IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, BANGALORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

ITA No.	***Asst.Year***	***Appellant***	***Respondent***
530/Bang/2010	2005-06	Canara Bank, BSCA Section, FM&S Wing, HO, No.112, JC Road, Bangalore-560002.	Joint CIT,LTU, Bangalore.
479/Bang/2009	2006-07	-do-	Addl.CIT, LTU Bangalore.
793/Bang/2011	2007-08	-do-	-do-
693/Bang/2012	2008-09	-do-	-do-
601/Bang/2010	2005-06	Joint CIT,LTU, Bangalore.	Canara Bank, Bangalore.
530/Bang/2009	2006-07	Addl.CIT,LTU,B'lore.	-do-
813/Bang/2011	2007-08	-do-	-do-
684/Bang/2012	2008-09	Joint CIT, LTU,B'lore	-do-

Assessee by : Shri G.Sarangan, Senior Advocate
& Shri S.Ananthan, CA.
Revenue by : Shri G.R.Reddy, CIT(DR)

Date of hearing : 07/03/2016
Date of pronouncement : 30/03/2016

O R D E R

Per BENCH :

These are cross appeals by the assessee-public sector bank as well as revenue, directed against different orders of the CIT(A) for the assessment years.

2. Since common issues are involved in all these appeals, the same are disposed of by way of this consolidated order. For the sake of convenience and clarity, facts for assessment year 2006-

07 are taken as lead matter. ITA No.479/2009 is assessee-bank's appeal and ITA 530/Bang/2009 is the revenue's appeal for assessment year 2006-07.

3. The assessee-bank raised the following grounds of appeal in ITA No.479/Bang/2009 for the assessment year 2006-07:

1) *The order of the learned CIT(A) is against the law and facts of the case.*

2) *The learned CIT(A) erred in confirming the deduction claimed u/s 36(1)(viia) after adjusting the brought forward loss to the extent of Rs.21,54,18,149/-*

3) *The learned CIT(A) erred in defining the 'total income 'for working out the deduction allowable u/s 36(1)(viia) of the Income tax Act, 1961.*

4) *The learned CIT(A) erred in disallowing the depreciation on HTM category of Rs.460,71,28,270/-.*

5) *The learned CIT(A) erred in confirming that the Bank cannot treat all investments as stock-in-trade for the purpose of Return of Income.*

6) *The learned CIT(A) erred in confirming that there is a change in the method of valuation in the relevant assessment year in respect of investments..*

7) *The learned CIT(A) erred in confirming the disallowances of public issue expenses u/s 35D of an amount of Rs.1,92,50,000/-.*

8) *The learned CIT(A) erred in confirming the write off of investments of an amount of Rs.24,00,000/-*

9) *For all these and other grounds that may be urged at the time of hearing the Appellant request that its appeal be allowed.*

4. Briefly, facts of the case are that the assessee-bank is a Government of India undertaking and is engaged in the business of banking. Return of income for the assessment year 2006-07 was filed on 21/11/2006 disclosing nil income under normal provisions of the Income-tax Act, 1961 [hereinafter referred to as 'the Act']. Tax payable u/s 115JB was computed at Rs.1,24,11,87,097/-. The return of income was selected for scrutiny by issuing notice u/s 143(2) of the Act. The assessment was completed on a total income of Rs.1326,82,33,656/- by the Addl.CIT, LTU, Bangalore, vide order dated 29/2/2008 passed u/s 143(3) of the Act. While doing so, Assessing Officer (AO), made the following disallowances:

a) Deduction u/s 36(1)(viia) was restricted to Rs.476,97,51,958/- as against the claim of Rs.498,51,70,108/- thereby resulting in addition of Rs.21,54,18,149/-.

b) Bed debts claim of Rs.903,37,86,609/- on the ground that the amounts were not written off in the books of account.

c) Depreciation on assets leased to Rajinder Steels and Group of company Rs.20,91,396/-.

d) Expenditure on exempt income invoking provisions of sec.14A – Rs.16,77,57,498/-.

e) Preliminary expenses of Rs.1,92,50,000/-

f) Depletion in the value of HTM category of investments – Rs.4,60,71,28,270/-.

g) Write off of investments in Pennar Aluminium - Rs.24,00,000/-

h) Broken period interest – Rs.45,17,75,000/- .

5. Being aggrieved by the above disallowances, assessee-bank preferred an appeal before the ld. CIT(A) who, vide impugned order, confirmed the addition of Rs.21,54,18,149/- under the provisions of section 36(1)(viia) of the Act holding that the AO was justified in adopting the total income after setting off of brought forward loss for the purpose of calculating deduction under the said provision.

5.1 As regards the disallowance of bad debts written off, the ld. CIT(A) after considering the material filed before him held that the assessee-bank was entitled for deduction on account of bad debts of Rs.903,37,86,609/- and directed the AO to allow the claim.

5.2 As regards depreciation on assets leased to Kedia Group of companies, the ld. CIT(A) held that the AO had not complied with the directions of this Tribunal, non-compliance of the directions of this Tribunal amounts to violation of principles of natural justice. However, keeping in view the fact that for earlier assessment year, the issue was remitted back to the file of the AO, on the same lines, the issue was remitted back to the AO for fresh adjudication.

5.3 With respect to disallowance of expenditure for earning exempt income of Rs.16,77,57,498/-, the ld. CIT(A) following the decision of this Tribunal in assessee's own case for assessment

years 2002-03 and 2003-04 in ITA Nos.310 & 311/Bang/2011 held that no expenditure can be disallowed on estimate basis and therefore deleted the total addition made under the provisions of sec.14A.

5.4 With regard to disallowance of preliminary expenses, the ld. CIT(A) confirmed the disallowance holding that the expenditure is in the nature of capital expenditure.

5.5 The ld. CIT(A) also confirmed the addition on account of depletion in the value of investments held under the category of Held To Maturity (HTM) holding that treatment in the books of account is a relevant factor.

5.6 The ld. CIT(A) also confirmed the addition on account of write off of NP investment of Rs.24 lakhs holding that the loss is on capital account.

5.7 In respect of addition made on account of broken period interest of Rs.45,17,75,000/-, the ld. CIT(A) deleted the addition holding that even in a case where accrual or mercantile system of accounting is followed, interest becomes due only when holder of the securities get a right to receive interest and following the decision of this Tribunal in assessee-bank's case for earlier years, directed the AO to delete the addition.

