आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No.144, 145 and 146/AHD/2023
Assessment Year :2012-13, 2017-18 and 2018-19

The Mehsana Urban Co-op. Bank Ltd. Urban Bank Road Mal Godown Road Mehasana PAN : AAAAT 2500 R	Vs.	ACIT, Mehsana Circle Mehsana.

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/**(Respondent)

Assessee by :	Shri Bandish Soparkar, AR
Revenue by :	Shri Sanjay Jain, Sr.DR

सुनवाई की तारीख/Date of Hearing : 07/02/2024
घोषणा की तारीख /Date of Pronouncement: 15/02/2024

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

These appeals relate to the same assessee filed against separate orders passed by the ld.Commissioner of Income Tax(Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "Ld.CIT(A)"] under section 250(6) of the Income Tax Act, 1961 ("the Act" for short) of even dated i.e. 13.02.2023 pertaining to the above three assessment years.

2. It was common ground that the issues raised in above three appeals were common and arising from identical set of facts. Therefore, all the appeals were taken up together for hearing, and are being disposed of by this common order.

3. We shall first take up the assessee's appeal **in ITA No.144/Ahd/2023** pertaining to the **Asst.Year 2012-13**.

4. At the outset, the ld.counsel for the assessee stated that he wishes to raise an additional ground before us challenging the validity of the assessment framed under section 147 of the Act in the present case. An application seeking admission of the said ground was placed before us, which reads as under:

> *"Appellant craves leave to raise this additional ground of appeal before the Hon'ble ITAT. This is legal ground and therefore as per the decision of Hon'ble Supreme Court in the case of National Thermal Power (229 ITR 383) it can be raised before the Hon'ble ITAT.*
>
> *1. Both the lower authorities erred in law and on facts reopening of assessment beyond period of four years from end of the relevant assessment year ignoring fact that there is no failure on part of appellant to disclose fully and truly all material facts.*
>
> *2. The reopening of assessment is bad in law and required to be quashed."*

5. Referring to the contents of the above application ld.counsel for the assessee sought admission of the additional ground pointing out that it was a legal ground which could be adjudicated on the basis of material and facts on record. That therefore, as per the decision of the Hon'ble Supreme Court in the case of National Thermal Power, 229 ITR 383, it ought to be admitted for adjudication. Ld.DR did not object to the same.

6. In view of the above, noting that the assessee has by way of the additional ground raised a legal issue challenging the validity of assessment framed in the present case, the additional ground raised by the assessee is admitted for adjudication.

7. Order was pronounced in the Open Court.

8. The ld.counsel for the assessee, thereafter, proceeded to make his arguments vis-à-vis the said ground raised.

9. His contention was that reopening of the assessment in the present case, under section 147 of the Act, by the AO was without jurisdiction since statutory conditions for the exercise of valid jurisdiction were not fulfilled in the present case. He pointed out that in the facts of the present case;

- reopening was resorted to beyond four years, the impugned assessment year being Asst.Year 2012-13 and notice under section 148 was issued at fag end of the sixth year i.e. 30.3.2018;
- that initially assessment under section 143(3) of the Act was framed on the assessee.

He pointed out that as per the provisions of section 147 of the Act, in cases where initially assessment is made under section 143(3) of the Act and reopening is resorted by the AO beyond four years, the same can be done only when it is found by the AO that there is a failure on the part of the assessee to disclose material facts. Our attention was drawn to the relevant provisions of law contained in section 147 of the Act as under:

> *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 reassess65 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 proceedings65 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 facts66 necessary for his assessment, for that assessment year:*

[Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:]

[Provided [also] that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.]

The ld.counsel for the assessee thereafter drew our attention to the reasons recorded by the AO for reopening the case of the assessee and argued that the same did not reveal any failure on the part of the assessee to disclose any material facts on account of which reopening was resorted to. Our attention was drawn to the copy of reasons recorded for reopening of the assessment placed before us at PB 41 to 43 which reads as under:

1. Name of the Asessee	:	The Mehsana Urban Co-op.Bank Ltd.,
2. Address of the Assessee	:	Urban Bank Road, Mehsana 384 002
3. PAN of the Assessee	:	AAAAT2500R
4. Assessment Year	:	2012-2013
5. Details of the Assessing officer having jurisdiction over the assessee	:	ACIT, Mehsana, Gujarat

