefit is claimed, belongs to the assessee satisfying the statutory conditions, and not to the Assessing Officer.

9. If the Revenue's interpretation is accepted, the words "at its option" would have little or no operative content. The assessee would not, in substance, have an option; the authorities would decide whether the main clause or the proviso alone should govern. Such an interpretation is not permissible where the statutory language expressly vests a choice in the assessee.

10. The statutory provisions are intended to recognise the peculiar nature of banking business and the provisioning requirements prescribed by the RBI. The proviso was introduced as a fiscal incentive in respect of specified doubtful and loss assets. It must therefore be interpreted so as to give meaningful effect to the benefit enacted by Parliament, while of course remaining within the express monetary and percentage limits prescribed by the statute. The interpretation cannot be adopted merely because it narrows the benefit where the text does not impose such a restriction.

11. In **CIT v. Tamil Nadu Industrial Investment Corporation Ltd.**, **[2019] 112 taxmann.com 386 (Madras)**, the Madras High Court considered the expression "at its option" in the cognate proviso to section 36(1)(viia). The Court held that the proviso carved out an exception and that the expression "at its option" could not be rendered meaningless. The Revenue's challenge was dismissed by the Supreme Court: **CIT v. Tamil Nadu Industrial Investment Corporation Ltd., [2020] 268 Taxman 395 (SC)**. Although the Supreme Court's order was consequent upon dismissal of the Revenue's challenge, the reasoning of the High Court is persuasive and accords with the plain meaning of the provision.

12. The same question, in relation to the appellant-bank and the bank-specific provision, was considered by this Court in **Indian Bank v.**

Commissioner of Income-tax, [2023] 151 taxmann.com 205 (Calcutta), **IT Appeal No. 70 of 2011, decided on 20 March 2023**. Following the principle in Tamil Nadu Industrial Investment Corporation, this Court answered the first substantial question of law in favour of the assessee and rejected the contention that the first-proviso deduction was necessarily alternative to the deduction under section 36(1)(viia)(a).

13. The Revenue's reliance on the Tribunal's earlier orders in the appellant's own case cannot prevail over the correct interpretation of the statute by this Court. Consistency is desirable, but an erroneous view cannot be perpetuated merely because it was followed in an earlier year. Nor can an administrative circular or explanatory material control or restrict the plain statutory language. Such material may assist in understanding the legislative background, but cannot override the Act.

14. On a true and proper construction of section 36(1)(viia)(a), including the first proviso and the applicable succeeding proviso, the deduction contemplated by the proviso is not to be rejected solely on the ground that a deduction under the main provision has already been allowed. The statutory option belongs to the assessee. The benefit under the proviso is not, in the circumstances of the present case, an alternative benefit which automatically stands exhausted upon allowance of the main-clause deduction. The claim remains subject to

fulfilment of the factual conditions prescribed by the Act, the RBI classification requirement and the applicable statutory ceiling.

15. The substantial question of law is, accordingly, answered in the affirmative, in favour of the appellant-assessee and against the Revenue.

16. The appeal is allowed. The impugned order of the Income-tax Appellate Tribunal, insofar as it rejects the appellant's claim of Rs.96,65,00,000/- under the first proviso to section 36(1)(viia)(a) on the ground that the deduction is alternative to the main-clause deduction, is set aside.

17. The Assessing Officer shall give effect to this judgment and allow the claim in accordance with law, after verifying only the conditions and limits prescribed by section 36(1)(viia)(a), including the relevant RBI classification and the applicable percentage ceiling. Such verification shall not include reconsideration of the legal issue answered by this judgment.

18. There shall be no order as to costs.

19. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

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[Rajarshi Bharadwaj, J]

.....
[Sudip Deb, J]

Kolkata
13.10.2026
PA (BS)