5.8 As regards the addition made to book profits u/s 115JB, the ld. CIT(A) held that the disallowance u/s 14A cannot be added to book profit for the purpose of computing taxable income u/s

115JB of the Act following the law laid down by the Hon'ble Apex Court in the case of *Apollo Tyres Ltd.* (255 ITR 273).

6. Being aggrieved by that part of the order which is against the assessee-bank, assessee-bank is in appeal in ITA No.479/Bang/2009 and the revenue is also in appeal on the grounds which are allowed in favour of the assessee in ITA No.530/Bang/2009.

7. Now, we shall take up the appeal filed by the assessee-bank (ITA No.479/Bang/2009). The assessee-bank has raised totally 8 grounds of appeal. Ground No.1 is general in nature and does not require adjudication.

8. Ground Nos.2 and 3 challenge the addition made u/s 36(1)(viia) of the Act as confirmed by the ld. CIT(A).

8.1 Brief facts surrounding this issue are as under: The assessee-bank made a claim for deduction of Rs.498,51,70,108/- u/s 36(1)(viia) of the Act for the purpose of arriving at the amount of deduction on the total income computed before set off of brought forward business loss of Rs.286,89,40,957/-. The working given by the assessee-bank is as under:

Income from business	664,15,02,177
Income from House property	14,08,481
Total Income	664,29,10,657
7.5% of total income (A)	49,82,18,299
10% of average advances to rural branches (B)	448,69,51,809
Eligible deduction (A+B) =	498,51,70,108

It is the contention of the assessee-bank that for the purpose of provisions of section 36(1)(viia) 'total income' means total income before set off of brought forward business loss. In support of this contention, assessee-bank relied upon the decision of the Hon'ble Kerala High Court in *CIT vs. Kerala State Industrial Development Corporation Ltd.*(182 ITR 67), *CIT* as confirmed by the Hon'ble Supreme Court reported in 96 Taxman.641, *vs. Bihar State Financial Corporation* (142 ITR 518). Following these decisions, co-ordinate bench of this Tribunal in ITA No.291/Bang/1998 in assessee's own case held that this deduction should be allowed before set off of brought forward loss. The AO was of the opinion that the total income as reduced by set off of brought forward loss alone should be considered for the purpose of working the deduction under the provisions of section 36(1)(viia). On appeal before the ld. CIT(A), the ld. CIT(A) concurred with the views of the AO and upheld the addition.

8.2 Before us, learned counsel for assessee-bank has reiterated the same submissions made before the lower authorities.

8.3 On the other hand, ld.CIT(DR) vehemently argued that total income means income computed under the provisions of the Act before allowing deduction under the provisions of section 36(1)(viia) as well as deductions under Chapter VIA.

8.4 We heard rival submissions and perused material on record. There is no dispute as to the eligibility of the assessee-

bank for deduction u/s 36(1)(viia) but the bone of contention between the assessee-bank and the revenue is only with regard to manner of computation of the amount of deduction. Therefore, it is apt to reproduce the relevant provision of section 36(1)(viia):

> *"36(1)(viia) in respect of any provision for bad and doubtful debts made by –*
>
> *(a) a scheduled bank (not being a bank incorporated by or under the laws of a country outside India) or a non-scheduled bank, an amount (not exceeding seven and one-half per cent] of the total income (computed before making deduction under this clause and Chapter VIA) and an amount exceeding 34[ten] per cent of the aggregate average ad made by the rural branches of such bank computed in prescribed manner:*
>
> *Provided that a scheduled bank or a non-scheduled referred to in this sub-clause shall, at its option, be allowed any of the relevant assessment years, deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accord the guidelines issued by it in this behalf, for an amount not exceeding five per cent of the amount of such assets - in the books of account of the bank on the last day of the year:*
>
> *Provided further that for the relevant assessment year commencing on or after the 1st day of April, 2003 and ending the 1st day of April, 2005, the provisions of the first prov. have effect as if for the words "five per cent", the words cent" had been substituted:*
>
> *Provided also that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed a further deduction in excess of the limits specified in the foregoing provisions, for an amount not exceeding the income derived from redemption of securities in accordance with a scheme framed the Central Government:*
>
> *Provided also that no deduction shall be allowed under the t proviso unless such income has been disclosed in*

the return of income under the head "Profits and gains of business or profession.

Explanation.—For the purposes of this sub-clause, "re' assessment years" means the five consecutive assessment commencing on or after the 1st day of April, 2000 and before the 1st day of April, 2005"

8.5 From plain reading of the above provisions, it is clear that the amount of deduction should be arrived at 7.5% of the total income computed before making any deduction under the provisions of section 36(1)(viia) and chapter VIA and an amount not exceeding 10% of average advanced made by rural b ranches of such bank. The manner of computing advances is laid down in rules of Income-tax Rules. In the present case, the controversy is regarding the interpretation of term 'total income'. 'Total income' has been defined to mean total 'income before making any deduction under section 36(1)(viia) and Chapter VIA.

8.6 The Constitution Bench of the Apex Court, in the case of *Distributors (Baroda) Pvt. Ltd vs Union Of India* (155 ITR 120), in the context of interpreting the provisions of sec.80M held that deduction u/s 80M has to be calculated with reference to the amount of dividend income computed in accordance with the provisions of the Act. While coming to such conclusion, Hon'ble Apex Court taken note of its earlier decision in the case of *Cambay Electric Supply Industry Co. Ltd.* (113 ITR 84) wherein the Hon'ble Apex Court held that for the purpose of allowing deduction under the said provision, it was necessary to first

compute total income of the assessee in accordance with other provisions of the Act i.e. in accordance with all the provisions except sec.80E. Earlier decision of the Hon'ble Apex Court in the case of *Cloth Traders Pvt. Ltd. (118 ITR 243)* was overruled. Further, the Hon'ble Apex Court, following its decision in the case of *Distributors (Baroda) Pvt. Ltd* (supra) held in the case of *H.H. Sir Rama Verma vs. CIT* (205 ITR 433) held that in the context of deduction u/s 80E long term capital loss brought forward from earlier years has to be first set off against long term gains of current assessment year before deduction contemplated u/s 80T of the Act is allowed. The relief under the said Act is to be given only for the amount of long term capital gains of the current year after long term capital loss of earlier years brought forward is set off. Therefore, having regard to the law laid down by the Hon'ble Apex Court in the above cases, it must be held that the total income computed in accordance with provisions of the Act i.e. in accordance with provisions except provisions of sec.36(1)(viia) and Chapter VIA is alone to be considered for the purpose of calculating amount of deduction under the said provision. The reliance placed by the learned counsel for the assessee-bank on the decision in the case of *Kerala State Industrial Development Corporation* (96 taxman 641) and *Bihar State Financial Corporation* (142 ITR 518) is misplaced. Those decisions were rendered in the context of provisions of sec.36(1)(viii).