Reasons for re-opening of the assessment in case of The Mehsana Mehsana Urban Co-op.Bank Ltd. for A.Y.2012-13 u/s 147 of the Act

The assessee is a co-operative bank engaged in the Banking business of providing credit facilities to its members. Return of income for the impugned year filed by the assessee on 29.09.2012 declaring total income at Rs.24,85,56,080/- which has been processed u/s. 143(1) of I.T. Act. Subsequently, assessment u/s. 143(3) of I.T. Act has been finalized on 12.11.2014 determining income of the assessee at Rs.25,89,46,992/-.

On perusal of assessment records, it is revealed that the assessee had claimed provision for bad and doubtful debts u/s.36(1)(viia) of an amount of Rs.2,15,62,380/- at 7.5% of total income (Rs.29,69,89,991/-) and Rs. 56,95,000/- as provision against rural advance totaling to Rs.2,72,57,380/- and further claimed deduction of Rs.1,02,70,200/- as special reserve u/s.36(1)(viii). For computation of

the total income under section 36(1)(viii) should be deducted from total income before computing the deduction u/s.36(1)(viia) which was not done. Thus, Rs.7,70.265/- (7.5% of Rs.1,02,70,200/-) was allowed in excess. Accordingly, this resulted into under assessment of Rs.8,63,775/-.

Considering the above facts, I have reason to believe that income chargeable to tax is escaped assessment to the extent of Rs.8,63,775/-. It is therefore, observed that the facts of the case are covered by the Explanation 1 to section 147 of I.T. Act.

In this case, a return of income was filed for the year under consideration and regular assessment u/s 143(3) of I.T.Act was made on 12.11.2014. Since, 4 years from the end of the relevant year has expired in this case, the requirements to initiate proceeding u/s 147 of the Act are reason to believe that income for the year under consideration has escaped assessment because of failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the assessment year under consideration. It is pertinent to mention here that reasons to believe that income has escaped assessment for the year under consideration have been recorded above. I have carefully considered the assessment records containing the submissions made by the assessee in response to various notices issued during the assessment proceedings and have noted that the assessee has not fully and truly disclosed the following material facts necessary for its assessment for the year under consideration :-

For computation of the total income under section 36(1)(viii) should be deducted from total income before computing the deduction u/s.36(1)(viia) which was not done

It is evident from the above facts that the assessee had not truly and fully disclosed material facts necessary for its assessment for the year under consideration thereby necessitating reopening u/s 147 of the Act.

It is true that the assessee has filed a copy of annual report and audited P&L A/c and balance sheet along with return of income where various information/ material were disclosed. However, the requisite full and true disclosure of all material facts necessary for assessment has not been made as noted above. It is pertinent to mention here that even though the assessee has produced books of accounts, annual report, audited P&L A/c and balance sheet or other evidence as mentioned above, the requisite material facts as noted above in the reasons for reopening were embedded in such a manner that material evidence could not be discovered by the AO and could have been discovered with due diligence, accordingly attracting provisions of Explanation 1 of section 147 of the Act.

It is evident from the above discussion that in this case, the issue under consideration was never examined by the AO during the course of regular assessment. This fact is corroborated from the contents of notices issued by the AO u/s 142(1) and order sheet entries dated recorded during the 143(3) proceedings. It is important to highlight here that material facts relevant for the assessment on the issue under consideration were not filed during the course of assessment proceeding and the same may be embedded in annual report, audited P&L A/c, balance sheet and books of account in such a manner that it would require due diligence by the AO to extract these information. For afore-stated reasons, it is not a case of change of opinion by the AO.

10. Referring to the same, he pointed out that the reopening was resorted to for the reason that the assessee's claim for provision for bad and doubtful debts under section 36(1)(viia) of the Act was found to have not been computed correctly. He pointed out that the reasons revealed that the AO had become aware of the same on perusal of the assessment records. Referring to para-2 of the reasons, he pointed out that the AO found from the assessment records that while the assessee was claiming deduction on account of bad and doubtful debts under section 36(1)(viia) of the Act and had also claimed deduction on account of special reserve created under section 36(1)(viii) of the Act, he noted that as per the provisions of law deduction claimed under section 36(1)(viii) of the Act was required to be deducted from the total income for the purpose of computing provision for bad & doubtful debts as per section 36(1)(viia) of the Act, which he noted was not done in the present case. As per the AO the assessee had computed deduction u/s 36(1)(viia) of the Act without reducing the reserves created as per section 36(1)(viii) of the Act and thus had claimed excess deduction u/s 36(1)(viia) of the Act to the tune of Rs.7,70,265/-

The ld.counsel for the assessee pointed out that what the AO noted from the records was probably only incorrect calculation of the provision for bad and doubtful debts claimed by the assessee under

section 36(1)(viiia) of the Act. The error being that special reserve claimed by the assessee under section 36(1)(viii) of the Act was to be deducted from the total income and on the balance provision u/s 36(1)(viia) was to be calculated, which as per the AO the assessee had not done. He pointed out that clearly it was not the case of the AO that any fact vis-à-vis claim of provision of bad and doubtful debts or for that matter, the quantum of reserve under section 36(1)(viii) of the Act was not disclosed by the assessee. On the contrary, he pointed out that the reasons revealed that these facts emerge from the record itself, and therefore, he contended, there could be no case of failure on the part of the assessee to disclose any material fact. He further drew our attention to the reason recorded by the AO, categorically pointing out the material facts which the assessee had not disclosed as

> *"…. I have carefully considered the assessment records containing the submissions made by the assessee in response to various notices issued during the assessment proceedings and have noted that the assessee has not fully and truly disclosed the following material facts necessary for its assessment for the year under consideration:*
>
> *For computation of the total income under section 36(1)(vii) should be deducted from total income before computing the deduction under section 36(1)(viia) which was not done.*
>
> *It is evident from the above facts that the assessee had not truly and fully disclosed material facts necessary for its assessment for the year under consideration thereby necessitating reopening u/s.147 of the Act."*

11. He stated that what the AO has considered to be material fact was not material fact, but only computational error, while all the facts relating to the computation were admittedly disclosed by the assessee. The ld.counsel for the assessee stated, therefore, that since there was no failure on the part of the assessee to disclose any material facts, relating to the assessment of income, the reopening

resorted to in the present case under section 147 of the Act beyond four years was in violation of the provision of law, and the order passed, therefore, in the present case, was clearly without jurisdiction, and therefore needed to be set aside.

12. He relied upon the decision of the Hon'ble Gujarat High Court in the case of P.V. Doshi Vs. CIT, (1978) 113 ITR 22 (Guj) pointing out that it categorically held that the condition precedent for initiating the reassessment proceedings being by way of a safeguard in public interest so that the finally concluded proceedings are not reopened lightly with consequent hardship to the assessee, therefore, these conditions are mandatory conditions; that there could not be a waiver of a mandatory provision and these conditions need to be necessarily fulfilled for exercise of valid jurisdiction; that an order without jurisdiction is nullity.

The ld.DR, however, submitted that the AO had clearly pointed out the material fact which the assessee had failed to disclose in his reasons recorded, and therefore, there was no infirmity in the jurisdiction assumed by the AO to reopen the case of the assessee in the present case.

13. We have carefully heard contentions of both the parties, and have gone through the documents and case laws referred to before us. We are in complete agreement with the contentions of the ld.counsel for the assessee that the AO in the present case had reopened the case of the assessee under section 147 of the Act without fulfilling the mandatory conditions stated in law for the said purpose. The requirement of law as is evident from a bare reading of the section reproduced above and which we have noted even the AO notes in his reasons recorded for reopening the case is that for reopening of cases beyond four years, where an assessment under

section 143(3) has already been made, the AO needs to be satisfied that there has been failure on the part of the assessee to disclose material facts. There is no dispute vis-à-vis this provision of law. The fact that in the present case, reopening was resorted to beyond four years, and the assessment under section 143(3) of the Act stood framed is also not disputed. The only dispute is, whether it could be stated that there was any failure on the part of the assessee to disclose any material facts pertaining to the assessment of income. The reasons recorded by the AO, we find, do not reveal any such failure on the part of the assessee. As rightly pointed out by the ld.counsel for the assessee, and as revealed by the reasons also, reopening was resorted to in the present case, noting incorrect calculation of claim for provision for bad and doubtful debts of the assessee under section 36(1)(vii) of the Act. As per the said section, the assessee is entitled to claim 4% of its total income as provision for bad and doubtful debts. This total income is to be net of special reserve created under section 36(1)(viii) of the Act, which the assessee had claimed not net while calculating its provision for bad and doubtful debts. Thus, as rightly pointed out by the ld.counsel for the assessee, escapement of income as per the AO was attributable to the incorrect calculation of bad and doubtful debts. The facts, for the said purpose, of the amount of special reserve claimed by the assessee was admittedly on record, and even as per the AO itself, this incorrect calculation of the provision for bad and doubtful debts was material the fact not disclosed by the assessee. We completely agree with the ld.counsel for the assessee that this mathematical incorrectness cannot be said to be failure on the part of the assessee to disclose any **material fact**. It is, at the most, an alleged computational error, or an incorrect/conclusion by the assessee but certainly not a material fact. Mandatory condition, therefore, for assuming jurisdiction to frame assessment under

section 147 of the Act in the present case of failure on the part of the assessee to disclose material facts was we hold, not present. Jurisdiction assumed by the AO therefore for framing assessment under section 147 of the Act, we hold, was not in accordance with law. The assessment order passed, therefore, we hold is void, without jurisdiction and is directed to be set aside.

14. Since, we have held the assessment order to be invalid, therefore other grounds raised by the assessee on the merits of the case, in the grounds of appeal, do not require separate adjudication, being mere academic in nature.

15. In the result, the appeal of the assessee is allowed in the above terms.

16. We shall now take up the appeal of the assessee in **ITA No.145/Ahd/2023 pertaining to the Asst.Year 2017-18**.

17. Ground No.1 raised by the assessee is as under:

> *"Ld.NFAC/CIT(A) erred in law and on facts in disallowing employee's contribution to provident fund and ESI of Rs.90,64,955/- u/s 36(1)(va) ignoring fact that being first year of new payment gateway system implemented by EPFO and accordingly there were technical errors which results into delay in depositing same within due date."*

18. As is evident from the above, the issue relates to disallowance of alleged delayed deposit of employees contribution to ESI/PF in terms of the provisions of section 36(1)(va) of the Act.

19. The ld.counsel for the assessee conceded that the issue is now settled by the Hon'ble Apex Court against the assessee in the case of Checkmate Services P.Ltd. Vs. CIT, (2022) 143 taxmann.com 178. But he contended that facts of the present case require a re-look into the issue. He stated that the delay in payment in the present case was of few days ranging from one to seven days, and it was all attributable to the reason that the EPFO had devised a new payment e-gateway, and on account of some technical snag on the same,

though the payments were initiated in time by the assessee, but they could not be deposited with the EPFO within stipulated time. He pointed out that the ITAT, Ahmedabad Bench in identical facts and circumstances had held that where the delay in payment of employees' contribution to ESI and PF was not attributable to the assessee, disallowance under section 36(1)(va) of the Act was not maintainable. He referred to the decision of the ITAT in the case of Inox Leisure Ltd. Vs. DCIT, ITA No.23/Ahd/2022 order dated 5.7.2023. Copy of the same was placed before us.

20. The facts relating to the case were pointed out to us from the assessment order page no.2, wherein the delay of employees' contribution to PF amounting to Rs.90,64,955/- was detailed in a tabular form as under:

S.No.	Name of Fund	Due date for payment	Actual date of payment	Sum received from the employee (Rs.)
1.	Provident Fund	15/06/2016	16/06/2016	13,83,952/-
2.	Provident Fund	15/07/2016	22/07/2016	14,65,343/-
3.	Provident Fund	15/08/2016	16/08/2016	14,74,422/-
4.	Provident Fund	15/01/2017	24/01/2017	15,46,590/-
5.	Provident Fund	15/02/2017	23/02/2017	15,99,669/-
6.	Provident Fund	15/03/2017	24/03/2017	15,94,979/-
Total				**90,64,955 /-**

21. Referring to the above, he pointed out that the delay was ranging from one day to seven days. He pointed out that the fact of delay occurred on account of technical glitch in the payment gateway of EPFO was pointed out to the ld.CIT(A) in the submissions made to him. Copy of the submissions is placedby the assessee before in PB Page no.107. The relevant para read as under:

(3C)

C We further state you that according to section 7Q Interest Payable and 14B power to recover under E.P.F. Act, 1952, the late payment of fund (employee and employer) after due date are acceptable by "E.P.F." Authority itself. So your good self is requested to consider relaxation provision under E.P.F. Act, 1952 and allow the same keeping the principle of natural justice please.

D EPFO has introduced new payment system gateway through online platform in the year 2016. In initial period, due to new system, entity was finding technical difficulty in payment of provident fund. At that time, we were continuously trying to pay the employee provident fund in time but due to technical problem we were unable to make payment in time. The copy of SBI letter generated from system enclosed.

Under the stated facts and provision of law we request to delete the addition of Rs.90,64,955/- mad by AO and oblige us please.

22. The ld.counsel for the assessee contended that despite pointing out the same to the ld.CIT(A), he had completely ignored the contention of the assessee and upheld the disallowance made by the AO under section 36(1)(va) of the Act.

The ld.DR, on the other hand, vehemently opposed the contention of the ld.counsel for the assessee.

23. We have heard both the parties and have also gone through the documents and case law referred to by the ld.counsel for the assessee. We have noted that the ITAT, Ahmedabad Bench in the case of Inox Leisure Ltd. has held that where delay in payment of ESI/PF contribution is not attributable to the assessee, but to the concerned departments itself, then in such facts and circumstances, it is be construed that the assessee had deposited the contribution to the relevant fund within the due date prescribed, warranting no disallowance under section 36(1)(va) of the Act.

24. We have noted that the assessee had pleaded this before the ld.CIT(A) who has not taken note of the same. Considering the same, therefore, we hold, it is fit case to restore the issue back to the file of the ld.AO to be adjudicated afresh in accordance with law, after verifying the facts of the case.

The ground no.1, therefore, is allowed for statistical purpose.

25. Ground no.2 reads as under:

"Ld. NFAC/CIT(A) erred in law and on facts in disallowing deduction u/s 36(1)(viia) of Rs. 37,81,347/-"

26. The above ground relates to the disallowance made of deduction claimed under section 36(1)(viia) of the Act.

27. The solitary dispute for consideration, it was pointed out, related to the manner of computation of provision for bad and doubtful debts. The ld.counsel for the assessee pointed that as per the provisions of section 36(1)(viia) of the Act, a Scheduled Bank or Cooperative Bank is entitled to claim deduction on account of provision for bad and doubtful debts of an amount not exceeding 7.5% of its total income which total income is to be computed before making any deduction under this clause and Chapter-VIA. He

stated that section 36(1)(viii) provides for claiming deduction on account of special reserve created which again is to be computed on the total income computed before making any deduction under this clause and Chapter-VIA. It was pointed out that the assessee in the present case had claimed deduction under both the sections. The case of the Revenue was that as per the provisions of both the sections, the total income which needed to be computed before making any deduction under this clause was to be interpreted as that deduction under sub-clause (viia) i.e. provision for bad and doubtful debts was to be computed on the total income arrived at without claiming any deduction under section 36(1)(viii) of the Act. The ld.counsel for the assessee pointed out that the case of the Revenue is that provision for bad and doubtful debts needs to be computed on the total income after providing special reserve created by the assessee under section 36(1)(viii) of the Act, while the assessee had claimed the deduction without doing so. He pointed out that the Hon'ble Madras High Court in the case of Infrastructure Development Finance Co. Ltd. Vs. ACIT, (2019) 104 taxmann.com 205 (Mad) had dealt with an identical issue and held that both the provisions of section 36(1)(vii) and 36(1)(viii) are independent provisions and deduction under both these clauses has to be made independently without reducing the total income by deduction under clause (viii) of section 36(1) of the Act. Our attention was drawn to para 28 of the order, which reds as under:

> *"28. The facts in the present case are distinguishable and different. A provision had been made for deduction of provisions for Bad and Doubtful debts under Section 36(1)(viia)(c) independent of Section 36(1)(viii) which provide for deduction upto 40% for special Reserve created by Assessee providing long term finance for development of infrastructure facility. The Tribunal in the present case had actually not applied its mind on this issue. They had simply reaffirmed the earlier order dated 05.09.2003 for the Assessment Year 2000-2001, and the order dated 19.01.2004 for the Assessment Year 2001-2002 and followed the same principles. However, as pointed out above, the*

appeals against the said orders had been allowed by a Co-ordinate Bench of this Court and the answer has been given in favour of the Assessee. If Section 36(1) is examined, it is clear that sub-section (1) gives the list of matters in respect of which deduction can be allowed while computing the income referred under Section 28. Clause (i) to (xi) of sub-section 1 of Section 36 do not imply that those deductions depend on one another. If an Assessee is entitled to the benefit under Clause (i) sub-section (1) of Section 36, the Assessee cannot be deprived of the benefit the other Clauses. This is how the provisions have been arrayed. The computation of amount of deduction under both these clauses has to be independently made without reducing the total income by deduction under clause (viii) of Section 36 of the Act."

28. The ld.DR was unable to point out any contrary decision either of the Hon'ble High Courts or of the Hon'ble Supreme Court on the issue, though he relied heavily on the orders of the authorities below.

29. We have heard both the parties and we have also gone through the decision of Hon'ble Madras High Court in the case of Infrastructure Development Finance Co. Ltd. (supra) and we find that in the said case, the Hon'ble Court was seized with an identical issue as that before us, of the manner of computation of provision for bad and doubtful debts in terms of provisions of section 36(1)(viia) of the Act, as read alongwith the claim of special reserve under section 36(1)(viii) of the Act. We have noted that Hon'ble High Court in the said case has held that both the sections are independent section and computation of amount of deduction to be calculated independently without reducing the total income by deduction under either of the sections.

The ld.DR being unable to point out any contrary decision to the same, we hold, issue before us squarely covered by the aforesaid decisions of the Hon'ble Madras High Court (supra), and following the same, we hold that the assessee is entitled to claim provision for bad and doubtful debts under section 36(1)(vii) on the total income

computed without reducing its claim of special reserves under section 36(1)(viii) of the Act.

The order passed by the ld.CIT(A) on this issue is therefore set aside and ground raised by the assessee is allowed.

30. Ground No.3 and 4 are raised by the assessee relating to the issue of addition made to the income of the assessee on account of mismatch in the income reported in Form No.26AS and that accounted for in its books of accounts.

31. The mismatch being an amount of Rs.2,04,918/-, the contention of the ld.counsel for the assessee before us was that the assessee had closed its books of accounts, and subsequently respective parties had taken into account these incomes pertaining to the assessee, and deducted tax thereon in the impugned year itself; that the assessee had accounted for the same as its income in the subsequent year, and paid taxes on the same; that there is no loss to the Revenue, therefore, following the decision of Hon'ble Apex Court in the case of 358 ITR 295 (SC) CIT vs. Excel Industries Ltd. there is no case for making any addition to the income of the assessee.

The ld.DR however vehemently supported the order of the authorities below.

32. We have heard both the parties; and gone through the material available on record. It is not disputed that this income has been returned to tax by the assessee in subsequent year, and therefore, no purpose would be served by taxing the said income in the impugned year. Further the Hon'ble Apex Court in the case of Excel Industries Ltd. (supra) comes to the assistance of the assessee, considering the aspect of tax neutrality. However, we may add, the

assessee be allowed the claim of TDS only in the year in which the said income is returned to tax.

Accordingly, this ground of appeal is allowed with the above directions.

33. In the result, the appeal of the assessee in ITANo.145/Ahd/2023 is allowed.

34. ITA No.146/Ahd/2023 : Asst.Year 2018-19

35. Ground No.1 and 2 are as under:

1. *Ld.NFAC/CIT(A) erred in law and on facts in disallowing deduction u/s 36(1)(viia) of Rs.63,13,716/-.*
2. *Ld. NFAC/CIT(A) erred in law and on facts in disallowing deduction u/s 36(1)(viii)of Rs.7,10,754/-*

36. The above grounds are admitted to be identical to ground no.2 of ITA No.145/Ahd/2023. Therefore, our decision rendered therein will apply equally, following which the above grounds of the assessee are allowed.

In effect appeal of the assessee is allowed.

37. In the result, all the appeals of the assessee are allowed.

Order pronounced in the Court on 15th February, 2024 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad, dated 15/02/2024