आयकरअपीलीयअधिकरण, 'डी' न्यायपीठ,चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, CHENNAI

श्रीचंद्रपूजारी, लेखासदस्यएवंश्रीजी. पवनकुमार, न्यायिकसदस्यकेसमक्ष

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER

अपीलसं./ I.T.A.Nos.1671, 1801, 1802, 1803 & 1804/Mds/2014
निर्धारणवर्ष/ Assessment Year : 2007-08, 2008-09, 2008-09, 2009-10 & 2010-11

Asst. Commissioner of Income Tax, Circle - I, Kumbakonam.	Vs.	M/s. City Union Bank Limited, 149, TSR Big Street, Kumbakonam.

[PAN: AAACC 1287E]

अपीलसं./ I.T.A.Nos.2034 & 2035/Mds/2014
निर्धारणवर्ष/ Assessment Year : 2007-08 &2008-09

M/s. City Union Bank Limited, Administrative Office, 24-B, Gandhi Nagar, Kumbakonam.	Vs.	The Joint Commissioner of Income Tax, Kumbakonam.

[PAN: AAACC 1287E]

(अपीलार्थी/Appellant)		**(प्रत्यर्थी/Respondent)**
अपीलार्थी की ओर से /Appellant by	**:**	Shri V. Vivekanandan, CIT
प्रत्यर्थीकीओरसे/Respondent by	**:**	Mr. G. Seetharaman, CA

सुनवाईकीतारीख/Date of Hearing	:	25.10.2016
घोषणाकीतारीख/Date of Pronouncement	:	28.12.2016

आदेश /O R D E R

PER BENCH:

These Cross Appeals filed by the revenue and the assessee respectively is directed against the different orders of CIT(A) - Tiruchirapalli, for the assessment year 2007-08, 2008-09, 2009-10 and 2010-11. Since, the issue is in appeals are common in nature, the appeals are clubbed and heard together and disposed off by the common order. For the sake of convenience, we first take up the assessee appeal ITA No. 2034/Mds/2014 for the assessment year 2007-08.

2. Before we proceeded for hearing there is a delay of 44 days in filing the appeals by the assessee. The ld. AR filed condonation petition and explained the circumstances for delay which are not deliberate. Further, ld. DR of the assessee has no serious objections for condonation of delay. After hearing the submissions, we are satisfied with the Reasonable cause explained in affidavit for filing the Appeals Belatedly. Therefore, the delay is condoned and appeals are admitted. Similarly, there is a delay of 8 days in filing the appeals by the Revenue, we have considered the explanations in the affidavit and considered the delay and admitted the Revenue appeals.

3. The assessee has raised the following grounds:

3.1 The order of the Ld. CIT(A) is contrary to the facts and circumstances pertaining to the case of the Appellant in so far it relates to non consideration of the ground with regard to validity of reopening of the assessment.

3.2 The Ld. CIT(A) while disposing the case on merits ought to have considered that the very initiation of the proceedings to reopen the completed assessment by issue of notice u/s. 148 of the IT Act was palpably devoid of jurisdiction and conditions precedents to the reopening were absent in the present case.

3.3 The Ld. CIT(A) ought to have appreciated that the Hon'ble Tribunal in the Appellant's own case for the assessment year 2002-03 (ITA No. 740/Mds/09) has held that the reassessment made by issue of notice u/s. 148 even within a period of four years is liable to be cancelled since the reassessment was made on account of change of opinion.

4. The Brief facts of the case are the assessee is a Banking Company and Return of Income was filed on 25.10.2007 electronically and the Return of income was processed u/s. 143(1) on 18.02.2008. Subsequently, the case was selected for scrutiny and Assessment was completed u/s. 143(3) of the Act dated 30.12.2009, determining the total income at Rs. 1,25,68,67,030/-. Subsequently, the income was reduced to Rs. 50,72,31,300/- as per the Tribunal Appellate order in ITA No. 770(M.P. No. 209)/Mds/2011 dated 16.12.2011. The Assessing Officer is having information that the assessee's has made payment towards MICR charges without deduction of Tax(TDS) on payments and violates provisions of section 194J of the Act and provisions of section 40A(ia) of the Act are applied. The Assessing Officer

issued notice u/s. 148 of the Act. In response to the notice the assessee bank filed Return of income on 01.08.2011 with total income of Rs. 50,70,78,200/- and notice u/s. 143(2) was issued. In compliance to the notice Ld. AR appeared from time to time and provided with copy of reasons of re-opening of Assessment. The Assessing Officer found that the Assessee Bank has not deducted TDS u/s. 195J of the Act on payment of technical and professional charges Rs. 6,59,460/- to SBI, Surat Branch as MICR charges. The Ld. AR has submitted that the TDS has been deducted in assessee's Surat Branch on MICR charges and remitted to Government. The Ld. AR filed the copies of Form 16A issued to the SBI, Surat Branch and challan in support of the payments, but the Ld. AO found that the payment made by the Assessee Branch as intimated by the ITO (TDS -1) Surat does not tally with Form 16A issued to SBI and the Ld. AR could not produce Form No. 26Q and provided only the Xerox copy of Form 16A. The Ld. AO found that there is no sufficient evidence to allow the claim and disallowed Rs. 6,59,460/-. Similarly, Assessing Officer made other addition Rs. 3,77,979/- u/s. 14A of the Act and commission locker rent income adjustment and recalculated deduction u/s. 36(1)(viia) as the Ld. AO found that the assessee has also claimed the deduction on the advances of Tiruppanandal Branch being the rural branch and made changes to the Average Aggregate advances of Rural Branches and calculated the Revised deduction u/s. 36(1)(viia) of the Act Rs. 5,83,42,534/- and computed the assessed total income of Rs. 57,59,80,590/- and raised the demand.

5. Aggrieved by the order, assessee filed an appeal with CIT(A). The Assessee Bank has raised the grounds before the CIT(A) on the initiation of the

proceedings u/s. 148 of the Act without precedent conditions and no fresh material was available with the Assessing Officer to open the assessment which is completed u/s. 143(3) of the Act on 30.12.2009. The Ld. CIT(A) Considered the arguments on the re-assessment proceedings and provisions of section 36(1)(viia) of the Act. The Ld. CIT(A) found that the Assessee Bank, in the assessment proceedings has produced copy of Form 16A issued to SBI, Surat and the Ld. AO has failed to appreciate that the From 16A issued for TDS, therefore provisions of section 40a(ia) of the Act are not applicable and deleted the addition. The Ld. CIT(A) discussed deduction u/s. 36(1)(viia) of the Act and on and relied on the assessee's own case for the assessment year 2013-14 in ITA No. 1485/2007 in remitting to the Assessing Officer to follow jurisdictional Tribunal decision and allowed the ground for statistical purpose. Further, the Ld. CIT(A) relied on decision of co-ordinate bench in M/s. Laskhmi Vilas Bank (LVB), in High Court decisions and restricted disallowance u/s. 14A of the Act at 2% of exempted income and directed Ld. AO to do accordingly and statistically allowed the appeal. Aggrieved by the order the assessee has filed an appeal before the tribunal on the re-opening of the assessment.

6. Before us, the Ld. AR argued that the re-assessment proceedings are bad in law and earlier assessment was completed u/s. 143(3) of the Act. Further, there is no fresh material on record and it is only mere change of opinion. The re-opening of assessment was made on 06.06.2011 and reasons rendered by the Assessing Officer that there is no TDS was deducted on MICR payment charges to SBI, Surat. The CIT(A) dealt on the disputed issue at page 2 of his order and there is no decision / findings of the CIT(A) in cancelling the order or quashing the re-

assessment proceedings and the Ld. AR prayed for allowing the appeal. Contra, Ld. DR relied on the orders of the lower authorities.

7. We heard the rival submissions, perused the material on record and judicial decisions and the grounds raised by the Ld. AR. The Ld. CIT(A) has decided the issue on merits and has not dealt with the issue regarding re-opening of assessment. The Ld. CIT(A) has not considered the assessee's own case for the earlier assessment year where the re-assessment notice was issued u/s. 148 of the Act within four years due to change of opinion and cancelled and the Ld. AR drew attention to the order of CIT(A), where, there is no findings of re-opening proceedings. We also perused the orders of Assessing Officer and CIT(A) the re-opening of assessment is not basic vital matter of assessment, and it has to be decided before adjudicating on the issues. Considering the apparent facts, judicial decisions and provisions of law we are of the opinion that the CIT(A) has not passed the speaking order on the validity of the re-assessment proceedings and in the assessment year 2002-03in ITA No. 740/Mds/2014, the Tribunal quashed the re-assessment being within the period of four years from the date of assessment. We are of the opinion the Ld. CIT(A) order has to clarify and pass a speaking order on legal issue. We are inclined to remit disputed issue of re-opening of assessment to the file of CIT(A) to give findings on legal issue and the assessee should be provided with adequate opportunity of hearing before passing the order and then comment on merits and allow the assessee appeal for statistical purpose.

8. The Revenue has filed appeal in ITA No. 1671/Mds/2014 for the assessment year 2007-08 against the order of the CIT(A). Since, we have remitted the issue to the file of the CIT(A) to pass a speaking order on the legal issue. As such, the Revenue appeal cannot be survived at this stage. Hence, we dismiss the Revenue appeal as infructuous. In the result, assessee appeal ITA No. 2034/Mds/2014 is allowed for statistical purpose and Revenue appeal ITA No. 1671/Mds/2014 is dismissed.

9. We take up the appeal in ITA No. 2035/Mds/2014 filed by the assessee for the assessment year 2008-09. The assessee has filed the appeal against the order of CIT(A) in ITA No. 93/2012-13 dated 27.02.2014 passed u/s. 143(3) r.w.s. 147 of the I.T. Act. The assessee has raised the legal ground of re-assessment and filed the additional ground on disallowance under 40a(ia) of the Act. The assessee bank has raised the legal ground on validity of re-assessment proceedings as the original assessment proceeding for the assessment year 2008-09 was completed on 31.12.2010 and notice issued for reopening of assessment on 06.06.2011, Reasons being non-TDS deduction by Surat Branch on MICR payments to SBI. We have dealt on the legal issue in assessment year 2007-08 in ITA No. 2034/2014, where the disputed matter was remitted to the file of the CIT(A) to decide the legal issue and pass the order on merits and we find disputed issue in the present assessment year is also similar to earlier year and we accordingly remit the matter to the file of CIT(A) as referred in Para 7 above and allow the appeal for the statistical purpose.

10. We take up Revenue appeal ITA No. 1801/2014for the assessment year 2008-09 filed against the order of CIT(A) Thiruchirapalli in ITA No. 332/2010-11/CIT(A)/TRY, dated 27.02.2014 passed u/s. 143(3) and 250 of the Act.

11. The Revenue has raised the grounds and we take up the issues in ground independently. Firstly, the Revenue has raised ground against the CIT(A) erred in allowing the claim of the assessee of Broken Period Interest being capital expenditure allowed as revenue expenses. The Assessing Officer while considering Broken Period Interest relied on the judicial decisions that the disallowance worked out on claim of Broken Period Interest on HFT category securities. The Ld. AO treated the interest paid on investments for the purchase of securities as capital in nature and disallowed Rs. 3,70,47,072/-. The Ld. CIT(A) found that the Assessing Officer relied on the Supreme Court decision of CIT Vs. Vijaya Bank 187 ITR 541 (SC). The Ld. AR argued that the Broken Period interest on securities is revenue expenditure as per the direction of the RBI that interest paid at the time of purchases of securities is revenue expenses. The Ld. CIT(A) considered the decision of jurisdictional High Court and decision of Coordinate Bench in assessee's own case for the assessment year 1991-92, 1995-96, 1996-97 and 1997-98 in TC No. 1162 to 1168 dated 12.03.2012, observed that the Coordinate Bench of Tribunal has considered the interest paid on purchase of investments is Revenue expenditure and also relied on the decision of Karur Vysya Bank Ltd., 273 ITR 510 (Mad). Subsequently, Revenue has challenged the decision of the Madras High Court and filed SLP in the Hon'ble Supreme Court and was dismissed. With these observations,

the Ld. CIT(A) considered the Broken Period Interest as Revenue expenditure and allowed the grounds of the assessee.

11.1 Before us, the Ld. DR of the Revenue argued that the Ld. CIT(A) has erred in allowing the deduction treated as Revenue expenditure and not considered the findings of the Assessing Officer and relied on the judicial decisions. Contra, the Ld. AR relied on the orders of the CIT(A) and Tribunal orders.

11.2 We heard the rival submissions, perused the material on record and judicial decisions, the Broken Period Interest issue covered by the Co-ordinate Bench decision in assessee's own case in MP No. 205 to 210/Mds/2011 in ITA No. 935, 937, 939, 940, 770 & 1507/Mds/2007 for the assessment years 2002-03 to 2007-08 dated 16.12.2011 Page 5 at para 5 read as under:

> *"The Ld. DR Shri K.E.B. Rengarajan could not point out any reason as to why the above decision of the Hon'ble Jurisdictional High Court is not applicable on the facts of the instant case. Further, it is not in dispute that the decisions which are contrary to the decision of the Hon'ble Jurisdictional High Court are mistakes apparent from record rectifiable u/s. 254(2) of the I.T. Act, 1961. For this proposition, reliance can be placed on the decision of the Hon'ble Supreme Court in the case of ACIT Vs. Saurashtra Kutch Stock Exchange Ltd (2008) 173 Taxmann 322 (SC). We, therefore, amend the consolidated order dated 08.07.2011 of the Tribunal passed in respect of Ground No. 2 of the appeal of the Revenue in assessment year 2007-08, Ground No. 5 in assessment year 2002-03, Ground No. 2 in assessment year 2004-05, Ground No. 2 in assessment year 2005-06 and Grounf No. 2 in assessment year 2006-07 directed against the order of the Ld. CIT(A) in deleting the addition of Rs. 27,19,09,845/- in assessment year 2007-08, Rs. 28,13,95,360/- in assessment year 2002-03, Rs. 4,78,50,242/- in assessment year 2004-05, Rs. 9,33,17,162/- in assessment year 2005-06, Rs. 15,95,84,207/- in assessment year2006-07 and first ground of appeal in the assessee's appeal in ITA No. 1507/Mds/2007 order dated 30.10.2009 on account of broken period interest and allowing the same as Revenue expenditure and the decision of the*

Tribunal in respect of the said grounds are to be treated as decided in favour of the assessee by following the above cited decision of the Hon'ble Jurisdictional High Court.

Accordingly, we upheld the CIT(A) order and dismiss the ground of the Revenue.

12. The second ground the Revenue has challenged the action of the CIT(A) in allowing the claim of amortization charges as Revenue expenditure. The Ld. AO on perusal of annual report to the Return of Income found that the assessee bank has disclosed in other income an amount of Rs. 5,18,96,860/- amortization expenditure deducted from the current income and not credited to the Profit & Loss Account and the amount pertains to deduction in respect of HTM Securities and the Ld. AO relied on the RBI guidelines and is of the opinion that the assessee is required to follow accountancy principles and the capital expenditure cannot be allowed in the Profit & Loss Account unless authorized by the Act.

12.1 Further, the Ld. AO is of the opinion that the assessee included the amortization amount in the book value of HTM Securities to arrive at cost of purchase. Therefore, the assessee bank cannot claim the cost paid and face to value receivable at the time of HTM Securities as expenditure and disallowed Rs. 5,18,96,960/-. The Ld. CIT(A) considered the findings of the Assessing Officer and grounds raised before him and followed the judicial decision in the assessee's own caseand the submissions on the amortization expenses that it represents only depreciation loss written off in the books of accounts and is allowable expenditure and relied on the decision of Hon'ble Supreme Court in the case of UCO Bank 240 ITR 355 (SC), where it was held that depreciation in investments should be allowed

as revenue expenditure. Since, the securities are stock in trade and valued at cost or market value whichever is less the claim has to be allowed. The Ld. CIT(A) placed reliance on Jurisdictional High Court decision in assessee's own case in 291 ITR 144 (Mds), where it was held that the depreciation on investments is allowable claim. Similarly, co-ordinate bench of Tribunal, in assessee's own case for the assessment years 2004-05, 2006-07 and 2007-08, in ITA No. 937, 940 and 770/2010, following Jurisdictional High Court decision allowed the claim, accordingly, the Ld. CIT(A) directed the Assessing Officer to allow the deduction of Amortization expenditure and allowed the ground of the assessee for statistical purpose.

12.2 Aggrieved by the order, the Revenue has challenged the action of the CIT(A) has erred in treating capital expenditure as revenue expenditure without considering the facts. The Ld. AR submitted that all the government securities are treated as stock in trade and relied on the order of the CIT(A) and Jurisdictional High Court and Tribunal orders. We heard the rival submissions, perused the material on record, judicial decisions. The Ld. DR has argued that the CIT(A) has erred in allowing the deduction and relied on the judicial decisions. Whereas, Ld. AR explained that the assesse bank has following consistency in his books of account and supported this arguments with the Hon'ble Supreme Court decision and other decisions. We heard both the sides and perused material on record and judicial decisions. We found the coordinate bench of Tribunal in assessee's own case in ITA No. 935, 937, 940/Mds/2010 for the assessment years 2004-05, 2006-07 & 2007-08 at Para 62 to 64 at Page 28 read as:

" 62. Briefly stated, the facts of the case are that the Assessing Officer disallowed depreciation on securities on the ground that the bank had claimed depreciation on securities but has ignored the appreciation in value of securities.

63. The Assessing Officer further observed that the bank has claimed depreciation on securities because they are held as stock in trade and not as investment which was not agreed to by the Assessing Officer who made the addition.

64. On appeal, the Ld. CIT(A), observing that the issue is covered in favour of the assessee by the decision of the Hon'ble Jurisdictional High Court in assessee's own case reported in 291 ITR 144, allowed the claim of the assessee."

We rely on above decision and upheld the action of order of CIT(A) and dismiss the revenue ground.

13. The Third ground that the Ld. CIT(A) erred in deleting the addition without appreciating provision of section 43D were the interest is chargeable to tax in the year of credit as such interest in Profit and Loss Account or in the year in which interest is actually received in NPA by the bank. The Assessing Officer found that the banking companies are required to offer income under "profit and gains of business" and income from other sources on accrual basis. As per RBI guidelines the assesse bank has to maintain Books of accounts on accrual basis. Whereas, section 43D of the Act provides exception to the general rule dealing on the chargeability of interest, further, the income of scheduled Bank in respect of Bad or Doubtful debts shall be chargeable to tax in the previous year in which it is credited by bank to its profit and loss account or in the year in which it is actually received. The Ld. AO found that there are NPA's in the assessee bank and has not provided any interest on

NPA as per the RBI guidelines and relied on Apex Court decision the Southern Technologies where the RBI guidelines cannot over ride the provisions of the act.

13.1 The Ld. AO, considering the facts of NPA's has estimated the interest on NPA which recovered are reduced from the provision at Rs. 5 Lakhs. The Ld. CIT(A) found that the Assessing Officer has disallowed, relying on the provisions of section 43D has charged interest on NPA on Accrual Basis which are more than 90 days but not Bad and Doubtful Debts being less than 180 days under Rule 6EA r.w.s. 43D. The Ld. CIT(A) observed that the addition was only on estimated basis without appreciating the provisions of section 43D of the Act which clearly states, that the interest is chargeable to the tax in the year of credit of interest to Profit and Loss Account or in the year in which it was actually received by the bank in the case of NPA Accounts, further any disturbance in the method of accounting consistently followed by the bank may lead to complexity in the subsequent years and estimated interest on NPA. Aggrieved, the Ld. DR argued that the CIT(A) has erred in deleting interest on Non-Performing Accounts and has not made the accurate findings of provision of 43D of the Act and overlooked the AO's observation. Whereas, the Ld. AR relied on the orders of the CIT(A).

13.2 We heard the rival submissions, perused the material on record and the provisions of law on chargeability of interest on NPA accounts. The bank has been consistently following same accounting policy in earlier years and change in treatment shall lead to complex issues. The Ld. AR contention that the addition is only made for this particular year and no such additions made in the subsequent

assessments. The Ld. AO relied on the provisions of section 43D and where AO has made addition on estimated basis without appreciating the fact that under the provisions of section 43D interest shall be chargeable to tax in the year of credit of such interest to the Profit and Loss Account or the year in which the actual interest is received by the bank in the case of NP Accounts and any disturbances or change in the accounting method followed by the bank will lead to complexities in the subsequent assessment year. We are of the opinion, since, the Assessing Officer has made certain observations in the Assessment Order and also CIT(A) has directed for deletion of interest and issue of estimation of interest being first time made by the Assessing Officer. We are of the opinion, that the Assessing Officer has only estimated the income without giving any depth reasons on estimations. We are of the opinion that the disputed issue has to be re-examined by the Assessing Officer for limited purpose and we remit the issue to the file of the Assessing Officer and allow the ground of the Revenue for statistical purpose.

14. The forth ground that the Ld. CIT(A) erred in deleting the addition made on account of excess cash balance transferred in the suspense account in balance sheet as there is no claim or identity of person which belongs legally. The Assessing Officer found that there is unclaimed amount in the books and it was not brought to tax and relied on the decision of apex court in the case of M/s. T.V. Sundaram Iyengar & Sons 222 ITR 344 (SC) and applied the ratio of unclaimed dividend of the investors or Regulatory authority and such unclaimed amount cannot remain with the companies or the bankers. The assessee bank explained that the unclaimed balance belongs to clients and same cannot be treated as income of the bank. The Assessing

Officer found that as the Agreement of the assesse bank's right to recovery of any claim is barred to limitation and there is increase in unclaimed Balance accounts lying with the bank being more than three years. Since, the bank is acting as a custodian for the money belonging to others and deduction would be allowed to the extent of the amount paid and remaining brought to tax and made additions of Rs. 12,25,142/-. Whereas, the Ld. CIT(A) relying on the assessee's own case for the assessment year 2001-02 and 2002-03 in ITA No. 739, 740/Mds/2009, directed the AO to follow the Supreme Court decision and Tribunal decision and allow the appeal for statistical purpose.

14.1 Before us, Ld. DR argued that the Ld. CIT(A) has erred in directing the Assessing Officer to follow the decision of Tribunal in assessee's own case and Apex Court decision as the unclaimed balance does not belong to the bank and is taxable, as bank is only a custodian. Contra, the Ld. AR relied on the orders of the CIT(A). We heard the rival submissions, perused the material on record on judicial decisions. The Assessing Officer has taxed unclaimed balance shown in the Balance Sheet as income of the assessee and it relates to stale drafts, pay orders and cheque which are shown as liability in the Balance Sheet and the assessee, as the banker has to owe the commitments of its customers without taking shelter of time limitation and we found the Hon'ble Kerala High Court in the case of Catholic Syrian Bank Ltd., Vs. ACIT, 349 ITR 0569 as held, *"Excess cash received at counters of the bank represents for which there is no claimant can be considered as income of bank."* We respectful following the Kerala High Court decision treat the unclaimed balance as

the Revenue receipts irrespective of the fact that the bank is a custodian and set aside the orders of the CIT(A) and allow the ground of the Revenue.

15. The fifth ground raised by the Revenue, that the Ld. CIT(A) erred in allowing the additional claim of bad debts as the assessee bank has claimed deduction of Rs. 5.5 Crores, subsequently, adopted different methods to make further claim whereas, the amount is required to be transferred to separate reserve before the end of the financial year but not next year and the additional claim u/s. 36(1)(viii)of the Act is not allowed in the Return of income. The Assessing Officer found that the assessee bank has claimed Bad debts and Doubtful Debts, written off to the extent of Rs. 39,86,16,078/-. The Assessee bank clarified that rural Debts has no correlation with the Bad debts and are arise out of loans given by non-rural bank. The Ld. AO relied on the CBDT circular and System Review of the Banks by the C& AG instruction No. 17/2008 issued by the Board on 26.11.2008. The Assessing Officer is bound by circular and made an addition. The Ld. CIT(A) observed that the Assessing Officer has disallowed the amount of claim u/s. 36(1)(vii) of the Act. The claim for Bad debts written off are not over and above the credit balance in the provision for Bad and Doubtful debts and the SLP filed by the Department against the Decision of the Hon'ble High Court of Madras in assessee's case and against the decision of South Indian Bank and discussed on the provisions of section 36(1)(vii) and conclude relying on the decision of the Hon'ble Supreme Court in the Catholic Syrian Bank Ltd., Vs. CIT dated 17.02.2012, where it was held that the scheduled

commercial banks will continue to get the full benefit of the irrecoverable debts u/s. 36(1)(vii) of the Act in addition to the benefit of deduction for the provision for Bad and Doubtful Debts u/s. 36(1)(viia) of the Act. The Ld. CIT(A) directed the Assessing Officer to follow the decision of Supreme Court and allowed the ground for statistical purpose. The Ld. DR argued that the CIT(A) erred in directing the AO in deleting the addition and as per based on judicial decision. Contra, the Ld. AR relied on the orders of the CIT(A) and the assessee's own case.

15.1 We heard the rival submissions, perused the material on record, we found similar issue was dealt in assessee's own case by jurisdictional High Court of Madras where the deduction u/s. 36(1)(vii) of the Act was allowed and in respect of assessment year 1991-92, 1993-94 & 1994-95 reported in CIT Vs. City Union Bank Ltd., (2007), 291 ITR 144 (Mds) and accordingly upheld the action of CIT(A) and dismiss the revenue ground.

16. The sixth ground raised that the Ld. CIT(A) erred in allowing the claim of the assessee u/s. 36(1)(viia) of the Act for assessment purpose. Whereas, the deduction is available only on the incremental rural advances during the financial year and not on total balance outstanding at the end of the accounting year but aggregate average advances at the end of the previous year. The Assessing Officer in the assessment proceedings dealt on incremental advances disclosed at page 27 to 29 of his order and worked out the Revised claim of deduction u/s. 36(1)(viia) of the Act by restricting the advances in respect of outstanding claims at the end of the accounting year as per Rule 6ABA of Income Tax Rules, further the assessee is

required to maintain separately Assessment purpose and deduction has to be worked out based on Average Advances of Rural branches of the Bank during the year and such deduction is also available for Bad and Doubtful Debts made in respect of incremental advances of the assessee, restricted deduction u/s. 36(i)(viia) of Rs. 2,45,03,934/-. The Ld. CIT(A) relied on the orders of the assessee's own case in earlier year at page 10 of the order found that the action of the Assessing Officer is not acceptable and deduction u/s. 36(1)(viia) of the Act has to be allowed on Current advances irrespective of Aggregate Average branch advances outstanding as provided under Rule 6ABA. The Ld. CIT(A) has perused the Rule 6ABA and is of the opinion that there is no provision to consider only advances made during the year and relied on Tribunal decision in ITA No 1485/Mds/2007 for the assessment year 2003-04 and directed the Assessing Officer to follow the jurisdictional Tribunal order and allowed the ground for statistical purpose.

16.1 Aggrieved by the order, Revenue has filed the appeal before us. The revenue has contested that the Bank's claim u/s. 36(1)(viia) of the Act on the amounts outstanding at the end of accounting year is not correct and such claim should be based on incremental advances. The Assessing Officer has considered these facts and provisions and supported arguments with coordinate bench decision of The Lakshmi Vilas Bank Ltd., Vs ACIT in ITA No. 1205, 1209, 1548, 1620 & 1621/Mds/2014 dated 29.01.2016 were incremental advances made during the year by the Rural Branches was considered and allow the ground of appeal of Revenue. Whereas the Ld. AR has contested that the decision is not applicable to assessee bank relied on the assessee's own case for the assessment year 2003-04. We heard

both the parties, perused the material on record and judicial decisions, we found that the decision of High Court and coordinate bench of the Tribunal, squarely apply to the assessee and we set aside the order of CIT(A) on this ground and upheld the action of assessee. Relying on the decision of the Lakshmi Vilas Bank (Supra) at Para 86 to 93 which reads as:

"86. The next common ground raised in the appeal of the Revenue in I.T.A. Nos. 245, 246, 247 & 248/Mds/2014 [A.Y. 2004-05, 2006-07, 2007-08 & 2008-09] is with regard to allowability of deduction under section 36(i)(viia) of the Act. In the following assessment years, the Assessing Officer has made disallowance against the claim of deduction under section 36(i)(viia) of the Act.

A.Y.	***Claimed in the return***	***Allowed by the AO***	***Disallowance made by the AO***
2004-05	*22,20,00,000/-*	*4,52,90,296/-*	*17,67,09,704/-*
2006-07	*8,22,82,529/-*	*5,64,78,408/-*	*2,58,04,121/-*
2007-08	*10,18,36,091/-*	*1,95,53,562/-*	*8,22,82,529/-*
2008-09	*17,59,91,049/-*	*7,43,64,614/-*	*10,16,26,435/-*

87. The above disallowances is on account of deduction claimed every year on the outstanding balances of average advances made by the bank at the end of the accounting year, as per Rule 6ABA. Since the income is required to be computed separately for each year as each accounting year is a separate unit for assessment purposes, deduction has been worked out on the average advance made by the rural branch of the bank during the year. Deduction is available for the provision for bad and doubtful debt made in respect of incremental advances made by the rural branches during the year. The ld. CIT(A) has observed that the Assessing Officer has interpreted the Act and restricted the deduction under section 36(i)(viia) to the average advances made by rural branch of the bank during the year. By following the decision of the Coordinate Bench of the Tribunal in assessee's own case in I.T.A. No. 552 & 553/Mds/2009 for the assessment years 2001-02, 2002-03 dated 18.12.2009 decided the issue in favour of the assessee and directed the Assessing Officer to delete the addition made on this account.

We have heard both sides, perused the materials on record and gone through the orders of authorities below. For the sake of clarity and to have better understanding over the issue, the entire facts with regard to the issue is reproduced for the assessment year 2004-05 in I.T.A. No. 245/Mds/2014. In the assessment order, the Assessing Officer has observed as under:

3. Allowable Deduction u/s 36(1)(viia):

In the assessment order dated 29.12.2006, the AO disallowed the entire claim of deduction u/s 36(1)(viia), since the assessee did not provide details of provision created for bad and doubtful debts, proof of the population places where the rural branches are located, monthly average aggregate advances outstanding balances etc. The CIT(A) deleted the addition made by the AO based on the decision of the Hon'ble Supreme Court in the case of 'Catholic Syrian Bank Ltd., Cs CIT'.

The Hon'ble ITAT in the order dated 22.02.2013 remitted back the issue to the AO as under:-

"We are of the view that the CIT(A) has ignored the decision of Hon'ble Apex Court to the extent aforesaid. Therefore, we restore the ground back to the Assessing Officer to re-decide the issue in the light of observations made herein above and pass fresh order after affording adequate opportunity of hearing to the assessee."

As per directions of the Hon'ble ITAT the assessee was asked to furnish the details of provisions made, proof of the population places where the rural branches are located with average aggregate advances outstanding balances etc.

The assessee bank submitted the above details. Further it was stated that in the profit and loss account under provisions and contingencies, the provision for NPA to the tune of Rs.22,20,00,000/- was made. After careful consideration of the furnished particulars, the issue was decided as under-

In the assessment order in page no.18, in para no.2, the AO observed as under.-

"The deduction mentioned in the first proviso viz, that for assets classified by RBI as doubtful assets or loss assets in accordance with the guidelines issued is to be availed of at the option of the assessee. The very word option indicates that the assessee has been allowed to choose either of the two deductions. In other words, if the assessee chooses for the option to claim a deduction in the proviso, it cannot claim a deduction as mentioned in clause 'a'.

Based on the above, the assessee was asked to clarify whether it exercise option (a) i.e. whether it claims deduction on doubtful debts as classified by the RBI or (b) 7.5% of Gross Total Income and 10% of aggregate average rural advances.

The assessee bank stated that it claims as per option (b).

3.1 The other issue involved relates to quantum of deduction available under main Provision of Section 36(1)(viia)(a). It is relevant to mention here that the assessee was claiming deduction every year on the outstanding balances of average advances made by the bank at the end of the accounting year, as per Rule 6ABA. Since the income is required to be computed separately for each year as each accounting year is a separate unit for assessment purposes, deduction has to be worked out on the average advance made by rural branch of the bank during the year. Deduction is available for the provision for bad and doubtful debt made in respect of incremental advances made by the rural branches during the year.

In the assessment order, the AO in page no.18 and in para no.1 observed as under:-

".....The deductions are available only in respect of advances made by the rural branches in relevant year, as can be seen from the wording "aggregate average advances made by a rural branches' used in this section and also the words the amount of advances made by each rural branch used in Rule 6 ABA The income is to be computed separately for each year after granting deduction. The specification of "advance" in this context pertains to advances containing the closing balance of the preceding year."

Based on the above observation, the issue was decided as under.-

3.1. It is worth mentioning that the RBI provides for making provision for bad and doubtful debt which has become NPA as per the prudential norms prescribed by it. These norms direct banks to make provision in respect of secured advances to the extent of 20% of the amount if the debt remains doubtful for one year, this provisioning increases to 30% if the debt/advance remains doubtful for a period between 1 to 3 years and provisioning goes upto 50% if the debt is doubtful for more than 3 years. However, if the advance is not covered by realisable value of security, then provisioning can be made upto 100% of the advance given. The banks are required to make provisioning for 100% of the advance in respect of 'loss of assets'. Thus, after a gap of few years, almost the entire amount of loan which becomes bad and doubtful has to be provided for by the banks. The banks are allowed deduction in respect of provision made for bad and doubtful debts.

3.2. In this context, allowing deduction under sub-clause (a) of clause (viia) of sub-section (1) of section 36 in respect of both the limbs of the sub-clause

(i) deduction in respect of provision made for bad and doubtful debts

(ii) deduction @ 10% on the cumulative outstanding balance at the end of the accounting year (average aggregate advances) of the loan given by the rural branches, year after year on the same amount advanced, without recourse to the figure of the amount actually advanced by the rural branches of the bank during the year,

would result in allowing deduction which may be more than the amount advanced by the rural branches of the bank . This is absurd and of course not the intention of Legislature.

3.3. This can be explained with a simple example. For argument sake, say the rural branches of a Bank made advances during the financial year 1989- 90, say to the extent of Rs.10 Crores and no advances were made by the rural branches, in the following 10 years. If the interpretation of the assessee as evident from claim of deduction u/s 36(1)(vii)(a) is accepted, the assessee would claim deduction, under the main provision of section 36(1)(viia)(a) on the aggregate outstanding rural advances which remain same throughout @ 10% as per sub-clause (a) of clause (viia) of sub-section(l) of Section 36 for every 10 years following Asst. Year 1990-91

without making any advance in last 10 years (entire amount lent would be written off by way of provision). This interpretation is absurd. Deduction for the provision for bad and doubtful debts claimed by the assessee Bank has to be worked out in respect of advances made during the year. A deduction has to be worked out for each year, based on incremental advances given by the rural branches of the bank, from the income computed for each accounting year.

3.4. Any other interpretation of clause (viia)(a) (as adopted by the assessee bank) would result in absurdity. Thus allowing deduction for the same advance year after year on account of granting deduction under second limb of sub-clause (a) of clause (viia) of sub- section (1) of section 36 @ 10% of the average aggregate advances made by the rural branches which are outstanding at the end of the accounting year and at the same time allowing deduction for the provisions made for bad and doubtful debt would result in deduction which may be more than the amount lent by the rural branches of the bank. Needless to say, this was not the intention of the Legislature.

The assessee has claimed deduction to the extent of Rs.22,20,00,000/-. This has been worked out as under:

On Rural advances (10% of aggregate average rural advances	*Rs.8,97,38,394*
Non Rural advances (7.5 of Total Income)	*Rs.4,10,56,320*
10% of Doubtful and lossess	*Rs.9,12,05,286*
Total	*Rs. 22,20,00,000*

3.5. This claim is not correct in the context of discussions above and is reworked as under. It is relevant to mention that the assessee bank has made provision for bad and doubtful debts to the extent of Rs.22,20,00,000/- only as shown in the Schedule 17 of the Annual Report. The actual working of the allowable deduction u/s 36(1)(viia) would be as follows:

(a)	*Aggregate average rural advances as on 31.03.2004*	*89,73,83,937*
(b)	*Aggregate average rural advances as on 31.03.2003*	*72,98,45,944*
(c)	*Increase in aggregate average rural advances during the year [(a)-(b)]*	*16,75,37,933*
(d)	*Deduction allowable on aggregate rural advances [@ 10% of (c)]*	*1,67,53,799*
(e)	*7.5% of Gross Total Income before deduction under Chapter VIA*	*2,85,36,497*
(f)	*Total of (d) and (e)*	*4,52,90,296*
(g)	*Provision made for Bad and Doubtful Debts by the Bank*	*22,20,00,000*
(h)	*Least of (f) or (g) allowable as deduction u/s 36(1)(viia)*	*4,52,90,296*

3.6. The assessee is therefore entitled to a deduction of Rs. 4,52,90,296/- only and therefore the allowance is limited to the above extent and the excess claim of Rs. 17,67,09,704/- (22,20,00,000 - 4,52,90,296) is disallowed."

88. From the above, for the assessment year 2004-05, in the assessment order 29.12.2006, the Assessing Officer disallowed the entire claim of deduction under section 36(1)(viia) of the Act since the assessee did not provide details of provision created for bad and doubtful debts, proof of the population places where the rural branches are located, monthly average aggregate advances outstanding balances, etc. On appeal, the ld. CIT(A) deleted the addition made by the Assessing Officer based on the decision of the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. v. CIT. On appeal before the Tribunal, the Tribunal vide its order dated 22.02.2013 remitted back the issue to the Assessing Officer to re-decide the issue in the light of observations made herein above and pass fresh order after affording adequate opportunity of hearing to the assessee. In the second round of litigation, after examining the details filed by the assessee with regard to the claim made by the assessee under section 36(1)(viia), the assessee bank was asked to clarify whether it exercise option (a) i.e. whether it claims deduction on doubtful debts as classified by the RBI or (b) 7.5% of Gross Total Income and 10% of aggregate average rural advances and the assessee bank stated that it claims as per option (b). Accordingly, the Assessing Officer has restricted the same as tabulated hereinabove after reworking the aggregate average rural advances. The Assessing Officer has recomputed the aggregate average rural advances by adopting only the incremental advances made during the year by the rural branches and also by excluding branches which were situated at places with population of more than 10,000 according to the latest Census. The Assessing Officer has also held that the provision for 'standard advances' cannot be made part of provision for bad and doubtful debts for which deduction under section 36(1)(viia) of the Act is allowable.

89. The questions of law raised before the Hon'ble Apex court in the case of Catholic Syrian Bank were as follows:

".....

Whether the Full Bench of the High Court has grossly erred in reversing the finding of the earlier Division Bench that on a correct interpretation of the Proviso to clause (vii) of Section 36(1) and clause (v) to Section 36(2) is only to deny the deduction to the extent of bad debts written off in the books with respect to which provision was made under clause (viia) of the Income Tax Act?

Whether the Full Bench was correct in reversing the findings of the earlier Division Bench that if the bad debt written off relate to debt other than for which the provision is made under clause (viia), such debts will fall squarely within the main part of clause (vii) which is entitled to be deduction and in respect of that part of the debt with reference to which a provision is made under clause (viia), the proviso will operate to limit the deduction to the extent of the difference between that part of

debt written off in the previous year and the credit balance in the provision for bad and doubtful debts account made under clause (viia)?" [para 11 of the order]

90. After examining the various Circulars issued by the Board in relation to section 36(1)(viia) and 36(1)(vii) and also the Statement of Objects and Reasons to the Finance Act 1986, the Hon'ble Supreme Court came to the conclusion that the legislative intention behind the introduction of section 36(1)(viia) was to encourage rural advances and to aid creation of the provision for bad debts in relation to such rural branches. Some of the salient findings of the Hon'ble Supreme Court are as follows:

- A mere provision for bad and doubtful debts is not an allowable deduction in the computation of taxable profits. However, in the case of rural advances, in line with the policy to promote rural banking, a provision may be allowable u/s Sec.36(1)(viia), without insisting on an actual write- off.

- Provisions of sections 36(1) (vii) and 36(1)(viia) of the Act are distinct and independent items of deduction and they operate in their respective fields.

- A scheduled bank may have both urban and rural branches. It may give advances from both branches with separate provision accounts for each. In the normal course of its business, an assessee bank is to maintain different accounts for the rural debts and for non-rural/urban debts. Maintenance of such separate accounts would not only be a matter of mere convenience but would be the requirement of accounting standards.

- The bad debts written off in debts, other than those for which the provision is made under clause (viia), will be covered under the main part of Section 36(1)(vii), while the proviso will operate in cases under clause (viia) to limit deduction to the extent of difference between the debt or part thereof written off in the previous year and credit balance in the provision for bad and doubtful debts account made under clause (viia).

- In case of rural advances which are covered by clause (viia), there would be no double deduction. The proviso, in its terms, limits its application to the case of a bank to which clause (viia) applies. Indisputably, clause (viia) applies only to rural advances.

- If the amount of bad debt actually written off in the accounts of the bank represents only debt arising out of urban advances, the allowance thereof in the assessment is not affected, controlled or limited in any way by the proviso to clause (vii).

- A statue is not normally construed to provide for a double benefit unless it is specifically so stipulated or is clear from the scheme of the Act.

- Proviso to sec 36(1)(vii) would not permit benefit of double deduction, operating with reference to 'rural' loans, while under Section 36(1)(vii), the assessee would be

entitled to general deduction upon an account having become bad debt and being written off as irrecoverable in the accounts of the assessee for the previous year.

91. A number of cases decided by the Hon'ble High Courts and also by the Apex Court are cited / referred to in the above judgement. Cases of Vijaya Bank Vs. CIT (323 ITR 166) 2010-TIOL-31-SC-IT and Southern Technologies Vs JCIT (320 ITR 577) 2010-TIOL-01-SC-IT are referred to therein. Accounting standard AS29 and also the effect of Board's Circular's have also been discussed at length in the order along with the subject of interpretation and construction of the relevant sections. Thus, the judgement is a comprehensive one which has considered the ratios laid down by various courts, the implications of Board's circulars and accounting standards.

92. The Hon'ble Supreme Court has held in the case of Catholic Syrian Bank that

"Mere provision for bad and doubtful debts may not be allowable, but in the case of a rural advance, the same, in terms of section 36(1)(viia) may be allowable without insisting on an actual write off …….in case of rural advances which are covered by clause (viia), there would be no double deduction. The proviso, in its terms, limits its application to the case of a bank to which clause (viia) applies. Indisputably clause (viia) applies only to rural advances." (emphasis supplied) (para 25&27).

93. Thus, it can be seen that in the case of provision made towards nonrural debts, no deduction can be allowed as there is no specific provision in the Income Tax Act to allow the same. This indicates that the provision made towards urban debt should be added back and allowed only when bad debts are really written off. The question of double deduction being allowed does not arise therein at all, because it is allowed only on actual write off. The Hon'ble Apex Court has also held that the proviso to section 36(1)(vii) apply only in respect of rural debts. In view of the above decision and in view of the option exercised by the assessee that it can claims deduction on doubtful debts as per option (b) i.e. 7.5% of Gross Total Income and 10% of aggregate average rural advances, the Assessing Officer has rightly worked out the allowable deduction, which is less than that of the provision made by the assessee as doubtful debts, allowed the deduction of bad debts for all assessment years and remaining balance was brought to tax. Accordingly, we reverse the order of the ld. CIT(A) and confirm the addition made by the Assessing Officer for all the above assessment years. This ground of appeal of the Revenue is allowed. "

We found the decision of the Hon'ble Supreme Court in respect of provisions of section 36(1)(vii) is restricted to rural debts and the deduction has to be allowed based on the above decision and the Assessing Officer has restricted the claim based on the incremental advance made during the year by the rural branches. Since, the Co-ordinate bench of this Tribunal has considered the facts and also provisions of law

in the above decision. We inclined to set aside the order of the CIT(A) and upheld the action of the Assessing Officer and allow the ground of the Revenue.

17. The seventh ground that the Ld. CIT(A) erred in allowing the deprecation loss on account of shifting of securities in the middle of the year without considering the facts that the assessee Bank has not reduced depreciation from book value on securities at the time of sale of securities. The Ld. AO found that the assessee has claimed deduction under Head shifting of securities Rs. 2,20,55,856/- and the Ld. AR explained that the RBI allow such expenditure and relates to difference in the cost price of the securities of HFT & AFS category and the market price on the date of shifting of the same to HTM securities. The Ld. AO observed that the only transfer of HFT and AFS takes place in the year subsequent to year of purchase and security has already been marked to market till the end of the accounting year proceeding the year in which to transfer or shifting of securities takes place in the year of purchase. Therefore, the difference in the cost of acquisition and market price is merely a notional loss and cannot be allowed as deduction and disallowed. Aggrieved, in Appellate proceedings, the Ld. CIT(A) considered the facts at page 12 of his order that the depreciation on transfer of securities loan AFS category to HTM category are accounted at depreciated value as per RBI guidelines and relied on Tribunal order of the assessee's own case in ITA No. 935, 937, 939, 940, 770 & 1507/Mds/2007, and Jurisdictional High Court decision of assessee's own case 291 ITR 144 (Mds) and allowed the grounds. On appeal before us, the Ld. DR argued the action of CIT(A)in deleting the claim of assessee on shifting of securities is not in accordance with RBI guidelines and same has been set aside. Contra, the Ld. AR relied on the order of

the CIT(A). We heard the both the parties, perused the material on record and judicial decisions, similar issue was dealt by this coordinate bench in the assessee's own case in ITA No. 935& Others dated 08.07.2011 at Page 28 and 29 at Para 62 to 65 referred at 291 ITR 144 (Mds). Accordingly, following the above decision, we dismiss the ground of the Revenue.

18. The last ground that the Ld. CIT(A) has erred in deleting of the interest accrued on Government Securities. The Ld. AO assessed the interest Rs. 11,21,38,272/- on securities on mercantile system and rejected the contention of the assessee that income has been offered to tax only on due or receipt basis. Aggrieved, the Ld. CIT(A) found that the assesse bank has disclosed income receivable in the Books of accounts and but not actually accrued and relied on the Jurisdictional High Court decision in the assessee's own case in the case of CIT Vs. City Union Bank Ltd., (2007) 291 ITR 144 (Mad) and others and directed the Assessing Officer to verify the contentions of the assessee and ratio of decisions of the jurisdictional High Court on interest income recalculation and allowed the appeal for statistical purpose. Before us, the Ld. DR argued that the Ld. CIT(A) has erred in directing the AO to consider interest income without appreciating the other facts on record. Contra, the Ld. AR relied on the order of the CIT(A) and jurisdictional High Court decision. We find similar issue in the assessee's own case for earlier assessment year is covered by High Court decision CIT Vs. City Union Bank Ltd., in 291 ITR 144 (Mds) and accordingly we upheld the order of CIT(A) and dismiss the ground of the Revenue. The Revenue appeal is partly allowed for statistical purpose.

19. Now we take up the Revenue appeal in ITA No. 1802/Mds/ 2014 for the assessment year 2008-09 filed against the order of CIT(A) dated 27.02.2014 passed u/s. 143(3) r.w.s. 147 and 250 of the Act. The Revenue has raised the grounds on violation of provisions of section 40a(ia) of the Act and Ld. CIT(A) has erred in deleting the addition u/s. 36(1)(viia) of the Act, ignored the applicable provisions of the Act. We have remitted the assessee's appeal ITA No. 2035/Mds/2014 for the assessment year 2008-09 to the file of CIT(A) on legal issue of re-opening of assessment was not adjudicated by appellate authority. We found, since the disputed issue is remitted to the file of CIT(A), as referred at Para 9 of the order. As such, Revenue appeal cannot be survived at this stage and become infructuous and dismissed.

20. We take up ITA No. 1803/Mds/2014 Revenue appeal for the assessment year 2009-10. The first ground that the CIT(A) erred in relying on the judicial High Court decision and deleted addition of the accrued interest on Government Securities. We have dealt similar issue at Para 18 of the order for the assessment year 2008-09 and accordingly the ground of the Revenue is partly allowed for statistical purpose.

21. The second ground that CIT(A) has erred in allowing the claim of the assessee on amortization charges as revenue expenditure. We have decided the similar issue at Para 12.2 and dismiss the Revenue ground.

22. The third ground that the CIT(A) erred in deleting the addition towards Broken Period Interest. This issue was dealt at Para 11.2 for the assessment year 2008-09 and the same is applicable. The ground of the Revenue appeal is dismissed.

23. The Ld. CIT(A) has deleted the addition made towards ex-gratia payment to the employees. The Assessing Officer has disallowed the Ex-gratia payment on the ground that the payment is nothing but an appropriation of profits by the assessee Bank to all the employees without distinguishing the quality of work of the employees. Whereas, the Ld. CIT(A) has found Rs. 5,60,15,000/- is business expenditure and relied on the decision of the Calcutta High Court in the case of National Engineering Industries Limited Vs. CIT 208 ITR 1002 (Kolkata), similarly, co-ordinate bench of the Tribunal in the case of Lakshmi Vilas Bank Limited and Karur Vysya Bank Limited, where ex-gratia payments are in the nature of Business expenditure u/s. 37(1) of the Act and allowed the assessee claim. The Ld. DR argued that the ex-gratia payments does not pertains to business and CIT(A) erred in allowing the claim. Contra, the Ld. AR relied on the order of the CIT(A). We heard the submissions, perused the material on record and judicial decision, we find issue is covered by the decision of the co-ordinate bench of Tribunal Lakshmi Vilas Bank, Karur Vysya Bank and National Engineering Industries Limited (Supra). Accordingly, we upheld the order of CIT(A) and dismiss the Revenue ground.

24. The fifth ground the Ld. CIT(A) erred in allowing the additional claim for Bad Debts u/s. 36(1)(viii). We have decided the similar issue at Para 15.1 and dismiss the Revenue ground.

25. The sixth ground that the Ld. CIT(A) erred in allowing the deduction u/s. 36(1)(viia), we have decided this issue in the ITA No. 1801/Mds/2014 at Para 16.1 against the assessee. Accordingly, we allow the ground of appeal of the Revenue.

26. The seventh ground that the Ld. CIT(A) has erred in deletion of the addition towards depreciation loss incurred on shifting of securities. The similar issue we adjudicated in ITA No. 1801/Mds/2014 at Para 17 and dismiss the ground of the Revenue appeal.

27. The last ground that the Ld. CIT(A) erred in deleting the addition of the stale draft, pay order and cheque disclosed as liability. The Ld. CIT(A) observed at Para 11 of his order that Ld. AO applying the provisions of section 41(1) of the Act of cessation of liability in respect of value of the stale draft cheque and pay orders as they were not en-cashed by the customers and remained with the bank for more than three years. Similar issue we have decided in ITA No. 1801/Mds/2014 at Para 14.1 and we allow the ground of the Revenue.

28. Now, we take up Revenue appeal for the assessment year 2010-1 in ITA No. 1804/2014, the first ground raised on deletion of interest accrued on Government Securities. We have discussed similar issue in ITA No. 1801/Mds/2014 at Para 18 in favour of the assessee and dismiss the Revenue ground.

29. The second ground, that the Ld. CIT(A) erred in deletion of the deduction u/s. 36(1)(viii) as discussed in the ITA No. 1801/Mds/2014 for assessment year 2008-09 at Para 15.1 and the ground is dismissed.

30. The third ground that the CIT(A) erred in allowing the deduction u/s. 36(1)(viia), we have decided the issue in ITA No. 1801/Mds/2014 at Para 16.1 against the assessee. Accordingly, we allow the ground of the appeal of Revenue.

31. The forth ground that the Ld. CIT(A) erred in allowing the deduction u/s. 37(1) of the Act in respect of donation instead of deduction u/s. 80G of the Act. The CIT(A) found that the Assessing Officer has disallowed donation to the Government school for construction of class room and World Tamil Conference held at Coimbatore, Neighbourhood Health Care Trust. The Ld. AR explained that the donation to the school is wholly and exclusively for the purpose of business. Whereas, the Assessing Officer has disallowed the amount. The Ld. CIT(A) observed that the donation is for the purpose of business which brings monetary advantages either today or tomorrow and directed the Assessing Officer to accept the contentions and allow such expenditure u/s. 37(1) of the Act. Aggrieved, the Ld. DR argued that CIT(A) erred in allowing the deduction. Whereas, the Ld. AR relied on the order of the CIT(A). We found that the expenditure incurred towards construction of school in nature of business expenditure and we upheld the decision of the CIT(A) and dismiss the appeal of the Revenue.

32. The fifth ground that the Ld. CIT(A) erred in deleting the addition towards Stale Drafts / Pay Orders, we decided this issue in ITA No. 1803/Mds/2014 for the assessment year 2009-10 at Para 27 and allow the ground of the Revenue.

33. The last ground raised that the Ld. CIT(A) erred in deleting the addition towards excess Cash Balance, we have dealt this issue in ITA No. 1801/Mds/2014 at Para 14.1 and accordingly, we allow the ground of the Revenue.

34. In the result, the appeals filed for the assessment year 2007-08 filed by the Revenue in ITA No. 1671/Mds/2014 is dismissed. The appeal filed by the assessee in ITA No. 2034/Mds/2014 for the assessment year 2007-08 is allowed for statistical purpose. The appeal filed by the assessee in ITA No. 2035/Mds/2016 for the assessment year 2008-09 is partly allowed for statistical purpose. The Revenue appeal for the assessment year 2008-09 in ITA No. 1801/Mds/2014 is partly allowed for statistical purpose and the Revenue appeal for the same assessment year in ITA No. 1802/Mds/2014 is dismissed. The Revenue appeal for the assessment year 2009-10 in ITA No. 1803/Mds/2014 and for the assessment year 2010-11 in ITA No. 1804/Mds/2014 are partly allowed.

Order pronounced on Wednesday, the 28th day of December, 2016 at Chennai.

Sd/-

(चंद्रपूजारी)

(CHANDRA POOJARI)

लेखासदस्य/ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिकसदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 28th December, 2016

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF