

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'E', New Delhi**

**Before : Shri I.C. Sudhir, Judicial Member And  
Shri L.P. Sahu, Accountant Member**

**ITA No. 4566/Del./2014  
Assessment Year: 2010-11**

Oriental Bank of Commerce, Central Accounts Office, Plot No. 5, Sector-32, Institutional Area, Gurgaon (PAN: AAACO0191M). <b>(Appellant)</b>	vs.	Addl. CIT, Range-13, New Delhi.  <b>(Respondent)</b>
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**ITA No. 5200/Del./2014  
Assessment Year: 2010-11**

Addl. CIT, Range-13, New Delhi.  <b>(Appellant)</b>	vs.	Oriental Bank of Commerce, Central Accounts Office, Plot No. 5, Sector-32, Institutional Area, Gurgaon. <b>(Respondent)</b>
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<b>Assessee by</b>	Sh. KVSR Krishna, C.A. & Sh. Aman Goyal, C.A.
<b>Revenue by</b>	Smt. Shaifali Swaroop, CIT/DR

<b>Date of Hearing</b>	01.08.2017
<b>Date of Pronouncement</b>	11.09.2017

**ORDER**

**Per L.P. Sahu, A.M.:**

Both these cross appeals by the assessee and the Revenue are directed against the order dated 18.06.2014 of ld. CIT(A)-XVI, Delhi for the assessment

years 2010-11. The grounds raised by both the parties in their appeals, read as under :

*“1. The Ld. CIT(A) has erred in law and on the facts in confirming the disallowance u/s. 14A to the extent of Rs.3,96,00,000/- on adhoc basis without showing any nexus between the expenditure incurred and tax free income. The disallowance made is wrong and bad in law and hence deserves to be deleted.*

*2. The Ld. CIT(A) has erred in law and on the facts and circumstances of the case in not accepting the plea of the assessee that there is no expenditure incurred by the assessee bank for earning tax free income and hence no disallowance should be made u/s 14A of the Income Tax Act, 1961.*

*3. The appellant contends that no expenditure is incurred for earning tax free income because a) expenditure incurred is for banking business of the assessee, b) assessee has sufficient non-interest bearing own funds to invest c) the investments made by the bank are to meet RBI norms like CRR, SLR ratios etc. d) the investments in the bank are made to realize gains or losses and earning dividend is only incidental, e) neither the Assessing Officer nor the CIT(A) has any material to support nexus between expenditure incurred and earning of tax free income for disallowance. Hence the order of the CIT(A) upholding disallowance u/s 14A is wrong and bad in law.*

*4. The CIT(A) has erred in treating sum of Rs.9,20,47,969/- being software expenses alleging them to be of capital nature, consequently allowing depreciation instead of treating the entire amount as revenue expenditure. The appellant contend that the software expenses have not resulted in bringing into existence any asset nor any benefit of enduring nature. The expenditure is recurring in nature and toward enabling the assessee to carry on its business and should be allowed as revenue expenditure.*

*5. The CIT(A) as well as AO has failed to appreciate the facts of the case that these expenses are of the nature of renewal of licenses charges, any-virus software, AMCs, incurred for the running of the Banking System*

*which is fully computerized. Therefore, the same should be allowed as revenue expenditure.”*

Grounds raised in Revenue's appeal:

- 1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law and facts in deletion of the indirect interest expenditure under Rule 8D(2)(ii) by holding that the AO has not recorded any cogent reason whereas the AO has specifically mentioned that the expenses incurred is independent of the fact that the investment were made in compliance to RBI Guidelines or of its own accord.*
- 2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law and facts by ignoring the fact that the assessee even after been granted many opportunities, was not able to submit the bifurcation between the expenses incurred on exempted and non- exempted incomes which only goes to reflect the mal- intentions of the assessee.*
- 3. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law and facts by ignoring the fact that the assessee has made voluminous investments, and to look after and monitor these investments the assessee would have made expenses which were not apportioned by the assessee, hence the sec- 14A is applicable on the assessee.*
- 4. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law and facts by ignoring the provision laid down by the Act through section 14A read with Rule 8D, as per which all the clauses (i), (ii) & (iii) of sub section 2 are duly applicable even if the direct expenses have been added back by the assessee, suo moto.*
- 5. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law and facts by ignoring the fact that once provisions of section 14A are held applicable, then the provisions of sub- section (2) of section 14A will empower the AO to compute the disallowance in accordance with such method as may be prescribed i.e. Rule 8D. The Rule 8D does not mention anything about direct applicability or non- applicability of the expenditure in relation to earning exempt income and its calculation is prescribed therein.*

6. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in law and facts by ignoring the fact that the section 14A talks about the investments made and the expenses paid there on. In its financials the assessee has nowhere been able to prove the distinction between its investments.*

7. *On the facts and circumstances of the case, the Ld. CIT(A) erred in law and in facts of the case by giving relief to the assessee on 100% depreciation claimed by the assessee on temporary fixtures, ignoring the fact that the fixtures noted by the assessee have longer life than one year.*

8. *On the facts and circumstances of the case, the Ld. CIT(A) erred in law and in facts of the case by ignoring the principal laid down by the apex Court in the case of Madras Industrial Corporation vs CIT where in expenses have been amortized over a period of five years.*

9. *On the facts and circumstances of the case, the Ld. CIT(A) erred in law and in facts of the case by ignoring the fact the assessee after being granted many opportunities, was not able to file any proof that it has crystallized the said amount.*

10. *The Ld. CIT(A) erred in law and in facts of the case by ignoring the fact that the assessee was not able to file any list of the customers to which it had to pay said amount which shows that the amount so claimed was a mere provision and per the accounting policy provision is not allowed in the year in which it has been created.*

11. *On the facts and circumstances of the case, the Ld. CIT(A) erred in law and in facts of the case by ignoring the fact that the RBI guidelines are to the extent of treatment of provisions for the safety of customers, but it no way mentioned that the profits has to be decreased to that extent for taxation purposes. Moreover the guidelines are applicable on the banks and not on the department.*

12. *The Ld. CIT(A) erred in law and in facts of the case by ignoring the fact that the provisions of the section 36(1)(vii) are available to the assessee only if the assessee fulfills the conditions laid down in the section 36(2)(v) of the Act.*

13. *The Ld. CIT(A) erred in law and in facts of the case by ignoring the fact that the assessee had never created or accounted the said debts in the previous years and worked contrary to the provisions/ conditions laid down in the section 36(2) of the Act.*

2. By way of grounds Nos. 1 to 3, the assessee has challenged the sustenance of disallowance u/s. 14A of the Act to the tune of Rs.3,96,00,000/- and by way of grounds Nos. 1 to 6, the Revenue has challenged the deletion of addition of Rs.46.56 crores out of addition of Rs.50.52 crores u/s. 14A of the Act.

3. The brief facts of the issue are that the assessee made investments in Govt. securities, shares, debentures from time to time, the details of which are as under :

(Rs. in crores)

	31 <sup>st</sup> March 2009	31 <sup>st</sup> March 2010
Investment in shares	563.52	520.71
Mutual Funds	88.63	89.00
Investment in Tax Free Bonds	308.49	13.50
Total	960.64	623.21

Out of above investments, the assessee had earned tax free income of Rs.15,59,46,671/-, the details of which are given at page 18 of the impugned order. The assessee did not make any deduction u/s. 14A in respect of expenditure incurred in relation to above exempt income. The assessee claimed that no expenditure were incurred for earning the exempt income

and the expenditure, whatsoever incurred by the bank is in the course of conducting the banking business under the banking Regulation Act, 1949 and hence, the expenditure is allowable as business expenditure as allowed in the past. The assessee had adequate share capital and reserves to cover the entire investment and therefore, there would be no expenditure for disallowance u/s. 14A. The AO was not satisfied with the explanation of the assessee and disallowed a sum of Rs.50.52 crores u/s. 14A of the Act, applying Rule 8D against tax free income of Rs.15,59,46,671/- earned by the assessee-bank. The Id. CIT(A) after considering the submissions of the assessee, decision of Hon'ble Bombay High Court, relevant provisions of section 14A and Rule 8D, deleted the indirect interest expenditure of Rs.46.56 crores computed by AO u/r 8D(2)(ii) of the IT Rules. The Id. CIT(A), however, sustained the disallowance of Rs.3.96 crores as computed by AO u/r 8D(2)(iii) of the IT rules, being 0.5% of average value of investments, as contemplated in the last limb of Rule 8D.

4. We have heard both the parties and have perused the material on record and we find that this issue is covered by the decision of ITAT, Delhi Benches, New Delhi dated 27.12.2016 in the case of assessee itself for A.Y. 2008-09 and 2009-10(ITA Nos. 6795 & 6796/Del./2013 and 242 &

243/Del./2014) (copy placed at paper book), wherein, the impugned issue in the identical facts and circumstances, has been disposed of as under :

“6. We have heard both the parties and have perused the material on record. The contention of the assessee has been that similar issue in the identical facts and circumstances of the case came up for adjudication before ITAT Delhi Bench in appeal of assessee and Revenue for A.Y. 2007-08, whereby the Tribunal after considering the facts and circumstances of the case restored the issue back to the Assessing Officer and the Assessing Officer while giving the appeal effect, has restricted the disallowance to the extent of 5% of the exempted income. It was, therefore, contended that the disallowance, if any, could at the most be restricted to 5%. This contention of the assessee is not found supported by any evidence on record. He has referred to page No. 24 of the paper book, in which the Assessing Officer has given appeal effect vide order dated 24.02.2016. However, we do not find anything in this order to support the contention of the assessee that the Assessing Officer has restricted the disallowance to the extent of 5% of the exempted income. Rather the Assessing Officer has shown the relief u/s. 14A as nil. Besides, the provisions of Rule 8D were inserted in the statute w.e.f. 24.03.2008 and as such was not applicable for the assessment year 2007-08. Therefore, the findings recorded by the Tribunal in appeal for the assessment year 2007-08 would have no application in appeal for the assessment years under consideration, i.e., 2008-09 and 2009-10. Therefore, the order of the Id. CIT(A) on this issue does not require any interference being based on sound reasonings. The relevant portion of the impugned order reads as under for ready reference:

*“5.2.2 Section 14A provides that all the expenditure incurred in relation to the exempt income shall be disallowed. Rule 8D clearly provides for disallowance of direct expenditure incurred in relation to the exempt income under clause (i) of sub-rule (2) and indirect expenditure by way of interest of relevant previous year, under clause (ii) of sub rule (2). Further other indirect expenditure of the relevant previous year are to be disallowed as per clause (iii) of sub-rule (2), which is to be determined on the basis of average value of investment from which the exempt income is earned.*

*2.2.3 Hon'ble High Court of Bombay in Godrej & Boyce Mfg. Co. Ltd. v. DCIT [2010] 194 Taxman 203 (Bom) held that as a result of the enactment of section 14A, no expenditure can be allowed as a deduction in relation to income which does not form part of the total income under the Act. Only that part of the expenditure, which is incurred in relation to income which forms part of the total income, can be allowed. The expenditure incurred in relation to income which does not form part of the total income has to be disallowed. The expression 'expenditure incurred' in section 14A refers to expenditure on rent, taxes, salaries, interest, etc., in respect of which allowances are provided for. Hon'ble High court further held that sub-sections (2) and (3) of section 14A are intended to enforce and implement the provisions of sub-section (1). The object of sub-section (2) is to provide uniformity of method where the*

*Assessing Officer is, on the basis of the accounts of the assessee, not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under the Act. Sub-section (2) of section 14A does not enable the Assessing Officer to apply the method prescribed by rule 8D without determining in the first instance the correctness of the claim of the assessee, having regard to the accounts of the assessee.*

*5.2.4 Hon'ble High Court of Delhi in Maxopp Investment Ltd. v. CIT [2011] 15 Taxmann.com 390 (Delhi) held that while rejecting the claim of the assessee with regard to the expenditure or no expenditure, as the case may be, in relation to exempt income, the Assessing Officer would have to indicate cogent reasons for the same.*

*5.2.5 From the particulars furnished it is seen that as against the above investments of Rs. 759.04 crore the bank has its own share capital of Rs. 250.54 crore, Reserve and Surplus of Rs. 5525.36 crores and balances under current deposits of Rs. 7,762.39 crore on which the bank does not pay any interest. Therefore the available funds which are non interest bearing is Rs.13,538.29 crore. Thus, it is seen that sufficient interest free funds are available to make the investment of Rs. 759.04 crores from which tax free exempt income is earned. The appellant also submitted that the investments as stated above are out of the said funds available to the assessee.*

*5.2.6 The AO held that the amount of direct expenditure in relation to exempt income is nil under Rule 8D(2)(i). The AO computed the indirect interest expenditure under rule 8D(2)(ii) at Rs. 45.52 crores. However while computing indirect interest expenditure of Rs. 45.52 crore for disallowance u/s 14A, the AO has not indicated any cogent reason as to how the interest expenditure are indirectly incurred in connection with investment from which the exempt income is earned. In the light of the fact that sufficient funds are available to make the investments and the appellant's submission that the investments were made out of interest free funds available, therefore, AO is required to indicate cogent reason on the basis of the accounts that the claim of the appellant is not correct. In the absence of any finding on the basis of accounts that interest expenditures are incurred in relation to exempt income and considering the fact that sufficient interest free funds are available, therefore, no disallowance of indirect interest expenditure can be made under Rule 8D(2)(ii). In view of the above the indirect interest expenditure of Rs. 45.52 crores computed by the AO under Rule 8D(2)(ii) for disallowance u/s 14A is not justified.*

*5.2.7 However, considering the tax exempt investment of Rs. 759.04 crores and tax exempt income of Rs. 46.56 crores, some administrative and managerial expenses are definitely incurred which are attributable to tax exempt investment income. Therefore, as per Rule 8D(2)(iii), 0.5% of average value of investment calls for disallowance u/s 14A keeping in view the administrative*

*and managerial expenses attributable to tax free investment income. The AO has disallowed Rs. 3,63,00,000/- under Rule 8D(2)(iii) being 1/2% of average value of tax exempt investment which is, therefore, justified. In view of the above factual and legal position, the disallowance made by the AO u/s 14A is reduced from Rs. 49.15 crores to Rs. 3.63 crores. Accordingly the grounds of appeal are partly allowed."*

Similar finding has been recorded by the Id. CIT(A) in appeal for the assessment year 2009-10. Both the parties could not be able to place any material on record to discard the findings recorded by the first appellate authority as above. Therefore, grounds Nos. 5 & 6 of assessee's appeals and ground No. 1 & 1.1 in Revenue's appeals are dismissed.

Respectfully following the decision of coordinate Bench, ground No. 1 to 3 of assessee's appeal and grounds Nos. 1 to 6 of Revenue's appeal are dismissed and the order of the Id. CIT(A) is affirmed on this score.

5. By way of ground Nos. 4 & 5, the assessee has challenged the sustenance of disallowance of Rs.9,20,47,969/- as revenue expenditure being software expenses. The facts are that during the year under consideration, an amount of Rs. 9,20,47,969/- had been expended on account of Software Expenses which was charged to revenue. The assessee stated that the expenditure pertained to license fee for use of various software application, purchase of new software licenses of Oracle Data Base, Anti Virus Software, Support Charges for Software Items etc. The Assessing Officer observed that the assessee did not furnish any reason for not capitalizing the said expenses and charging them to revenue. He, therefore, following CIT v. Aravali Construction Co. Pvt. Ltd. 124 Taxman 146 (Raj) (2002), Maruti Udhyog Ltd. v. DCIT (ITAT,

Del) 92 ITD 119, JCIT v. India Equipment Leasing Ltd. (ITAT, Chennai) 296 ITR (AT) 177 and Amway India Enterprises v. DCIT (ITAT, Del-SB) 111 ITD 112, AO held that the expenditure incurred on acquisition of computer software was to be treated as capital in nature and accordingly, the expenditure of Rs. 9,20,47,969/- was holding the same as capital expenditure. The learned CIT(A) sustained the addition vide impugned order.

6. Having considered the rival contentions and gone through the material available on record, we find that this issue is also covered by the order dated 27.12.2016 of ITAT, Delhi Benches in the case of assessee itself for A.Y. 2008-09 & 2009-10 (supra), wherein the issue has been decided as follows :

“7. Issue No. 3 : This issue involved in ground No. 7 of both the appeals of the assessee, relates to disallowance of software expenses of Rs.2.60 crores and Rs.10.91 crores respectively for A.Y. 2008-09 and 2009-10. During the years under consideration, amounts of Rs. 2,83,89,975/- and Rs.11,66,05,590/- respectively were claimed to have been expended on account of Software Expenses which were charged to revenue. Assessee stated that the expenditure pertained to license fee for use of various software applications, purchase of new software licenses of Oracle Data Base, Anti Virus Software, Support Charges for Software Items etc. AO observed that no breakup of expenses with reference to AMC etc. was provided except a list outlining total expenses incurred. The assessee also did not furnish any reason for not capitalizing the said expenses and charging them to revenue. The AO, therefore, following the decision in CIT v. Aravali Construction Co. Pvt. Ltd. 124 Taxman 146 (Raj) (2002) concluded that the expenditure incurred on acquisition of computer software was to be treated as capital in nature. Accordingly, the expenditure of Rs. 2,83,89,975/- was disallowed for A.Y. 2008-09 and in A.Y. 2009-10 after giving corresponding depreciation, the expenditure of Rs.7,11,05,582/- was disallowed by the AO. The ld. CIT(A) deleted the disallowance of expenditure incurred for AMC holding them as Revenue expenditure but sustained the disallowance of remaining expenditure incurred on software as capital expenditure. The findings recorded by the ld. CIT(A) on this issue are identical except difference in the amounts of AMC expenses and other expenses incurred on software. The observations made by ld. CIT(A) in appeal for A.Y. 2009-10 read as under :

"5.4.3 In I.T. Rules Part A under the main heading III Machinery and Plant item no. (5) shows depreciation allowance on Computer including computer software is 60%. Further, note 7 below Part - B says:

"Computer Software" means any computer program recorded on any disc, tape, perforated media or other information storage device.

From the above, it is clear that computer software is included as Machinery and Plant where allowable rate of depreciation is 60%.

5.4.4 In *Hindustan Construction Co. Ltd. v. DCIT* [2013] 29 taxmann.com 82 (Mum.) the assessee incurred expenses for purchase of software development of E-Construct Suit. These programmes were specifically and exclusively designed for the purpose of business of the assessee and not general software. Hon'ble ITAT held that the expenditures have been laid out for acquiring intangible assets and the same will have an enduring benefit. Therefore, assessee is entitled for depreciation at 60%. Hon'ble ITAT Mumbai in *Sandoz (P) Ltd. v. DCIT* [2013] 34 taxmann.com 28 held that purchase of software whose life was more than 2 years, was capital in nature. Hon'ble Rajasthan High court in *CIT v. Aravali Construction Co. Pvt. Ltd.* 124 Taxman 146 (Raj)(2002) and Hon'ble ITAT, Delhi in *Maruti Udhyog Ltd. v. DCIT (ITAT, Del)* 92 ITD 119 held that expenditure incurred in relation to acquisition of computer software was to be treated as capital in nature.

5.4.5 In view of the above, I am of the opinion that all the expenses incurred on computer software except AMC is to be treated as Capital in nature. In the case of AMC, because it is specific that the contract is for one year, therefore, expenditure on AMC is required to be treated as revenue expenses. In the case of software license, unless it is specifically for one year, the expenditure cannot be treated as revenue. Moreover, sec 32 also specifically provides that licenses are intangible assets. In the Issue in appeal, from the detail of software expenses furnished before the AO, it is seen that only the following expenses are incurred for AMC:

Date	Name of the Vendor	Software Details	Amount (in Rs.)
09-08-2008	Mithi Software Tech P.L.	AMC Relay Server	41,800/-
14-08-2008	Network Solution P.L.	AMC of Networking at PDC	3,25,000/-
01-10-2008	Logica P.L.	AMC of QPH & QLM for RTGS	4,63,5007-
03-01-2009	HCL Infosystems Ltd.	AMC IBM Websphere for rtgs application	2,62,045/-
	Network Solution P.L.	AMC Information Security Infrastructure	1,62,500/-
	Logica Pvt Ltd.	AMC of QPH & QLM software	1,54,500

	<i>Network Solutions P.L.</i>	<i>AMC networking of 440 OBC &amp; 104 Egtb</i>	<i>4,60,591/-</i>
<i>24-03-2009</i>	<i>Wipro Limited</i>	<i>AMC of hw/sw cluster installed at PDC</i>	<i>27,79,357/-</i>
<i>26-03-2009</i>	<i>FSS Pvt. Ltd.</i>	<i>AMC of BASE 24 Software PDC</i>	<i>16,73,010/-</i>
<i>26-03-2009</i>	<i>FSS Pvt. Ltd.</i>	<i>AMC of BASE 34 Software DR Site</i>	<i>7,83,180/-</i>
<i>27.03.2009</i>	<i>Network Solutions Pvt. Ltd.</i>	<i>AMC cluster cisco router &amp; software switches at PDC</i>	<i>4,40,000/-</i>
		<i>Total:</i>	<i>74,95,483/-</i>

*Therefore, the above expenses of Rs. 74,95,4837- are clearly revenue expenses and AO is not justified in treating the same as capital item.*

*Out of the remaining expenses only the under mentioned five items are licenses, but nothing has been provided by the appellant to support that these are for annual use only.*

<i>Date</i>	<i>Name of the Vendor</i>	<i>Software Details</i>	<i>Amount (in Rs.)</i>
<i>09-08-2008</i>	<i>Wipro Ltd.</i>	<i>FINACLE Lisence</i>	<i>1,42,38,415.66</i>
<i>03-01-2009</i>	<i>Wipro Ltd.</i>	<i>ATS on license of FINACLE</i>	<i>1,42,38,415.66</i>
	<i>Wipro Ltd.</i>	<i>5 licenses Citric Integrated Treasury Solution at IBD</i>	<i>99,927.97</i>
	<i>HCL Infosystems Ltd.</i>	<i>500 Symantec Antivirus licenses</i>	<i>2,25,000.00</i>
<i>30-03-2009</i>	<i>Wipro Ltd.</i>	<i>50 Symantec Antivirus licenses</i>	<i>32,500.00</i>

*Therefore, the remaining expenses on acquisition of computer software Rs. 10,91,10,107/-including the licenses are to be treated as capital in nature. Further, the case laws relied upon by the A/R viz. Amway India Enterprises Vs. DCIT [2008] 301 ITR (AT.) 0001 ITAT (Del.) (SB), CIT Vs. G.R Capital Services Ltd. [2008] 300 ITR 420 (Delhi), Business Information Processing Services Vs. ACIT [1999] 239 ITR (AT) 19 ITAT (Jai) and CIT Vs. Southern Roadways Ltd [2008] 304 ITR 84 (Mad.) are not of any*

*help because all the decisions are pertaining to assessment years prior to amendment brought in w.e.f. April 1, 2003 where computer software was also included along with computer as a different class of asset within Machinery and Plant. In view of the above factual and legal position the AMC expenses Rs. 74,95,483/- mentioned above are to be treated as revenue expenditure and the remaining expenses Rs. 10,91,10,107/- are capital in nature. AO is directed to recompute the depreciation allowable on the above items of capital expenditure of Rs. 10,91,10,107/- on acquisition of software. Therefore, appeal fails in ground No. 10 of appeal with direction to the AO."*

On the similar reasoning, the ld. CIT(A) deleted the AMC charges of Rs.23,33,858/- and sustained other computer software expenses of Rs.2,60,56,117/- for the A.Y. 2008-09.

8. We have heard the submissions of both the sides and perused the material available on record and we find that the ld. CIT(A) has made an elaborate discussion on this issue. The ld. AR had submitted the details of AMC charges which has been allowed by the ld. CIT(A) as revenue expenditure, but in case of license fee for oracle database, antivirus software etc., the appellant could not establish that the same were for a particular period. The case laws relied upon by the appellant has rightly been distinguished by the ld. CIT(A). We, therefore, find that the ld. CIT(A) has passed a good order which needs no interference on this issue. Accordingly, grounds No. 7 in both the appeals of the assessee are dismissed."

Following the decision of co-ordinate Bench, grounds Nos.4 & 5 of the assessee's appeal are dismissed.

7. The Revenue in its appeal, by way of grounds Nos. 7 & 8 has challenged the deletion of addition of Rs.7.68 crores made by the AO on account of excess depreciation claimed on temporary wooden structure. This issue is also covered by the aforesaid decision of Tribunal for A.Y. 2008-09 & 2009-10 (supra), whereby the issue has been restored to the file of AO observing as under :

"11. Issue No. 5 : This issue involved in both the appeals of the Revenue pertains to 100% depreciation on temporary wooden structure allowed by the ld. CIT(A). The brief facts of the case are that the assessee-bank claimed 100% depreciation on temporary erections including internal partition, cabin formation,

flooring and concealed wiring etc. for the computers aggregating to Rs.10,01,24,279/- and Rs.9,60,81,761/- as supported by the Tax auditor's certificate inform 3CD along with depreciation chart which was placed before the authorities below. The AO disallowed the claim of assessee in part and observed that the above items were easily for five years and there the AO allowed 1/5<sup>th</sup> of the depreciation claimed thereby amortizing the same for five years and accordingly allowed 20% of the total claim of assessee amounting to Rs.2,71,24,419/- and Rs.1,92,16,352/- respectively. The Id. CIT(A) following the order of first appellate authority in the case of assessee for A.Y. 2007-08 deleted the additions made by AO. Accordingly, the Revenue is in appeal before the Tribunal.

12. We have heard the submissions of both the parties and have gone through the entire record. It is notable that the order of first appellate authority for A.Y. 2007-08, which the Id. CIT(A) followed to decide this issue, was challenged by both the parties before the Tribunal and the Tribunal in the identical facts and circumstances of the case has restored this issue to the file of AO for decision afresh vide order dated 04.11.2015 observing as under :

*"36. We have carefully considered the rival submissions. Assessee banks has shown addition of Rs. 15,73,78,019/- to the opening WDV of Rs 15622208/- and reduction therefrom of Rs 100163 resulting in to WDV of Rs. 99748028 and claimed depreciation thereon of Rs 75136583/-. Firstly, assessee has shown these items as furniture and fixtures and we do not find that Appendix I as per Income tax rules 1962 prescribed under the head furniture and fixtures any class of items, which is eligible for 100 % depreciation. As per annexure D of the tax audit report, assessee himself has classified it as temporary wooden structure. Definitely, it is apparent that it is not building which CIT (A) has considered. Therefore, from the facts it is not clear that whether it is building or furniture and fittings. Secondly, we agree with the views of the CIT (A) that AO has erred in allowing depreciation at the correct rates has amortized these expenditure over 5 years. Therefore, in absence of these facts, this ground of appeal is restored back to the file of AO for fresh verification. Hence ground no four of the appeal is allowed for statistical purposes."*

Respectfully following the decision of Co-ordinate Bench, we also restore this issue to the file of AO to decide the same in the same lines as directed by the Tribunal in appeal for A.Y. 2007-08 as noted above. Accordingly, grounds Nos.3 & 3.1 in Revenue's appeal for A.Y. 2008-09 and ground Nos. 2 & 2.1 in Revenue's appeal for A.Y. 2009-10 are allowed for statistical purposes."

Respectfully following the above decision, this issue is restored to the file of AO to decide the same, as directed by the Tribunal in appeal of the assessee for A.Y. 2007-08, as indicated above, after affording an opportunity of being

heard to the assessee. Accordingly, grounds Nos. 7 & 8 of the Revenue's appeal are allowed for statistical purposes.

8. The next issue involved in appeal of the Revenue, challenged by way of grounds Nos. 9 to 11, relates to deletion of addition of Rs.17.00 crores made by AO on account of interest on overdue deposits. Similar issue came for consideration in the identical facts before the Tribunal in appeal of the Revenue in case of assessee itself for A.Y. 2009-10, wherein, the coordinate Bench vide order dated 27.12.2016 (supra) has decided the matter in the following manner :

"13. Issue No. 6 : This issue involved in appeal of Revenue for A.Y. 2009-10, relates to deletion of addition of Rs.83.00 crores made by AO on account of interest on overdue deposits.

14. Having heard both the parties on this issue, we find on record that the assessee bank had made a provision of Rs.83.00 crores in respect of interest on overdue deposits at the rate of saving bank interest on time deposits. The assessee bank has followed the RBI Circular No. DBOD No.Leg.BC.34/09.07.005/2008-09 dated 22.08.2008. Instruction No. (xi) of the above RBI circular reads as under :

*"(xi). Interest on saving bank accounts should be credited on regular basis whether the account is operative or not. If a fixed Deposit Receipt matures and proceeds are unpaid, the amount left unclaimed with the bank will attract savings bank rate of interest."*

This issue has been discussed in detail by the Id. CIT(A) in his order. The assessee Bank is covered by the Banking Regulation Act, 1949 and it has to follow the directions of Reserve Bank of India which regulates all the banks operation in India. The books of accounts are to be maintained as per directions of the Reserve Bank of India and financial results of the banks are also prepared by the banks as per the prescribed norms fixed by RBI. The Reserve Bank of India has considered in its circular that interest should be paid at the rate of saving banks interest rate on overdue deposits. Accordingly, the assessee bank has made the provision of Rs.83.00 crores as on the date of balance sheet, i.e., 31.03.2009. No such provision is proved to have been made by the assessee bank prior to this circular. However, the

AO has observed that the assessee failed to identify the customers to whom such interest is payable and for which period and that the statutory auditors of the bank have qualified that the bank has changed the method of account. The ld. AR submitted that it is not the change in the method of accounting, but it was the change in accounting policy which is necessary to follow the guidelines of RBI in preparing the financial statement. The ld. CIT(A) has also accepted the view taken by the assessee and relied on a decision as is applicable to this case. However, the claim of assessee, in our opinion, is not acceptable until it is ascertained that the actual payment of the provision has been made to the customers or not. We, therefore, restore this issue to the file of AO for the limited purpose to verify whether actual payment of the provision has been made to the customers or not and to decide the same accordingly as per law. Needless to say, the assessee shall be given reasonable opportunity of being heard. Accordingly, ground No. 3 of Revenue's appeal for A.Y. 2009-10 is allowed for statistical purposes."

Following the above findings of the Tribunal, we restore this issue to the file of AO to decide the same afresh in the light of directions given by the Tribunal in appeal of Revenue for A.Y. 2009-10, as reproduced above. Accordingly, grounds Nos. 9 to 11 of Revenue's appeal are allowed for statistical purposes.

9. The last issue involved in appeal of the Revenue relates to deletion of addition of Rs.527.93 crores made on account of excess deduction u/s. 36(1)(viiia) of the IT Act. In our considered opinion, this issue has been properly dealt with by the ld. CIT(A) after appropriate consideration of the relevant provisions of law. The observations made by the ld. CIT(A) in the impugned order read as under :

"4.5.1 In ground no. 10,11,12 & 13 of appeal the plea of the appellant inter alia is that the AO has erred in making a disallowance of Rs. 527.93 crores as excess deduction claimed u/s 36(1)(viiia) of the Income Tax Act, 1961. The assessee has claimed a deduction of Rs. 470.65 crores u/s 36(1)(viiia) of the Income Tax Act. 1961. The AO in his order, against the above deduction of Rs. 470.65 crores u/s 36(1)(viiia), has made a disallowance of Rs. 527.93 crores, which is more than the

deduction claimed by the assessee. The break-up of Rs. 527.93 crores shows that Rs. 241.63 crores is on account of excess deduction claimed relating to the assessment years 2006-07 to 2009-10 and Rs. 286.30 crores relating to the year under consideration. AO has not given any working and basis for arriving at the year wise quantum of excess deduction claimed. There is no provision under the Income Tax Act, which allows the AO to make any disallowance / addition in any year of an amount not related to that year or related to other years. The addition if any to be made, is required to be made in the relevant year. Therefore, the addition of Rs. 241.63 crores on account of alleged excess deduction claimed in AY 2006-07 to AY 2009-10 is erroneous and legally not sustainable.

4.5.2 The only ground for disallowance made by the AO appears to be that the deduction is to be made after adjustment for the opening balance. The above assumption by the AO is erroneous because there is nothing provided under the provision of sec. 36(1)(viiia) which talks about adjustment for opening balance. The section simply says that while calculating the business income of the assessee u/s 28, deduction u/s 36(1)(viiia) will be allowed in respect of any provision for bad and doubtful debts made by the bank which is limited to certain percentages as specified in the section. The relevant extracts of the provision of sec. 36(1)(viiia) say :-

36. (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—

[(viiia) [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 [or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank], an amount [not exceeding seven and one-half per cent] of the total income [computed before making any deduction under this clause and Chapter VIA) and an amount not exceeding [ten] per cent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner :

[Provided that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed in 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 accordance with the guidelines issued by it in this behalf, for an amount not exceeding five per cent of the amount of such assets shown in the books of account of the bank on the last day of the previous year:]

[Provided further that for the relevant assessment years commencing on or after the 1st day of April, 2003 and ending before the 1st day of April, 2005, the provisions of the first proviso shall have effect as if for the words "five per cent", the words "ten per 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 by the Central Government;

Provided also that no deduction shall be allowed under the third proviso unless such income has been disclosed in the return of income under the head "Profits and gains of business or profession." ]

4.5.3 There is nothing mentioned in the said section about opening balance or closing balance. Each year is an independent year and the income u/s 28 is calculated every year. Therefore the deductions allowed by the Income Tax Act for computing income u/s 28 should be calculated for each year. The provision for bad and doubtful debts is debited to the profit & loss account in each year according to the guidelines prescribed by Reserve Bank of India for assets classification. However for the purpose of claim of deduction under the provisions of Income Tax Act, the allowability is computed according to the provisions of sec. 36(1)(viiia). On a reading of the above section, it is clear that while computing the income chargeable u/s 28, deduction is allowed in respect of any provision for bad and doubtful debts made by a scheduled bank which cannot exceed 7.5% of total income and 10% of aggregate average advances made by the rural branches of such bank in the prescribed manner. The manner of computation of the aggregate average advances in respect of rural branches is prescribed in Rule 6ABA which is as under:

- (a) the amounts of advances made by each rural branch as outstanding at the end of the last day of each month comprised in the previous year shall be aggregated separately;
- (b) the sum so arrived at in the case of each such branch shall be divided by the number of months for which the outstanding advances have been taken into account for the purposes of clause (a);
- (c) the aggregate of the sums so arrived at in respect of each of the rural branches shall be the aggregate average advances made by the rural branches of the scheduled bank.

The appellant submitted that the Bank follows the above rules for calculation of aggregate average advances in respect of rural branches and duly obtains audited statements from all the auditors who are carrying out the audit at the respective rural branches. Appellant also submitted the audited statement of aggregate average advances in respect of rural branches. The claim of aggregate average advances of rural branches has also been made on the basis of the audited statements of the rural branches as per the Rule 6ABA.

4.5.4 From the computation of income it is clear that the appellant has claimed the deduction u/s 36(1)(viiia) as per the provision which is sum of the amount not

exceeding 7.5% of the total income before making any deduction under this clause and chapter VI-A i.e. 7.5 % of Rs. 22,16,97,03,324/- (Rs. 166,27,27,749/-) and 10% of average aggregate advances pertaining to rural branches i.e. (10% of Rs. 3,043,77,68,253/-) Rs. 304,37,76,800/- as per auditor certificate qualifying the deduction under rule 6BA read with sec 36(1)(viiia). The claim made by the appellant u/s 36(1)(viiia) is to the extent it does not exceed 7 ½ % of the total income and an amount not exceeding 10% of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner. In view of the above, the arbitrary disallowance made by the AO cannot be sustained. Therefore, the same is deleted and appeal is allowed in this ground.”

Having gone through the above findings of the Id. CIT(A), based on the relevant provisions of law, we find no justification to interfere with the decision reached by the Id. CIT(A) on this count. The Id. Departmental representative could not be able to adduce any cogent material on record to repudiate the above observations of the CIT(A). We accordingly, confirm the impugned order on this issue. Grounds Nos. 12 & 13 of Revenue’s appeal are dismissed.

10. In the result, the appeal of the assessee is dismissed and that of the Revenue is partly allowed for statistical purposes, as indicated above.

Order pronounced in the open court on 11.09.2017.

**Sd/-**  
**(I.C. Sudhir)**  
**Judicial member**

**Sd/-**  
**(L.P. Sahu)**  
**Accountant Member**

Dated: 11.09.2017

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