8.7 The language employed in sec.36(1)(viii) and 36(1)(viia) is not *pari materia.* We had gone through the provisions of sec.36(1)(viii) which are as under:

> *"36(1) The deductions provided for in the following classes shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28 –*
>
> *(viii) in respect of any special reserve created "and maintained financial corporation" which is engaged in providing long-am for "[industrial or agricultural development or development of infrastructure facility in India or by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes, an amount not exceeding forty percent of the profits derived from such business of providing long-term finance (computed under the head "Profits and gains of bus profession" before making any deduction under this clause to such reserve account:*
>
> *Provided that where the aggregate of the amounts carried to such reserve account from time to time exceeds twice the amount of the paid-up share capital and of the general reserves of the corporation or, as the case may be, the company, no allowance under this clause shall be made in respect of such excess."*

From a plain reading of the above, it is clear that the amount of deduction is to be calculated with reference to income computed under the head 'profits and gains of business or profession'. The provisions governing the brought forward and set off business loss are not part of the provisions governing the computation of profits under the head 'profits and gains of business'. Therefore, reliance of the learned counsel for the assessee-bank on the

decisions cited above is totally misplaced. Even the decision of the co-ordinate bench in the assessee's own case in ITA No.291/Bang/1998 rests on the above decision. The co-ordinate bench had not considered the decision of Hon'ble Supreme Court cited supra. In the circumstances, the decision rendered by co-ordinate bench in the assessee-bank's case is *per incuriam.* Therefore, these decisions cannot be held to be applicable to the issue on hand. Hence, we hold that the method of calculation adopted by the AO is in accordance with the provisions of the Act and the reasoning adopted by the CIT(A) is also in consonance with the clear provisions of the Act. Hence, we confirm the addition made by the AO. The grounds of appeal raised by the assessee on this issue are dismissed.

9. Ground Nos.4 and 5 relate to direction of the CIT(A) deleting the addition made on account of depreciation in the value of Held to Maturity (HTM) category of investments. The background facts surrounding this issue are as under:

9.1 In the return of income, the assessee-bank claimed deduction of an amount of Rs.460,71,28,270/- on account of depreciation in the value of HTM category of investments. The undisputed fact about this category of investments is that they are shown as investment in the books of account up to assessment year 2004-05. This was changed to stock-in-trade from the assessment year 2005-06. They are forming part of the investments as per SLR of Reserve Bank of India. In the return of

income, the assessee-bank treated these investments as stock-in-trade placing reliance on the decision of the Hon'ble Supreme Court in the case of *United Commercial Bank* (240 ITR 355) wherein it is held that when the bank acquired investments pursuant to RBI guidelines governing SLR investments, though they are treated as investments in the books of account, they should be treated as part of the business assets. Following this dictum, the assessee-bank has treated them as stock-in-trade for income-tax purposes. The assessee-bank valued these securities following the principle of cost or market price whichever is less. Therefore, when there is a fall in the value of securities, the same is recognized as depreciation and debited to P&L Account. During the previous year relevant to assessment year under consideration, an amount of Rs.460,71,28,270/- was claimed as deduction in the return of income on this account. The AO had disallowed the claim by holding that the assessee-bank cannot adopt a different method of accounting for income-tax purpose than what is adopted in the books purpose.

9.2 On appeal before the CIT(A), the CIT(A) disallowed the claim by holding that conversion of securities from investments to stock-in-trade attracts the provisions of sec.45(2). The CIT(A) also taken notice of the fact that the assessee had no working regarding depreciated value of assets and capital gains on sale of assets. In the absence of such working, the CIT(A) confirmed the addition.'

9.3 Being aggrieved, the assessee-bank is in appeal before us. The learned counsel for the assessee-bank submitted that notwithstanding the treatment given in the books of account of investments of a banking company, should be treated as business assets and therefore, depreciation in the value of assets, if any, as on the date of balance on account of fall in values of investments should be allowed as a deduction in computing profits and gains of business of the banking company. In support of this, he relied on CBDT circular No.18/2015 dated 2/11/2015 and also on the following precedents:

a. *UCO Bank* (240 ITR 355)(SC)
b. *Karnataka Bank Ltd*. (356 ITR 549)(Kar.)
c. *CIT vs. HDFC Bank* (ITA No.250/2012 (Bom.)
d. *Vijaya Bank* (ITA No.687/2008dt.11/3/2013)(Kar.)
e. *Vijaya Bank* (ITA Nos.660, 596 & 747/2011 (ITAT, Bang)

9.4 On the other hand, ld.CIT(DR) argued that the circular No.18/2015 of CBDT was issued only in the context of provisions of section 80P of the Act. The same cannot be applied to the commercial banks. He relied on the orders of the lower authorities.

9.5 We heard the rival submissions and perused the material on record. The short issue in this ground of appeal is whether fall in value of investments made pursuant to SLR requirements of RBI can be allowed as a deduction while computing business income of a banking company. Notwithstanding treatment given in the books of account, it is undisputed fact that investments are

made only to comply with the regulations of RBI governing SLR requirement. Even otherwise, the Hon'ble jurisdictional High Court in the case of *Karnataka Bank vs. CIT* (356 ITR 539) held that circular issued by the RBI for treatment in the books of account is not relevant for classifying the investments whether stock-in-trade or not. In the present case, undisputedly, assessee-bank has changed its method of accounting by classifying the investments from investments to stock-in-trade. In such a situation, provisions of sec.45(2) of the Act are attracted. The said provisions of the Act read as under:

> *"45(2)Notwithstanding anything contained in sub-section (1), the profits or gains arising from the transfer by way of conversion by the owner of a capital asset into, or its treatment by him as stock-in-trade of a business carried on by him shall be chargeable to income-tax as his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him and, for the purposes of section 48, the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset. "*

But here the question is, in the earlier years though investments are shown as investments in the books of account, for income-tax purposes, the same was shown as stock-in-trade. Therefore, assessee-bank changed its method of accounting during the previous year relevant to assessment year under consideration is not a material fact in deciding the issue in the present appeal. In the earlier years, the same was claimed as stock-in-trade and the resultant loss or gain on account of following the principle cost or

market price whichever is less, is recognized for income-tax purpose. In this context, it is apt to reproduce circular No.18/2015:

"Circular No. 18 of 2015, dated November 02, 2015.

Subject : ***Interest from Non-SLR securities of Banks—reg.***

It has been brought to the notice of the Board that in the case of Banks, field officers are taking a view that, "expenses relatable to investment in non-SLR securities need to be disallowed under section 57(i) of the Act as interest on non-SLR securities is income from other sources".

2. Clause (id) of sub-section (1) of section 56 of the Act provides that income by way of interest on securities shall be chargeable to income-tax under the head "Income from other sources", if, the income is not chargeable to income-tax under the head "Profits and gains of business and profession".

3. The matter has been examined in light of the judicial decisions on this issue. In the case of CIT v. Nawanshahar Central Co-operative Bank Ltd. [2007] 160 Taxman 48 (SC), the apex court held that the investments made by a banking concern are part of the business of banking. Therefore, the income arising from such investments is attributable to the business of banking falling under the head "Profits and gains of business and profession".

3.2 Even though the abovementioned decision was in the context of co-operative societies/Banks claiming deduction under section 80P(2)(a)(i) of the Act, the principle is equally applicable to all banks/commercial banks, to which Banking Regulation Act, 1949 applies.

4. In the light of the Supreme Court's decision in the matter, the issue is well settled. Accordingly, the Board has decided that no appeals may henceforth be filed on this ground by the officers of the Department and appeals already filed, if any, on this ground before Courts/Tribunals may be withdrawn/not pressed upon. This may be brought to the notice of all concerned.

(Sd.) . . . . . .
D. S. Chaudhry,
CIT (A&J), CBDT, New Delhi.

From the reading of the above circular, it is clear that investments held by the banking concern are treated as a part of business of the banking company and therefore, the income arising from such investments is treated as part of business income falling under the head 'profits and gains of business'. Though the circular was issued in the provisions of sec.80P of the Act, the said principle was equally made applicable to other banks and commercial banks to which Banking Regulation Act, 1949 applies. Therefore, by virtue of the above said circular, investments made by the banking company should be treated as a business asset of the banking company or stock-in-trade. It is well settled in law that CBDT circulars are binding upon the officers who are entrusted with the responsibility of executing the provisions of the Act.

9.6 The jurisdictional High Court, in the case of *Karnataka Bank* (supra), after referring to the judgment of the Apex Court in the case of *Southern Technology* (320 ITR 577) and *UCO Bank* (237 ITR 889) held that the directions of the RBI are only disclosed norms and they have nothing to do with computation of taxable income. The jurisdictional High Court further upheld the claim of the assessee-bank following the principle of consistency. Even the Hon'ble Apex Court in the case of *UCO Bank* (supra) only laid down principle that where the investments are forming part of stock-in-trade, loss arising on account of fall in value of the securities should be recognized and allowed as a deduction.

But the above case cited supra does not come to the rescue of the assessee-bank for the reason that the assessee-bank, even in the books of account, has treated the investments as stock-in-trade from the assessment year 2005-06 onwards. Therefore, the question boils down to the one issue whether the change of method of accounting is bona fide or not. It is not the case of the revenue that the assessee-bank changed for a casual period to suit its own purpose. Therefore, the bona fide of the assessee-bank in changing the method of accounting cannot be doubted. Now, it is well settled that the assessee is entitled to change regular method of accounting irrespective of the fact, it results in loss to revenue. Therefore, having regard to the spirit of the circular cited supra and the fact that investments are shown as stock-in-trade in the books of account, loss/depreciation on account of fall in value of securities held by the assessee-bank should be allowed as deduction. Therefore, income arising there-from should also be treated as business income. The provisions of section 45(2) cannot be applied to the facts of the present case, as in the earlier years, for the purpose of income-tax proceedings, the investments were treated as stock-in-trade. Thus, grounds of appeal Nos.4, 5 & 6 are disposed of.

10. Ground of appeal No.7 relating to disallowance of expenditure on public issue of Rs.1,92,50,000/- is not pressed by the assessee-bank, hence dismissed as such.

11. Ground of appeal No.8 challenges the addition made on account of write off of investments of Rs.24 lakhs. The assessee made a claim of Rs.24 lakhs for deduction as write off of investments and when it was fund that these investments are not yielding any dividend/income or the advances granted to such companies are classified as non-performing, appropriate provisions or write off of such investments was shown as per guidelines of RBI. During the previous year relevant to assessment year under consideration, amount advanced to M/s.Pennar Aluminium of Rs.24 lakhs was converted into securities and he same is held as stock-in-trade. Since the value is found to be nil, same is written off in the books of account and claimed as a deduction in the return of income. The AO disallowed the claim by holding that writing off of investments cannot be allowed as a deduction.

11.1 On appeal before the ld.CIT(A), the ld.CIT(A) after taking into consideration the submissions of the assessee-bank that these were converted from investments to stock-in-trade, during the previous year relevant to assessment year under consideration, held that in the year of sale of such assets, capital gain or loss should be computed in terms of sec.45(2) of the Act. Therefore, loss arising on account of change in value of these securities should only be on capital account.

11.2 Being aggrieved by this finding of the ld.CIT(A), the assessee-bank is in appeal before us.

11.3 During the course of hearing, learned counsel for the assessee-bank submitted that these investments are acquired during the course of business of the assessee-bank and therefore, they should be treated only as stock-in-trade. Therefore, depreciation on account of fall in value of securities should be allowed as a revenue loss while computing profits and gains of business of assessee-bank.

11.4 On the other hand, ld.CIT(DR) relied on the orders of the lower authorities.

11.5 We heard rival submissions and perused material on record. The submission of the learned counsel for the assessee-bank that securities of M/s Pennar Aluminium Ltd., were acquired during the normal course of business of assessee-bank are not borne out of record. On the other hand, evidence on record clearly shows that these assets are shown as investments up to earlier assessment year and treated it as stock-in-trade during the previous year relevant to assessment year under consideration. Therefore, in such a situation, provisions of section 45(2) shall come into play. The fall in value of securities should be allowed as a capital loss in the year of sale of such securities as supported under the said provisions of the Act. Therefore, it is only a capital loss and cannot be allowed as a deduction. We uphold the order of the ld.CIT(A) and the ground of appeal filed by the assessee is dismissed.

12. In the result, the assessee-bank's appeal is partly allowed.

ITA No.530/Bang/2009 : (Appeal by the revenue for assessment year 2006-07):

13. The revenue raised the following grounds of appeal:

1) *The order of the CJT(A) is opposed to law and facts of the case.*

2) *The CIT(A) erred in directing the Assessing Officer to allow the claim of deduction u/s 36(1)(vii) amounting, to Rs. 903,37,86,609/-, being the bad doubts written off pertaining to non rural branches relying on the decision of the ITAT in the case of the assessee for the AY 04-05 as well as the decision of the Kerala High Court in CIT V South Indian Bank in 262 ITR 579. The CIT(A) ought to have appreciated the fact that the said decision of the ITAT has not been accepted by the department and an appeal has been filed in the Honorable High Court of Karnataka.*

3) *The CIT(A) has erred in directing the Assessing Officer to allow the deduction of Rs. 16,77,57,498/- being expenditure for earning exempt income relying on the decision of the ITAT for assessment year 2003-04 in the assessee own case. The CIT(A) ought to have appreciated the fact that the department is in appeal against the above mentioned decision of the ITAT on the issue.*

4) *The CIT(A) has erred in deleting the addition made to book profits u/s 11h5JB relating to expenditure incurred on earning exempt income holding that in view of Apex Court decision in Apollo Tyres(255 ITR273),the adjustment made is not in order. The CIT(A) ought to have appreciated that expenditure to earn exempt income is to be added to the book profits as per item (f) of Explanation 1 to section II5JB.*

5) *For these and such other grounds that may be urged at the time of hearing of appeal it is humbly prayed that the order of the CIT(A) be set aside and that or AO restored.*

6) *The appellant craves to add/ alter/ amend and / or delete any of the grounds on or before the hearing of the appeal.*

13.1 Grounds No.1, 5 and 6 are general in nature and do not require any adjudication.

13.2 Ground No.2 challenges the direction of the ld.CIT(A) directing the AO to allow deduction of Rs.903,37,86,609/- on account of bad debts.

13.3 AO disallowed the claim for deduction of the amount of Rs.903,37,86,609/- as bad debts on the ground that the assessee-bank has not written off the said amount in the books of account. On appeal before the ld.CIT(A), the ld.CIT(A) after considering the submissions of the assessee-bank that the claim for deduction of bad debts u/s 36(1)(vii) of the Act was in respect of bad debts written off relating to non rural branches, in respect of bad debts written off relating to rural branches, the same was reduced from opening balance of the provisions claimed u/s 36(1)(vii) of the Act as required by the proviso to sec.36(1)(vii) of the Act. In effect, bad debts relating to non rural branches alone was claimed as deduction. The ld.CIT(A) allowed the claim following the decision of the co-ordinate bench in the assessee's

own case for assessment year 2004-05. Being aggrieved, revenue is in appeal before us.

13.4 The ld.CIT(DR) relied on the orders of the lower authorities and submitted that the ld.CIT(A) was not justified in granting relief on this item as the conditions specified u/s 36(1)(vii) are not made.

13.5 On the other hand, ld. counsel for assessee-bank submitted that all ingredients of the provisions of sec.36(1)(vii) r.w.s.36(2) of the Act were complied with. He further submitted that reducing the provision for bad and doubtful debts from debtor's account amounts to write off as held by the Hon'ble Apex Court in the case of *Vijaya Bank* (323 ITR 166) and *Catholic Syrian Bank* (343 ITR 270) and the jurisdictional High Court in ITA No.1011/2008 in the assessee-bank's case. He further relied on the following decisions:

Bank of India:
(i) (27 Taxman 335)(ITAT,Mum)
(ii)ITA 3422 & 3437/2013, 1498/2011- ITAT,Mum.
(ii)ITA 2781 & 3534/2010 – ITAT, Mum.
(iii) 5 TMI 929/2014

Indian Bank:
(i)TA 470 to 472/2010 – ITAT, Chennai
(ii) ITA 131, 388/2001, 984, 1082/2003 –ITAT, Chennai
(iii) ITA 880/2010, 1395 to 1397/2014 – ITAT Chennai

13.6 We heard the rival submissions and perused the material on record. The assessee made a claim for deduction of bad debts, working of which is as under:

PARTICULARS		AMOUNT (Rs.)
Bad debts written off during the year (for all branches)	..	9,93,93,02,594
Less: Bad debt of rural branches adjusted against the provision during the FY 2005-06	..	90,55,15,985
		9,03,37,86,609
		=========

13.7 Provisions of section 36(1)(vii) grants deduction for amount of bad debts or part thereof written off by the assessee as irrecoverable in the accounts subject to provisions of sec.36(2) of the Act. The case of the AO is that the assessee-bank had not written off bad debts in the books of account as it is only a mere provision and therefore, disallowed the claim. Then the question as to what is meant by write off. Similar issue had come up before the Hon'ble Apex Court in the case of *Vijaya Bank* vs. *CIT* (323 ITR 166) wherein it was held that debiting the profit and loss account by an amount of provision for bad debts, reducing provision for bad and doubtful debts from debtors account in balance-sheet amounts to write off. In the present case, it is undisputed fact that provision for bad and doubtful debts was reduced from sundry debtors account in the balance-sheet. Therefore, it satisfies the law laid down by the Hon'ble Apex Court in *Vijaya Bank* (supra). The same reasoning was followed in the decisions cited by the learned counsel for the assessee-bank. The ld.CIT(A) also, after considering the law and the precedents on the issue, had come to the conclusion that it amounts to write off and the claim was allowed. Since the findings of the ld.CIT(A) are in line with the law laid down by the Hon'ble Apex Court, we

uphold the order of the ld.CIT(A) and dismiss the grounds of appeal (No.2) filed by the revenue.

14. Ground No.3 challenges the direction of the ld.CIT(A) directing the AO to delete addition of Rs.16,77,57,498/- made on account of expenditure to earn exempt income.

14.1 During the course of assessment proceedings, AO noticed that the assessee-bank earned income exempt from tax of Rs.335,51,49,960/-. Therefore, AO proposed disallowance under the provisions of sec.14A of the Act. The assessee-bank submitted that it had not incurred any expenditure to earn exempt income and therefore, no disallowance is called for. The contention of the assessee-bank was rejected by the AO in the absence of details furnished by the assessee. AO estimated 5% of the exempt income as expenditure and disallowed the same under the provisions of sec.14A of the Act.

14.2 On appeal before the ld.CIT(A), the ld.CIT(A) applying law laid down by the Hon'ble jurisdictional High Court in the case of *Maharashtra Apex Corporation vs. CIT* (286 ITR 585) held that no notional expenditure can be attributed to exempt income and deleted the addition. Being aggrieved, revenue is in appeal before us in the present appeal.

14.3 The ld.CIT(DR) relied on the orders of the AO and submitted that no income can be earned without incurring any expenditure.

14.4 On the other hand, learned counsel for the assessee-bank submitted that when no expenditure is incurred by the assessee in earning exempt, no notional expenditure can be attributed. In support of this legal proposition, he relied upon the following case-laws:

a) *CCI Ltd. vs. JCIT* (250 CTR 291)(Kar.)
b) *Assessee's own case* (381 & 382/2010)(ITA 1397/2006) – (Kar.)
c) *Corporation Bank* (ITA 1310 & 1393/2012) – ITAT, Bang.
d) *Bank of India* (3422 of 2013) ITAT, Mum.
e) *Bank of Maharashtra* (ITA 637/2008) ITAT, Pune

Learned counsel for the assessee-bank submitted before us that since interest exempt was earned from securities which was held as stock-in-trade, provisions of sec.14A have no application. In this connection, he has relied on the decision of the Hon'ble Bombay High Court in the case of *HDFC Bank Ltd. vs. DCIT* (366 ITR 505) *and CIT vs. India Advantage Securities Ltd.* (IT Appeal No.1131 of 2013 dated 30/04/2014).

14.5 We heard the rival submissions and perused material on record. It is undisputed fact that the assessee earned tax-exempt income from the following sources:

Interest on PSU bonds exempt u/s 10(15)(iv)(a)	..	Rs. 21,80,65,168/-
Interest exempt u/s 10(23G)	..	Rs.2,56,23,50,763/-
Dividend union exempt u/s 10(34) & (35)	..	Rs. 57,47,34,029/-
Total	..	Rs.3,35,51,49,960/-

It is the contention of the assessee-bank that no expenditure was incurred for earning above exempt income which does not form

part of the total income. The provisions of sec.14A of the Act state that no deduction shall be allowed in respect of an expenditure incurred by an assessee in relation to income which does not form part of the total income under the Act. Under the provisions of sub-sec.(2) of 14A of the Act, the AO is required to examine the accounts of the assessee and only when he is not satisfied with the correctness of the claim of the assessee in respect of expenditure in relation to exempt income, AO can determine the amount of expenditure which should be disallowed in accordance with methods prescribed i.e. rule 8D of the IT Rules. Therefore, at the first instance, himself examine the claim of the assessee that no expenditure was incurred to earn exempt income and it is only thereafter, and only if the AO is not satisfied on this account, and after making reference to accounts, he is entitled to adopt the method prescribed under rule 8D of the IT Rules. Rule 8D of the IT Rules read as under:

> "**METHOD FOR DETERMINING AMOUNT OF EXPENDITURE IN RELATION TO INCOME NOT INCLUDIBLE IN TOTAL INCOME**
>
> 8D(1) Where the Assessing Officer having regard to the accounts of the assessee of the previous year, is not satisfied with-
>
> (a) the correctness of the claim of expenditure made by the assessee ; or
>
> (b) the claim made by the assessee that no expenditure has been incurred
>
> in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).

(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely :-

(i) the amount of expenditure directly relating to income which does not form part of total income ;

(ii) in a case where the assessee has incurred expenditure by way of interest during the previous year is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely :..... "

14.6 Sub-rule(1) of rule 8D extracted above states that, the AO having regard to accounts of the assessee and not being satisfied with the correctness of the claim of expenditure made by the assessee or claim that no expenditure was incurred in relation to income which does not form part of the total income can go on to determine disallowance under sub-rule (2) to rule 8D of the IT Rules. Sub-rule (2) does not come into operation until and unless specific condition in sub-rule (1) is satisfied. This position is reiterated by the Hon'ble High Court of Karnataka in the case of *Maxopp Investment Ltd. vs. CIT* (347 ITR 272), and Bombay High Court *in Godrej & Boyce Mfg. Co. Ltd. vs. DCIT* (328 ITR 81). The AO had not given any finding as to how the claim of the assessee-bank that no expenditure was incurred to earn exempt income was incorrect. In the absence of such finding, resort cannot be had to the provisions of sub-rule(2) of rule 8D as held by the Hon'ble High Court in the cases cited supra. Furthermore, it is undisputed fact that exempt income is earned from securities which are held as a part of stock-in-trade. The Hon'ble Bombay High Court in the

case of *India Advantage Securities Ltd* (supra) held that provisions of sec.14A have no application in case assets are held as stock-in-trade. Therefore, provisions of sec.14A cannot be applied in the present case. Furthermore, in the assessee's own case, the Hon'ble High Court of Karnataka held that no notional expenditure can be attributed to exempt income in the case cited supra. Accordingly, we hold that no disallowance can be made u/s 14A of the Act. The ground of appeal of revenue is dismissed.

15. Ground No.4 is purely academic in nature since we have held that no disallowance can be made under the provisions of sec.14A in respect of exempt income. The question of adding back the amount of disallowance to the book profits does not arise.

16. The revenue raised the following additional grounds of appeal:

> *"May it please to your honours:*
>
> *The appellant seeks permission to raise the following additional grounds for the kind and favorable consideration of the Hon'ble Tribunal;*
>
> 1. *Assessee's claim of deduction u/s 36(1)(vii) of Rs.903.37 Cr is not in accordance with the provisions under the Act where bad debt written off was not debited into the profit and loss account.*
> 2. *The provision of NPA for both rural and non rural branches debited into the profit and loss account*

was only Rs.635.18 Cr. whereas the bad debt written off of Rs.903.37 Cr was claimed in computation of income and not debited into Profit and loss account."

16.1 The revenue is seeking revision of the claim made and allowed u/s 36(1)(viia) vide the above additional grounds.

16.2 From the perusal of the assessment order, it is clear that the AO neither disputed the allowability of the claim u/s 36(1)(viia) nor disturbed the amount of deduction claimed under the said provision. Therefore, the additional grounds do not emerge out of the assessment order. The revenue cannot seek relief beyond the assessment order. If the revenue feels that the order passed by the AO is erroneous, remedy is available under other provisions of the Act. Thus the additional grounds of appeal filed by the revenue are dismissed.

17. In the result, the appeal filed by the revenue is dismissed.

ITA No.530/Bang/2010 (Appeal by the assessee-bank for assessment year 2005-06):

18. The assessee-bank raised six grounds of appeal. Ground No.1 is general in nature and does not require adjudication.

19. Ground Nos. 2 to 4 relate to disallowance of depreciation on the value of investments Held To Maturity (HTM). A similar ground was raised by the assessee-bank for assessment year

2006-07 in ITA No.479/Bang/2009 and has been dealt by us in our order of even date in para.11.

For the detailed reasons given in para.. above, we hold that depreciation on the value of HTM is held to be allowable. Accordingly, we allow ground Nos.2 to 4 of the assessee-bank and direct the AO to allow deduction of Rs.553,50,00,000/- while computing income for the assessment year 2005-06.

20. Ground Nos.5 & 6 raised by the assessee-bank relate to disallowance of write off of investments of non-performing assets of an amount of Rs.67,85,29,990/-. A similar ground has been raised by the assessee for assessment year 2006-07. Since the facts are identical to the facts in assessment year 2006-07, for the detailed reasons given in order in para.15 we confirm the addition. Accordingly, these grounds of appeal filed by the assessee-bank are dismissed.

21. In the result, the appeal filed by the assessee-bank for assessment year 2005-06 is partly allowed.

ITA No.601/Bang/2010 (Appeal by the revenue for assessment year 2005-06):

22. The revenue raised 5 grounds of appeal apart from additional grounds of appeal. Ground Nos.1, 4 and 5 are general in nature and do not require adjudication.

23. Ground No.2 challenges the direction of the ld.CIT(A) allowing bad debts of Rs.1049,68,59,925/-. A similar ground is raised by the revenue for the assessment year 2006-07 in its appeal ITA No.530/Bang/2009 and has been dealt by us vide para.13.

Since the facts are identical to the facts in assessment year 2006-07, for the detailed reasons given in our order in para.13, we dismiss the ground of appeal filed by the revenue.

24. Ground No.3 challenges the direction of the ld.CIT(A) in deleting the disallowance of expenditure for earning exempt income of Rs.7,52,84,714/- u/s 14A of the Act. Facts in this assessment year on this issue are identical to the facts stated for assessment year 2006-07 in ITA No.530/Bang/2009 filed by revenue. For the detailed reasons given by us in our order of even date in para.14, we hold that no disallowance is called for u/s 14A of the Act.

25. The additional grounds of appeal are filed by the revenue seeking revision of the claim of deduction u/s 36(1)(viia) of the Act. The AO had allowed the amount of deduction as claimed by the assessee-bank. The AO neither doubted the allowability of the deduction nor disputed the amount of deduction. No grounds of appeal can be filed beyond assessment order. Additional

grounds of appeal do not emerge out of the assessment order, hence, dismissed as such.

26. In the result, appeal of the revenue is dismissed.

ITA No.793/Bang/2011 (Appeal by the assessee-bank for assessment year 2007-08):

27. The assessee-bank raised 5 grounds of appeal. Ground No.1 is general in nature and does not require any adjudication.

28. Ground Nos.2, 3 and 4 challenge the disallowance of depreciation in the value of HTM investments of Rs.309,73,59,173/-.

For the detailed reasons given in para.11 of our order in assessee-bank's appeal in ITA No.479/Bang/2009 above, we hold that depreciation on the value of HTM is held to be allowable. Accordingly, we hold that the assessee is entitled for depreciation on the value of HTM investments of Rs.309,73,59,173/-. Accordingly, these grounds of appeal are allowed.

29. Ground No.5 challenges the disallowance of contribution made to Disability Trust as per directions of the Hon'ble Supreme Court in Interest Tax case of *Devkala Consultancy Services Ltd.*

29.1 Brief facts are that the Hon'ble Supreme Court while dealing with public interest litigation case in the case of *Indian*

Banks Association vs. Devkala Consultancy Service & others (267 ITR 179) found that banks collected excess interest from borrowers on account of rounding off. This amount was found to be unconstitutional as Article 265 read with article 366(28) of the Constitution of India, nothing is realizable as tax or by way of recovery of tax or any amount akin thereto which is not permitted by law. Hon'ble Supreme Court also realized impracticability of returning excess tax recovered from borrowers and therefore, Hon'ble Apex Court gave direction for formation of a trust for benefit of disabled persons covered by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and that the excess tax so recovered as well as contributions from concerned bank and credit institutions as the Fund. Pursuant to these directions of the Hon'ble Supreme Court, assessee-bank contributed a sum of Rs.2.5 crores towards that fund and the AO disallowed it by holding that it is not an expenditure incurred for business purpose.

29.2 On appeal before the ld.CIT(A), the ld.CIT(A) also confirmed the same.

29.3 Learned counsel for the assessee-bank submitted that the contribution was made pursuant to directions of the Hon'ble Apex Court. Breach of directions of the Hon'ble Apex Court results in chaos in the administration of the assessee-bank thereby affecting the business interest of the assessee-bank adversely. Further, he submitted that similar contribution was held to be

allowable by the co-ordinate (Indore) bench of the Tribunal in the case of *State Bank of Indore vs. ACIT* in ITA Nos.376 & 479/Ind/2012 dated 16/5/2013.

29.4 On the other hand, learned CIT(DR) relied on the orders of the lower authorities.

29.5 We heard rival submissions and perused material on record. Undisputedly, impugned contribution was made by the assessee-bank pursuant to the order passed by the Hon'ble Supreme Court in the case of *Devkala Consultancy Service* (supra). Needless to say, breach of the directions of the Hon'ble Supreme Court is not in the business interest of the assessee-bank. Furthermore, what is paid in the form of contribution to the trust is only excess interest collected from borrowers and such excess interest was offered to tax in the year in which it was collected. Therefore, the AO, in all fairness, should have allowed the same as deduction. We totally concur with the reasoning given by the co-ordinate (Indore) bench of the Tribunal in the case of *State Bank of Indore* (supra). Hence, this ground of appeal of the assessee is allowed.

30. In the result, the appeal by the assessee-bank is allowed.

ITA No.813/Bang/2011 (Appeal by the revenue for assessment year 2007-08):

31. The revenue has raised seven grounds of appeal out of ground Nos.1, 6 and 7 are general in nature and do not require adjudication.

32. Ground No.2 challenges the direction of the ld.CIT(A) directing the AO to allow bad debts claim of Rs.744,60,46,532/-. For the detailed reasons given by us in para.13, while dealing with ITA No.530/Bang/2009 filed by the revenue, we uphold the findings of the ld.CIT(A) and the ground of appeal filed by the revenue is dismissed.

33. Ground No.3 challenges the direction of the ld.CIT(A) to delete the addition of Rs.2,09,49,856/- made under the provisions of sec.14A of the Act. For the detailed reasons given by us in para.14 in the appeal No.530/Bang/2009 filed by the revenue for the assessment year 2006-07, we hold that no disallowance u/s 14A is called for and accordingly, this ground of appeal by the revenue is dismissed.

34. Ground No.4 raised by the revenue challenges the direction of the ld.CIT(A) directing the AO to delete the addition made on account of depreciation on assets leased to M/s.Rajinder Steels and M/s.Kedia Group of Companies of Rs.15,68,546/-.

Brief facts surrounding this issue are as under: AO disallowed claim of depreciation in respect of assets leased to M/s.Rajinder Steels and M/s.Group of companies. It may be worth mentioning here that this is not first year in which the claim was disallowed. In earlier years also, the claim has been disallowed. We are informed at the Bar that in earlier assessment years, the Tribunal, in assessee-bank's own case in ITA Nos.597/99, 591/2000, 765 to 767/2011 then issue was restored to the file of the AO for fresh examination. Since depreciation claim is only consequential in nature, interest of justice would be met if the issue is also restored to the file of the AO to follow the decision taken for earlier assessment years. Thus this ground of appeal is partly allowed.

35. Ground No.5 challenges the direction of the ld.CIT(A) to delete the addition made on realization of assets of erstwhile Lakshmi Commercial Bank (LCB) Ltd., of Rs.60,92,288/-. Brief background of the issue is that LCB was merged with the assessee-bank in the year 1985. On merger, there was excess of liabilities over assets. Consequently there was a loss of Rs.21.75 crores and the same was claimed as deduction which was disallowed by the AO and the same was confirmed by the ld.CIT(A) as well as the Tribunal. The matter is pending adjudication before the Hon'ble High Court of Karnataka. During the previous year relevant to assessment year under

consideration, assessee-bank realized a sum of Rs.60,92,288/- out of written off assets of LCB. The assessee-bank's contention was that since excess of liabilities over assets was not allowed as deduction, the question of taxing the realization out of assets of LCB does not arise. The AO has not concurred with the assessee-bank's contention and made the addition. On appeal before the ld.CIT(A), the ld.CIT(A) concurred with assessee-bank and directed the AO to delete the addition. Against this finding of the ld.CIT(A), revenue is in appeal before us in the present appeal.

We heard rival submissions and perused material on record. It is undisputed fact that in the year of merger of LCB with assessee-bank, excess of liabilities over assets was not allowed as deduction while computing profits and gains of business. In such an event, any subsequent realization out of assets of erstwhile LCB cannot be brought to tax. We do not find any fault with the reasoning of the ld.CIT(A). In the circumstances, the ground of appeal filed by the revenue is dismissed.

36. With regard to additional grounds of appeal, for the detailed reasons given in revenue's appeal for assessment year 2006-07 viz ITA No.530/Bang/2009, we hold that additional grounds do not arise out of assessment order and dismissed as such.

ITA No.693/Bang/2012 (Assessee's appeal for assessment year 2008-09):

37. The assessee raised five grounds of appeal. Ground No.1 is general in nature and does not require any adjudication.

38. Ground Nos.2 and 3 challenge applicability of provisions of sec.115JB to the assessee-bank. It is the contention of the assessee-bank that provisions of sec.115JB are not applicable to banking company as no accounts are drawn up as per requirement of schedule VI of the Companies Act, 1956. The accounts are drawn in conformity with Banking Regulation Act, 1939. In this connection, assessee-bank had relied upon the decision of the co-ordinate bench in the assessee's own case in ITA No.305/Bang/2011, 73/Bang/2005'; Bank of Maharashtra in ITA 1505/2008 (ITAT, Pune) ; Union Bank of India, ITA 4155 to 4161/2011 & 4702 to 4706/2010 (ITAT, Mumbai) and UCO Bank in ITA No.1768/2009 (ITAT, Kolkatta).

Respectfully following the decisions of the co-ordinate bench, we hold that provisions of sec.115JB are not applicable to the banking company. Hence, this ground of appeal of the assessee is allowed.

39. Ground Nos.4 and 5 relate to depreciation in the value of investments HTM. Since in the earlier years we held that

depreciation on value of HTM investments are allowable, similarly for the same reasoning, appreciation on the value of investments HTM should be taxable. Hence, this ground of appeal of the assessee is dismissed.

40. In the result, assessee-bank's appeal is partly allowed.

ITA No.684/Bang/2012 (Revenue's appeal for assessment year 2012-13):

41. Revenue raised eight grounds of appeal. Ground Nos.1 and 8 are general in nature and need no adjudication. Ground No.2 challenges the direction of the ld.CIT(A) in allowing deduction of bad debts under the provisions of section 36(1)(vii). For the detailed reasons given in para.13 above in revenue's appeal (ITA No.530/Bang/2009) for assessment year 2006-07, this ground of appeal of the revenue is dismissed.

42. Ground Nos. 3 and 4 challenge the deduction allowed u/s 36(1)(viia) of the Act. The grounds of appeal raised by the revenue are beyond the scope of the assessment order. If the revenue feels that the assessment order passed is erroneous, remedy is available under other provisions of the Act. Hence, the ground of appeal of the revenue is dismissed.

43. Ground No.5 challenges the direction of the ld.CIT(A) to allow depreciation in respect of assets leased to M/s.Rajinder Steels and M/s.Kedia Group of companies. The ld.CIT(A), following order of the ld.CIT(A) for earlier assessment year, directed the AO to allow depreciation. Similar ground was raised by the revenue for assessment year 2007-08 in its appeal ITA No.813/Bang/2011. For the detailed reasons given by us in para.34 above, the issue is also restored to the file of the AO to follow the decision taken for earlier assessment years. This ground of appeal is treated as allowed.

44. Ground No.6 challenges the direction of the ld.CIT(A) not to tax amount realized from the assets of erstwhile Lakshmi Commercial Bank (LCB) Ltd., For the detailed reasons given by us in the appeal by the revenue for assessment year 2007-08 in ITA No.813/Bang/2011, we hold that this cannot be taxed. Hence, this ground of appeal of the revenue is dismissed.

45. Ground No.7 challenges the direction of the ld.CIT(A) to allow contribution made to Disability Trust. For the detailed reasons given by us in ITA No.793/Bang/2011 we hold that these contributions are allowable as deduction. Hence, the ground of appeal of the revenue is dismissed.

46. In the result, appeal by the revenue is partly allowed.

Order pronounced in the open court on this 30th day of March, 2016

sd/-	sd/-
(VIJAY PAL RAO)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Place : Bangalore
D a t e d : 30/03/2016

srinivasulu, sps

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By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore