

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BENGALURU**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
and
SHRI LALIT KUMAR, JUDICIAL MEMBER**

<i>Sl. No.</i>	<i>ITA No. & Asst. year</i>	<i>Appellant</i>	<i>Respondent</i>
1	753/Bang/2011 (2008-09)	Asst. Commissioner of Income-tax, Circle 2(1), Mangalore.	M/s.Karnataka Bank Ltd. Near Mahaveer Circle, Pumpwell, Mangalore. PAN:AABCT 5589 K
2	1334/Bang/2012 (2009-10)	M/s. Karnataka Bank Ltd. Mangalore.	Asst. Commissioner of Income-tax, Circle 2(1), Mangalore.
3	1396/Bang/2012 (2009-10)	Asst. Commissioner of Income-tax, Circle 2(1), Mangalore.	M/s.Karnataka Bank Ltd. Mangalore.
4	1335/Bang/2012 (2010-11)	M/s. Karnataka Bank Ltd, Mangalore.	Asst. Commissioner of Income-tax, Circle 2(1). Mangalore.
5	1397/Bang/2012 (2010-11)	Asst. Commissioner of Income-tax, Circle 2(1). Mangalore.	M/s.Karnataka Bank Ltd, Mangalore.
6	1265/Bang/2013 (2011-12)	-do-	-do-
7	1335/Bang/2013 (2011-12)	M/s.Karnataka Bank Ltd, Mangalore.	Asst. Commissioner of Income-tax, Circle 2(1). Mangalore.

AND

CO No.52/Bang/2011
(In ITA No.753/Bang/2011)
(Assessment year : 2008-09)
(by the assessee)

Assessee by : Shri A. Raghavendra Rao, CA
Revenue by : Shri R.K.Jha, CIT(DR)

Date of hearing : 09/11/2017
Date of pronouncement : 19/01/2018

O R D E R**Per INTURI RAMA RAO, AM :**

These are appeals filed by the assessee as well as the revenue directed against different orders of the Id. Commissioner of Income-tax (Appeals), Mysore for the assessment years 2008-09, 2009-10, 2010-11 and 2011-12. The assessee filed cross objection for the assessment year 2008-09. Since common issues are involved, all these appeals were heard together and are disposed of by this common order for the sake of convenience.

ITA No.753/Bang/2011 (Assessment year: 2008-09):

2. This is an appeal filed by the revenue directed against the order of the Id. Commissioner of Income-tax (Appeals), [CIT(A)] Mysore, dated 21/06/2011 for the assessment year 2008-09. The assessee had come up in cross objections.

3. Brief facts of the case are that the assessee is a scheduled private commercial bank engaged in the business of banking. The return of income for assessment year 2008-09 was filed on 30/9/2008 declaring total income of Rs.295,82,61,670/-. Against the said return of income the assessment was completed by the Dy.CIT, Circle 2(1), Mangalore, vide order dated 22/12/2010 passed under section 143(3) of the Income Tax Act 1961 (hereinafter referred to as the Act for short) at total income of Rs.295,82,61,679/-. While doing so, the Assessing Office made the following disallowances:

Add: Disallowances and additions as discussed in the order

1.	Expenses related to the exempted income	Rs. 2,97,38,902x
2.	Broken Period Interest on Govt. Securities	Rs. 14,51,83,335
3.	Bad debts written off u/s. 36(1)(vii)	Rs. 31,81,22,183y
4.	Provision for depreciation on Investment	Rs. 5,91,39,314 }
5.	Capital expenditure debited to P & L A/c.	Rs. 36,72,389
6.	Contribution to Pension Fund disallowed u/s.43B	Rs. 5,70,00,000

4. Being aggrieved, an appeal was preferred before the Id.CIT(A) who, vide impugned order granted relief on the issue of Broken period interest of Rs.14,51,83,335/- and also granted relief on account of bad debts written off of Rs.31,81,22,183/- and also depreciation on account of fall in value of investment of Rs.5,91,39,314/- and also granted relief in respect of contribution to Pension fund and confirmed addition on capital expenditure debited to P&L of Rs.36,72,389/-.

5. Being aggrieved revenue is in appeal before us raising the following grounds of appeal:

- 1 ~~The~~ order of learned CITCA) is opposed to law and facts of the case.
- 2.1 ~~The~~ learned CIT(A) erred in allowing the assessee's claim of depreciation of valuation of investment portfolio by treating the investments held by the bank as stock-in-trade.
- 2.2 ~~The~~ learned CITCA) erred in deleting the addition of Rs.2,97,38,902/being expenditure related to exempt income. The learned CITCA) has failed to appreciate the fact for this asst year 2008 -09, the expenditure on exempt income was not worked out as an estimate but in accordance with section 14 A(2) of the IT Act, 1961 read with rule 8D of the IT Rules.
- 2.3 ~~The~~ learned CIT(A) ought to have appreciated that section 14 A does not allow deduction in respect of expenditure in relation to income which do not form part of the total income of the assessee.
- 2.4 ~~The~~ learned CITCA) erred in allowing relief to the assessee. on the issue of broken period of interest, accrued, on government securities.
- 2.5 ~~The~~ learned CIT(A) has failed to appreciate the fact that there is no ambiguity in respect of the date of accrual of the interest on govt securities and accordingly the bank should have offered this income for taxation, when it is following mercantile system of accounting.

- 2.6 The learned CIT(A) failed to appreciate the fact that the distinction made by the assessee in respect of urban bad debts deductible u/s 36(1)(vii) and for rural debts u/s 36(1)(viii) is not tenable as there are no such distinctions as per the said sections.
- 2.7 The learned CIT(A) has not taken into cognizance the fact that the deductions u/s 36(1)(vii) are subject to the provisions of sec 36(2)(v) which is overriding in nature.
- 2.8 The learned CIT(A) erred in not considering the accounting principle that bad debts **actually** written off u/s 36(1)(vii) has to be first adjusted against the provision for bad and doubtful debts created u/s 36(1)(viii) and the balance or **unabsorbed** bad debts only can be written off.
- 2.9 The learned CIT(A) has failed to appreciate the fact that the assessee bank has followed the RBI guidelines for valuation of investment portfolio for the purpose of books but has treated the entire investments as stock-in-trade and valued the same as per least of cost or market value, values for income tax purpose only thereby making a claim for a notional loss. Only real profit/loss **can be recognized** under the I T Act and not the notional loss arrived at by valuing investment portfolio as per LCM Values.
- 2.10 The CBDT Circular No.665 directs the Assessing Officers to approach the issue of valuation of investment portfolio held by the banks in line with the RBI guidelines issued from time-to-time. The Ld. CIT(A) has not **considered** this Circular properly.
- 2.11 ~~For~~ The appellant craves leave to add, alter or amend all or any of the grounds of ~~appeal~~ before or at the time of the hearing.
- 2.12 ~~For~~ these and such other grounds that may be urged at the time of hearing it is ~~prayed~~ that the order of the CIT (A) may be cancelled and that of the Assessing Officer restored.
6. Ground Nos. 1, 2.6 and 2.7 are general in nature and do not require any adjudication.
7. Ground No.2.1 challenges the finding of the Id.CIT(A) granting relief on account of addition of depreciation on valuation of investments. The facts leading to this addition, as set out by the Assessing Officer are as under:

4. PROVISION FOR DEPRECIATION ON INVESTMENT:

4.1 The assessee Bank has claimed an amount of Rs.5,91,39,314/- being provision for depreciation on investment as per the Income Computation Statement. Vide letter dt. 18-11-2010, the assessee Bank was requested to explain the eligibility of the claim made. The assessee Bank vide its letter dt. 26-11-2010 stated that the above amount claimed represents reversal of surplus provision held in the books of accounts, which was offered to tax in the earlier years. The amount has been claimed because, for Income-tax purpose, whatever provisions made in the books of accounts as per RBI Guidelines is added back and separate claim is made for depreciation on investment by treating the entire investment as Stock-in-Trade.

4.2 The assessee's contention is not acceptable, as in earlier years. The Department has taken a consistent stand of disallowing any claim of depreciation on valuation of investment portfolio, treating the entire investment as Stock-in-trade and has insisted upon valuing the investments and claiming the depreciation on valuation of investments as per RBI Guidelines.

4.3 According to the assessee, the above amount of Rs.5,91,39,314/- represents reversal of surplus provision for depreciation on investment held in the books of accounts as per RBI Guidelines. The Department is allowing the claim of depreciation on investments, if the same is valued as per RBI Guidelines. At the same time, any surplus provision has to be reversed in the P & L A/c. In the instant case, the assessee Bank has taken a dual stand to their advantage as could be seen from their letter dt.26-11-2010. The assessee Bank has made a claim of Rs.20,56,25,224/- being depreciation on Securities shifted from Available for Sale category to Held to Maturity category. This shifting of investment has been done as per RBI Guidelines and the resultant depreciation has been claimed. But for valuing investment for Income-tax purpose, the Bank is treating entire investments as Stock-in-Trade. This dual stand adopted by the assessee Bank gives an undue advantage as far as taxable income is concerned. Accordingly, the surplus provision worked out by the assessee Bank for depreciation on investments in accordance with RBI Guidelines of **Rs.5,91,39,314/-** is disallowed.

4.4 The issue of valuation of investment portfolio is in dispute before various Appellate Authorities for earlier assessment years.

7.1 On appeal before the Id.CIT(A) the Id.CIT(A) granted relief following the decision of the Tribunal in the assessee's own case for earlier years.

7.2 Being aggrieved, the revenue is in appeal before us.

7.3 We heard rival submissions and perused material on material on record. The issue in this ground of appeal is whether fall in value of investment of securities shown as investments in the books of account can be allowed as deduction. An identical issue was dealt with by us threadbare in the case of *Canara Bank vs. JCIT* (68 taxmann.com 128). The relevant paragraphs are reproduced hereunder:

"9.5 We heard the rival submissions and perused the material on record. The short issue in this ground of appeal is whether fall in value of investments made pursuant to SLR requirements of RBI can be allowed as a deduction while computing business income of a banking company. Notwithstanding treatment given in the books of account, it is undisputed fact that investments are made only to comply with the regulations of RBI governing SLR requirement. Even otherwise, the Hon'ble jurisdictional High Court in the case of Karnataka Bank (supra) held that circular issued by the RBI for treatment in the books of account is not relevant for classifying the investments whether stock-in-trade or not. In the present case, undisputedly, assessee-bank has changed its method of accounting by classifying the investments from investments to stock-in-trade. In such a situation, provisions of sec. 45(2) of the Act are attracted. The said provisions of the Act read as under:

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

But here the question is, in the earlier years though investments are shown as investments in the books of account, for income-tax purposes, the same was shown as stock-in-trade. Therefore, assessee-bank changed its method of accounting during the previous year relevant to assessment year under consideration is not a material fact

in deciding the issue in the present appeal. In the earlier years, the same was claimed as stock-in-trade and the resultant loss or gain on account of following the principle cost or market price whichever is less, is recognized for income-tax purpose. In this context, it is apt to reproduce circular No. 18/2015:

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

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

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

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

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

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

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

(Sd.).....

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

From the reading of the above circular, it is clear that investments held by the banking concern are treated as a part of business of the banking company and therefore, the income arising from such investments is treated as part of business income falling under the head 'profits and gains of business'. Though the circular was issued in

the provisions of sec. 80P of the Act, the said principle was equally made applicable to other banks and commercial banks to which Banking Regulation Act, 1949 applies. Therefore, by virtue of the above said circular, investments made by the banking company should be treated as a business asset of the banking company or stock-in-trade. It is well settled in law that CBDT circulars are binding upon the officers who are entrusted with the responsibility of executing the provisions of the Act.

9.6 *The jurisdictional High Court, in the case of Karnataka Bank (supra), after referring to the judgment of the Apex Court in the case of Southern Technology Ltd. v. Jt. CIT [2010] 320 ITR 577/187 Taxman 346 and UCO Bank v. CIT [1999] 237 ITR 889/104 Taxman 547 (SC) held that the directions of the RBI are only disclosed norms and they have nothing to do with computation of taxable income. The jurisdictional High Court further upheld the claim of the assessee-bank following the principle of consistency. Even the Hon'ble Apex Court in the case of UCO Bank (supra) only laid down principle that where the investments are forming part of stock-in-trade, loss arising on account of fall in value of the securities should be recognized and allowed as a deduction. But the above case cited supra does not come to the rescue of the assessee-bank for the reason that the assessee-bank, even in the books of account, has treated the investments as stock-in-trade from the assessment year 2005-06 onwards. Therefore, the question boils down to the one issue whether the change of method of accounting is bona fide or not. It is not the case of the revenue that the assessee-bank changed for a casual period to suit its own purpose. Therefore, the bona fide of the assessee-bank in changing the method of accounting cannot be doubted. Now, it is well settled that the assessee is entitled to change regular method of accounting irrespective of the fact, it results in loss to revenue. Therefore, having regard to the spirit of the circular cited supra and the fact that investments are shown as stock-in-trade in the books of account, loss/depreciation on account of fall in value of securities held by the assessee-bank should be allowed as deduction. Therefore, income arising therefrom should also be treated as business income. The provisions of section 45(2) cannot be applied to the facts of the present case, as in the earlier years, for the purpose of income-tax proceedings, the investments were treated as stock-in-trade.”*

Respectfully following the above decision, we hold that the CIT(A) was correct in law in allowing fall in value of investment as business loss.

8. Ground No. 2.2 challenges the finding of the CIT(A) deleting the addition of Rs.297,38,902/- made under section 14A of the Act. The facts set out by the Assessing Officer on this issue are as under:

1. **EXPENSES RELATED TO EXEMPT INCOME:**

1.1. On verification of the Return of Income filed by the assessee Bank, it is noticed that the Bank has claimed the following as income exempt from taxation:-

1.	Interest on Tax Free Bonds u/s.10(15)	Rs.1,68,83,990/-
2.	Dividend received u/s.10(34)	Rs.1,28,54,912/-

1.2 The Assessee Bank has not debited any expenditure incurred towards earning such income. The same was pointed out to the Assessee Bank vide this office letter dtd. 09-11-2010. It is a known fact that there are certain expenses for earning these exempted income. The actual income which qualifies for exemption can be ascertained only after considering the expenses related to it and such expenses are disallowable under the provisions of Sec.14A of the Income Tax Act. Therefore, it was proposed to disallow expenditure incurred with respect to exempt income in accordance with 14A(2) r.w.Rule 8D of I.T. Rules, 1962. The assessee Bank vide letter dt. 15-11-2010 stated that there is no scope for utilization of manpower in collecting income under the above sources and accordingly, the expenses involved is NIL. The assessee Bank has further stated that it has large amount of cost free funds, hence the investments do not have even the interest cost. The explanation offered by the assessee Bank' is not acceptable, as any income earned should have the related expenditures attributed to it. The Bank's contention that it has invested cost free funds on the tax free

investments is not acceptable, as these investments will always have notional interest cost attached to it. It is pertinent to mention that in the case of Corporation Bank, the Hon'ble ITAT has upheld the disallowance made on this issue in earlier assessment years. The proposal to disallow expenses on exempt income u/s.14A is in line with the decision of the Hon'ble ITAT. The expenditure incurred with respect to exempt income as specified in Section 14A(2) r.w. Rule 8D(2) is worked out as under:

(i)	Amount of expenditure directly relating to income which does not form part of total income	NIL
(ii) A.	Amount of expenditure by way of interest	Rs. 1101,70,85,000
(ii)B	Average value of investment as on the first day and last day of previous year (Rs.161,12,95,000+132,34,84,000/2)	Rs. 187,83,25,000
(ii)C	Average of total assets as on the first and Last day of previous year (Rs.162,22,51,62,000+149,53,27,29,000/2)	Rs.177,81,16,70,000
(iii)	½ % of average value of investment (½ % of Rs.146,73,89,500)	Rs. 93,91,625
	Expenditure in relation to exempt income = (i) + AxB/C+(iii)	= Rs. 11,63,79,685

1.3 The assessee's contention that they have large amounts of cost free funds which were invested is not tenable, as capital and other cost free funds might have been utilized for the purpose of business also.

1.4 The Bank has claimed an amount of Rs.2,97,38,902/- as income exempt from tax. Since Section 14A(2) is presumptive in nature, the disallowance of expenditure in relation to exempt income is restricted to the income claimed to be exempt for taxation, i.e. Rs.2,97,38,902/-.

8.1 On appeal before the Id.CIT(A), the Id.CIT(A) deleted the addition following the decision of the Tribunal in ITA No.711/Bang/2010 dated 25/02/20 11 for the assessment year 2007-08.

8.2 Being aggrieved, the revenue is in appeal before us.

8.3 We heard rival submissions and perused the material on record. An identical issue was decided by us in the case of *Canara Bank* (supra) wherein it was held that resort to disallowance under section 14A can be made only in case where the Assessing Officer recorded satisfaction as to how the claim of the assessee that no expenditure was incurred to earn exempt income is incorrect. After placing reliance on the decision of the jurisdictional High Court in *CCI Ltd. v. Jt. CIT* [2012] 206 Taxman 563 (Kar.) and *Canara Bank vs. Asst.CIT* (228 Taxman 212(Kar) it was held therein as follows:

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

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

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

"METHOD FOR DETERMINING AMOUNT OF EXPENDITURE IN RELATION TO INCOME NOT INCLUDIBLE IN TOTAL INCOME

8D(1) Where the Assessing Officer having regard to the accounts of the assessee of the previous year, is not satisfied with—

- (a) the correctness of the claim of expenditure made by the assessee ; or*
- (b) the claim made by the assessee that no expenditure has been incurred*

in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).

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

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

14.6 Sub-rule(1) of rule 8D extracted above states that, the AO having regard to accounts of the assessee and not being satisfied with the correctness of the claim of expenditure made by the assessee or claim that no expenditure was incurred in relation to income which does not form part of the total income can go on to determine disallowance under sub-rule (2) to rule 8D of the IT Rules. Sub-rule (2) does not come into operation until and unless specific condition in sub-rule (1) is satisfied. This position is reiterated by the Hon'ble High Court of Delhi in the case of Maxopp Investment Ltd. v. CIT [2012] 347 ITR 272/[2011] 203 Taxman 364/15 taxmann.com 390 (Delhi) and Bombay High Court in Godrej & Boyce Mfg. Co. Ltd. v. Dy. CIT [2010] 328 ITR 81/194 Taxman 203. The AO had not given any finding as to how the claim of the assessee-bank that no expenditure was incurred to earn exempt income was incorrect. In the absence of such finding, resort cannot be had to the provisions of sub-rule (2) of rule 8D as held by the Hon'ble High Court in the cases cited supra. Furthermore, it is undisputed fact that exempt income is earned from securities which are held as a part of stock-in-trade. The Hon'ble Bombay High Court in the case of India Advantage Securities Ltd (supra) held that provisions of sec.14A have no application in case assets are held as stock-in-trade. Therefore, provisions of sec.14A cannot be applied in the present case. Furthermore, in the assessee's own case, the Hon'ble High Court of Karnataka held that no notional expenditure can be attributed to exempt income in the case cited supra. Accordingly, we hold that no disallowance can be made u/s 14A of the Act. The ground of appeal of revenue is dismissed.

8.4 The facts in the present case are identical to the facts in the case of *Canara Bank* (supra). Respectfully following the decision of the coordinate bench in the case of *Canara Bank* (supra) we hold that no disallowance under section 14A is warranted. Hence, the ground of appeal No.2.2 raised by the revenue is dismissed.

9. Ground No.2.3 challenges the finding of the CIT(A) granting relief on account of addition made on broken period interest. The facts set out by the Assessing Officer on the above addition are as under:

2. **BROKEN PERIOD INTEREST RECEIVED ON GOVT.SECURITIES:**

2.1 In the Profit & Loss A/c. for the year ending 31-3-2008, the assessee Bank has credited an amount of Rs.431,25,25,137/- being Interest on Securities. As

per the Schedule-A to the Return of Income, wherein the business income for the year has been worked out, an amount of Rs.416,73,41,802/- is said to be the gross interest on Securities realized for the previous year i.e. F.Y. 2007-08, leaving a balance amount of Rs.14,51,83,335/- being the interest due, but yet to be realised. As per Schedule 18 of the Annual Report submitted, it is mentioned

that the Income & Expenditure are accounted for on accrual basis except receipt of Commission, Exchange, Rent on Safe Deposit Lockers, which are accounted on Cash basis. Since the Bank is following Mercantile System of accounting in respect of interest, the balance interest amount of Rs.14,51,83,335/- should have been considered for taxation purpose for the current assessment year itself. Accordingly, it was proposed to add back this amount to the total income.

2.2 The assessee Bank vide its letter dt.15-11-2010 replied that as per the accounting system followed by the Bank, interest on Govt. Securities is accounted on the basis of receipt for Income-tax purpose, quoting the case of Canara Bank reported in 195 ITR 65. The assessee Bank has contended that the holder of Govt. Securities does not get a right to receive the interest before the due date and interest does not accrue at any time before the specified date. Hence, interest actually received only is returned for the Income-tax purpose, though it is accounted by taking proportionate interest in the final accounts.

2.3 The contention of the assessee Bank is not acceptable. The interest received on Govt. Securities is accounted in Mercantile basis for the purpose of final accounts. The same treatment should be meted out for Income-tax Return also, as the Bank is following Mercantile System of accounting. Moreover, the Department has preferred appeal to the Hon'ble Supreme Court of India against the decision of the Hon'ble High Court of Karnataka on this issue. The final verdict of the Hon'ble Supreme Court is awaited. As such, the issue is still under dispute.

2.4 In the light of the above, the explanation offered by the assessee Bank is not acceptable. Reference is invited to Section 145 of the I.T.Act, which reads as follows:-

Sec.145.

(1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the Assessee Bank.

(2) The Central Government may notify in the Official Gazette from time to time accounting standards to be followed by any class of Assessee Bank or in respect of any class of income.....

2.5 According to these provisions, it is explicitly known that the assessee Bank cannot follow dual method of accounting i.e. one method to arrive at the book profits and the other method to arrive at the taxable income in the return of income. After the substitution of Sec. 145(1) and deletion of the head of income 'Interest on securities', the Assessee Bank should have offered the income from interest on securities on accrual basis only as that is the method of accounting consistently followed by it. Considering the above discussions and careful reading of the Sec. 145, it is concluded that the assessee Bank has understated its taxable income to the extent of interest due but not realized for this assessment year. So, the difference between the amount offered for taxation and the amount shown in the P&L A/c. i.e. interest on securities including interest accrued but not due is brought back to the tax net.

2.6 Accordingly, the difference of **Rs.14,51,83,335/-** {Rs.431,25,25,137/- (-) Rs.416,73,41,802/-} is disallowed and added back to the total income.

9.1 On appeal, before the Id.CIT(A), relief was granted by the Id.CIT(A) placing reliance on the order of the Tribunal in the assessee's own case for the assessment year ITA 711/Bang/2010 dated 25/02/2011 for assessment year 2007-08.

9.2 Being aggrieved, the revenue is an appeal before us.

9.3 We heard rival submissions and perused the material on record. This issue is no longer *res integra* as the jurisdictional High Court in the ITA 147/08 dated 12/9/2012 in the assessee's own case, following the decision of Hon'ble Bombay High Court in the case of *CIT vs. Bank of Rajasthan Ltd.* (326 ITR 526)(Bom) held as under:

"16. It is declared u/s 5 of the Act that when interest is accrued or deemed to have been accrued, it is liable to tax. The word 'accrued' has defined the legal connotation. The interest that becomes due or liable to be payable whether or not it is paid, the interest is accrued or deemed to have been accrued. If the interest does not become due and not liable to pay such part of the interest arise, it cannot be said that the interest has become accrued. It appears from the facts of the case that the assessee is a bank. For its accounting purpose, it has shown the proportionate interest entitled to received on the Government securities. But for the assessment year, although it is not accrued, in the legal sense and in terms of

sections 5 and 145 of the I.T.Act. The contention of the Revenue that in the books of accounts, the proportionate interest shown for the broken period in the balance sheet, should be construed as the income accrued, is not tenable. In other words, the income which has become due and payable should alone be considered as income accrued and that should be offered as tax. The contention that Assessing Officer is entitled to tax on the interest income although not due and payable as accrued, is untenable. The fact that the assessee in its internal books of accounting mentions the proportionate interest, which is entitled to receive, in its balance sheet for the purpose of profit and loss cannot be deemed as income accrued, unless such income has become due and payable. On the basis of such amount, the AO has no right to charge the interest, which has not become due and payable.

17. In fact, we find not inconsistency between amended provisions of sections 145 and 5 of the IT Act. It may be that the amended provisions of section 145 now insists mercantile system of accounting where on the income accrued the tax can be levied whether or not received unlike in cash system. Merely because in the books of accounts the interest income, which is not due and payable is shown in the account of the assessee, that itself will not give right to A.O to tax unless it has become due and payable as per provisions of section 5 of the IT Act.

In that view, the questions of law are answered against the revenue. Insofar as the factual situation is concerned, the AO has to redo the assessment regarding interest on the Government securities in light of the observations made above. Accordingly, the appeals are disposed of. The Assessing Authority while re-doing, shall give opportunity to the assessee by issuance of notice and giving opportunity of hearing."

The decision of the Id.CIT(A) is in consonance with the law laid down by with the Hon'ble jurisdictional High Court in the case of the assessee, therefore, we do not find any reason to interfere with the order of the Id.CIT(A). The ground of appeal filed by the revenue is dismissed.

10. Ground Nos.2.4 and 2.5 challenge the finding of the Id.CIT(A) deleting addition made on account of bad debts written off. The facts as set out by the Assessing Officer in paragraph 3 to 3.7 are as under:

3. **CLAIM OF BAD DEBTS WRITTEN OFF U/S.36(1)(vii):**

3.1 As per the Schedule-A to the Return of income, the assessee Bank has claimed an amount of Rs.31,81,22,183/- towards Bad Debts written off u/s.36(1)(vii). It is also seen that an amount of Rs.54 crores is claimed towards provision for Bad & Doubtful Debts u/s.36(1)(vii). As per the proviso to Section 36(1)(vii) & its explanation, the eligible deduction u/s.36(1)(vii) is limited to the amount by which such debt exceeds the credit balance in the provision for Bad & Doubtful Debts account u/s.36(1)(vii).

3.2 Vide this Office letter dt.09-11-2010, the assessee Bank was enlightened that they are not eligible for separate deduction u/s.36(1)(vii) as the amount claimed of Rs.31,81,22,183/- is already subsumed by the provision made u/s.36(1)(vii) in respect of provision for bad and doubtful debts.

3.3 Vide reply dated 15-11-2010, the assessee Bank has stated that in respect of matters dealt with by each of the clause of Section 36(1) are independently deductible in computing the income u/s.28. It is also stated that all the bad debts written off and claimed u/s.36(1)(vii) are in respect of advances made by Bank in Urban Branches and Section 36(1)(vii) provides provision of 10% of the aggregate average advances made by the Rural Branches. The assessee Bank has relied upon certain case laws in favour of their arguments.

3.4 The actual provision made as per the books of accounts towards bad & doubtful debts is Rs.54 crores. Apart from this, the assessee Bank has claimed Rs.31,81,22,183/- u/s.36(1)(vii). The Section 36(1) of the I.T. Act and its sub-clauses (vii) & (vii) clearly stipulate the deductions eligible. The extract of Sec. 36(1) is reproduced hereunder for ready reference

"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—

(i) to (vi) -----

(vii) subject to the provisions of sub-section (2), the amount of [any bad debt or part thereof which is written off as irrecoverable in the accounts of the Assessee Bank for the previous year] :

[Provided that in the case of [an Assessee] to which clause (vii) applies, the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under that clause";

[Explanation : For the purpose of this clause, any bad debt or part thereof written off as irrecoverable in the accounts of the assessee shall not include any provision for bad & doubtful debts made in the accounts of the assessee]

3.5 As seen from the computation of income, the provision for bad & doubtful debts made in the books and claimed u/s.36(1)(vii) is Rs.54 crores and Bad debts written off claimed u/s.36(1)(vii) is Rs.31,81,22,183/-. From the above, it is clear that the amount of Bad Debts written off and claimed u/s.36(1)(vii) is subsumed in the provision for Bad & Doubtful debts made in the books of accounts and claimed u/s.36(1)(vii) at Rs. 54 crores.

3.6 Hence, as per the proviso and its explanation referred to above, the Assessee Bank is not eligible to claim bad debts u/s.36(1)(vii) of the Act. It is further clarified by the Instructions issued by the CBDT that in respect of claim for bad debts u/s.36(1)(vii), only such amount of bad debts written off as exceeds the credit balance available in the provision for bad & doubtful account created u/s. 36(1)(vii) of the Act.

3.7 By careful reading of the Act i.e. proviso to Sec. 36(1)(vii), it is evident that the Assessee Bank is eligible for claim of any bad debt or part thereof which is written off as irrecoverable only if the bad debt written off exceeds the credit balance in the provision for bad & doubtful debts account, that too limited by the excess quantum. Moreover, the claim made U/s.36(1)(vii) in respect of Bad debts should not include any provision for Bad & Doubtful debts made in the accounts of the Assessee. In the Assessee Bank's case, the claim of bad debts written off is Rs. 31,81,22,183/- is not justified since the provision for bad & doubtful debts as per books includes the bad debts written off. Therefore, the separate claim of bad debts written off u/s.36(1)(vii) by the assessee Bank is not allowed and added to the total income. Further, this issue is still in dispute before various Appellate Authorities for earlier assessment years.

Thus, the disallowance under this head is **Rs. 31,81,22,183/-**

10.1 Being aggrieved, the assessee preferred an appeal before the Id.CIT(A) who granted relief.

10.2 Being aggrieved, the revenue is in appeal before us. We heard rival submissions and perused the material on record. An identical issue

was decided by us in the case of *Canara Bank* (supra) 68 tax.com 128 wherein it was held as follows:

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

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

13.7 Provisions of section 36(1)(vii) grants deduction for amount of bad debts or part thereof written off by the assessee as irrecoverable in the accounts subject to provisions of sec.36(2) of the Act. The case of the AO is that the assessee-bank had not written off bad debts in the books of account as it is only a mere provision and therefore, disallowed the claim. Then the question as to what is meant by write off. Similar issue had come up before the Hon'ble Apex Court in the case of *Vijaya Bank* (supra) wherein it was held that debiting the profit and loss account by an amount of provision for bad debts, reducing provision for bad and doubtful debts from debtors account in balance-sheet amounts to write off. In the present case, it is undisputed fact that provision for bad and doubtful debts was reduced from sundry debtors account in the balance-sheet. Therefore, it satisfies the law laid down by the Hon'ble Apex Court in *Vijaya Bank* (supra). The same reasoning was followed in the decisions cited by the learned counsel for the assessee-bank. The Id. CIT(A) also, after considering the law and the precedents on the issue, had come to the conclusion that it amounts to write off and the claim was allowed. Since the findings of the Id. CIT(A) are in line with the law laid down by the Hon'ble Apex Court, we uphold the order of the Id. CIT(A) and dismiss the grounds of appeal (No. 2) filed by the revenue.”

10.3. In the present case facts relating to this issue have not been brought out by the Assessing Officer. Therefore we remand this issue back to the file of the Assessing Officer for the limited purpose of verifying that the amount of claim under section 36(1)(vii) should be limited to the amount written off in the books of account i.e. provision for bad debts debited to P and L account and reduced from sundry advances account. It may not be out of place to mention here that the provisions of section 36(1)(vii) and 36(1)(viiia) are independent of each other and the assessee is entitled to deduction u/s 36(1)(vii) in addition to the amount of deduction for provision for bad and doubtful debts u/s 36(1)(viiia) of the Act.

11. In the result the appeal filed by the revenue is partly allowed for statistical purposes.

Cross Objection No.52/Bang/2011 (Assessment year 2008-09):

12. The cross objection is filed by the assessee against the order of the Id. CIT(A) u/s 154 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] dated 21/01/2011 confirming disallowance u/s 14A of the Act.

The cross objection is not maintainable as the cross objection does not arise out of the order of the Id.CIT(A). A separate remedy is available under the provisions of Act against the order of the Id.CIT(A) passed u/s 154 of the Act.

13. In the result, cross objection filed by the assessee is dismissed.

ITA Nos.1334/Bang/2012 and ITA No.1396/Bang/2012 (Assessment year: 2009-10):

14. These are cross appeals filed by the revenue as well as the assessee directed against the order of the Learned Commissioner of Income-tax (Appeals), Mysore, [CIT(A)] dated 29/05/2012 for the assessment year 2009-10.

15. Brief facts of the case are that the return of income for the assessment year 2009-10 was filed on 29/09/2009 declaring total income of Rs.451,85,53,540/-. Against the said return of income, the

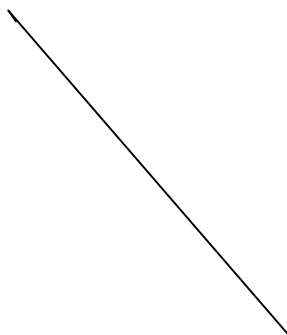
assessment was completed under section 143(3) vide order dated 09/03/2011 at total income of 535903 3110 stop while doing so the assessing officer made the following additions:

- i) Disallowance u/s 14A of Rs.341,48,169/-
- ii) An addition on account of broken period interest of Rs.6,45,73,400/-
- iii) Bad debts written off of Rs.7,72,64,647/-
- iv) Disallowance u/s 40(a)(ia) on ATM charges of other banks - Rs.6,44,93,357/-.

15.1 Being aggrieved by the assessment order, an appeal was preferred by the Id.CIT(A), who vide impugned order, granted relief on account of broken period interest and also on account of bad debts written off. However, the Id.CIT(A) confirmed the addition on account of disallowance u/s 14A of the Act and also u/s 40(a)(ia) of the Act.

15.2 Being aggrieved by this order both the assessee as well as the revenue is in appeal before us.

30. The assessee raised the following grounds of appeal in ITA No.1334/Bang/2012:



**ALLEGED
ESTIMATED
EXPENDITURE
Rs.3,41,48,167/-**

1. The learned Assessing Officer & CIT(A) is not justified in adopting Rule 8D for disallowance u/s.14A of the Income Tax Act which gives an unrealistic result of more than three times more expenditure than the exempted income.
2. The learned Assessing Officer & CIT(A) both had failed to note that there is absolutely no interest cost in investment yielding exempted income. The total accumulated investment in Securities yielding exempted income till 31.03.2009 is only Rs.15,041 Lakhs as against the total cost free funds available for such investment of Rs.2,72,404 Lakhs. Therefore there is absolutely no real interest cost on such investments.
3. The Assessing Officer also has failed to note the principles laid down in the decision of the Karnataka High Court in re. Maharashtra Apex Corporation Ltd. vs. CIT (2006) 286 ITR 585 (Kar). The said decision holds good to the instant case.

**FIRST MAIN
PURPOSE OF
HOLDING
INVESTMENT TO
MAINTAIN SLR –
SEC. 24**

4. The appellant submits that u/s.24 of the Banking Regulation Act, 1949 the appellant Bank's main business being banking "*shall maintain in India in unencumbered approved securities valued at a price not exceeding the current market price, an amount which shall not at the close of business on any day be less than 20 per cent of the total of its demand and time liabilities in India. (such approved Securities shall also include Securities lodged with another institution for an advance or any other credit arrangement to the extent to which securities have not been drawn against or availed of.)*"

Note: The percentage applicable for the appeal year is 25%.

This clearly indicates the main purpose of holding of investments in Securities is a very essential requirement to be in banking business under the Banking Regulation Act, 1949

<p>SECOND PURPOSE OF HOLDING SECURITIES – BUSINESS – SEC. 24</p>

5. The Banking business under Banking Regulation Act is defined u/s.5 as follows:

*'(b) "banking" means the accepting, for the **purpose of lending or investment**, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise;*

*(c) "banking company" means any company **which transacts the business of banking** in India.'*

Again Sec.6 of the Banking Regulation Act lists out Banking business as follows:

"Forms of business in which banking companies may engage – (1) In addition to the business of banking, a banking company may engage in any one or more of the following forms of business namely:-

*(a) the borrowing, raising, or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting; discounting, buying, selling collecting and **dealing in** bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, **debentures, certificates, scripts and other instruments, and securities** whether transferable or negotiable or not; the granting and issuing of letters of credit, traveler's cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on commission, underwriting and **dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds**; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others, the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposits or for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities;*

The combined reading of Section 5(b) & (c) [definition of banking] and Section 6(a) [business of banking] clearly indicates that the Securities and shares held as investment is for the purpose its business activities of dealing in the same.

DEALING IN INVESTMENTS & SECURITIES
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6. The learned Appellate had ignored the following details regarding the dealing in the investments/Securities:

- (i) Total purchases of investments during the year : Rs.28784.50 Cr.
- (ii) Total Sales of Investments during the year : Rs.27172.32 Cr.
- (iii) Income in Investment dealing during the year : Rs.190.67 Cr.

The incidental tax free income received because of the investment unsold as on the declaration of the other income of Rs.353.15 Cr.

7. The Assessing Officer has failed to note that the dealing in investments are taking place with an intention of making profit in such dealings and not with the main object of earning income which is incidental to the trade.

8. The Assessing Officer also has failed to note that any expenditure direct or indirect incurred in acquisition of the investment is a charge against the income earned in dealing in such investments.

9. The twin object of holding the Securities is to comply with the statutory liquid ratio required u/s.24 of the Banking Regulation Act and as part of Banking business in accordance with Sec.5(b) & (c) and 6(a) of the Banking Regulation Act. The shares are held and dealt in accordance with the mandatory statutory requirements of Banking business. The income earned in dealing in shares is significant portion of the overall banking income. In the overall activity the Bank earns **incidentally** the exempted income the interest and dividend.

10. The very purpose of holding investment is not to earn the interest or dividend and it is only incidental. As it is an incidental income, no expenditure can be alleged to be directly or indirectly related to earn the said income. The entire expenditure incurred to hold and dealing in the investments is pertaining to the business activity of holding investment to comply the twin statutory requirement i.e. SLR coupled with carrying on dealing in the same.

11. The Appellate and the Assessing Officer has not considered the decision of the Karnataka High Court in re CCI Limited v. JCIT (2012) 71 DTR (Kar) 141 which is on all fours with the facts of the instant case. In the said case the Hon'ble High Court has held as follows:

"When no expenditure is incurred by the assessee in earning the dividend income, no notional expenditure could be deducted from the said income. It is not the case of the assessee retaining any shares so as to have the benefit of dividend. 63 per cent of the shares, which were purchased, are sold and the income derived therefrom is offered to tax as business income. The remaining 37 percent of the shares are retained. It has remained unsold with the assessee. It is those unsold shares have yielded dividend, for which, the assessee has not incurred any payment of tax, if any expenditure is incurred in earning the said income, the said expenditure also cannot be deducted. But in this case, when the assessee has not retained shares with the intention of earning dividend income and the dividend income is incidental to his business of sale of shares, which remained unsold by the assessee, it cannot be said that the expenditure incurred in acquiring the shares has to be apportioned to the extent of dividend income and that should be disallowed from deductions. In that view of the matter, the approach of the authorities is not in conformity with the statutory provisions contained under the Act. Therefore, the impugned orders are not sustainable and require to be set aside."

12. In the above case decided by the High Court it was a case where Rule 8D was invoked and disallowance was made. Thus the decision referred is on all fours with the facts of the appellant's case and as such squarely applies to the appellant.

<p>Disallowance u/s.40a(ia) : Rs.6,44,93,357</p>
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13. The Assessing Officer has failed to note that this is not an instance which can be covered u/s.40a(ia) as it is an expenditure recovered by NFS network managed by the IDRBT, Hyderabad set by the RBI and Cash Tree set up by a consortium of Banks led by Bank of India to share their ATMs among themselves. This expenditure was incurred and paid / recovered by the Assessee in the course of business during the year and it is not unpaid / outstanding expenditure on year end date. Hence this is not exigible for disallowance u/s.40a(ia).

14. The CIT(A) and the Assessing Officer have failed to note that this expenditure is not one unpaid for which provision is made in account but one which is incurred and paid during the year. Sec. 40a(ia) is exigible only in case where as per Section itself the amount of expenditure is "payable" as on the year end date and not already paid before the accounting year end.

15. The Assessing Officer and the CIT(A) also have failed to consider the decisions in the following decisions which is applicable to the instant case:

- (i) Karnavathi Cooperative Bank Ltd vs. DCIT (2012) 134 ITD 486 (Ahmedabad)
- (ii) Meriline Shipping Transporters (Vishakhpatnam) v. ACIT (2012) 70 DTR (Visakha) (SB) Trib 81

16. Any other grounds to be urged at the time of hearing.

16. Ground Nos.1 to 12 challenge the finding of the Id.CIT(A) confirming the disallowance u/s 14A of the Act. The Assessing Officer set out the facts in paragraph 1 of the assessment order as under:

1. EXPENSES RELATED TO EXEMPT INCOME:

1.1. On verification of the Return of Income filed by the assessee Bank, it is noticed that the Bank has claimed the following as income exempt from taxation:-

-1.	Interest on Tax Free Bonds u/s.10(15)	Rs.1,13,06,711/-
2.	Dividend received u/s.10(34)	Rs.2,28,41,458/-

1.2 The Assessee Bank has not debited any expenditure incurred towards earning such income. The same was pointed out to the Assessee Bank vide this office letter dtd. 11-02-2010. It is a known fact that there are certain expenses for earning these exempted income. The actual income which qualifies for exemption can be ascertained only after considering the expenses related to it and such expenses are disallowable under the provisions of Sec.14A of the Income Tax Act. Therefore, it was proposed to disallow expenditure incurred with respect to exempt income in accordance with 14A(2) r.w.Rule 8D of I.T. Rules, 1962. The assessee Bank vide letter dt. 22-02-2011 stated that there is no scope for utilization of manpower in collecting income under the above sources and accordingly, the expenses involved is NIL. The assessee Bank has further stated that it has large amount of cost free funds, hence the investments do not have even the interest cost. The explanation offered by the assessee Bank' is not acceptable, as any income earned should have the related expenditures attributed to it. The Bank's contention that it has invested cost free funds on the tax free investments is not acceptable, as these investments will always have notional interest cost attached to it. It is pertinent to mention that in the case of Corporation Bank, the Hon'ble ITAT has upheld the disallowance made on this issue in earlier assessment years. The proposal to disallow expenses on exempt income u/s.14A is in line with the decision of the Hon'ble ITAT. The expenditure incurred with respect to exempt income as specified in Section 14A(2) r.w. Rule 8D(2) is worked out as under:

(i)	Amount of expenditure directly relating to income which does not form part of total income	NIL
(ii) A.	Amount of expenditure by way of interest *	Rs. 1443,82,76,012
(ii)B	Average value of investment as on the first day and last day of previous year (Rs.6326,52,33,000+Rs.8961,48,83,000/2)	Rs. 7644,00,58,000
(ii)C	Average of total assets as on the first and Last day of previous year (Rs.22,85,78,060+Rs. 19339,81,78,000/2)	Rs.21098,81,19,000
(iii)	½ % of average value of investment (½ % of Rs.76,44,00,58,000) Expenditure in relation to exempt income = (i) + AxB/C+(iii)	Rs. 38,22,00,290 = Rs. 523,09,23,243

1.3 The assessee's contention that they have large amounts of cost free funds which were invested is not tenable, as capital and other cost free funds might have been utilized for the purpose of business also.

1.4 The Bank has claimed an amount of Rs.3,41,48,169/- as income exempt from tax. Since Section 14A(2) is presumptive in nature, the disallowance of expenditure in relation to exempt income is restricted to the income claimed to be exempt for taxation, i.e. Rs.3,41,48,169/-.

Thus, the addition under this head is **Rs.3,41,48,169/-**

We heard rival submissions and perused the material on record. It is undisputed fact that facts of the present case are identical to the facts in the assessment year 2008-09 in ITA No.753/Bang/2011. Therefore, for parity of reasons given therein, the grounds of appeal 1 to 12 filed by the assessee are allowed.

17. Ground Nos.13 to 15 challenge the finding of the Id.CIT(A) confirming addition under section 40(a)(ia)of the Act. The facts as set out by the Assessing Officer in paragraph 4 of the assessment order are as under:

4. DISALLOWANCE U/S.40a(ia):

4.1 The assessee Bank has claimed an amount of Rs.21,22,73,406/- as Other expenses. The details of such expenses along with details of TDS compliance, were requested for vide this office letter dt.24.2.2011. In response, the assessee bank has furnished the details vide its letter wherein it is seen that these payments relate to ATM Maintenance charges, ATM replenishment charges, ATM security charges and VISA fees. However, there is also a payment of Rs.6,29,30,020/- towards ATM usage charges of other banks. According to the assessee bank, these payments cannot be quantified at any point of time. These payments are made to the National Financial Switch and Cash Tree consortium, who share these charges with the member banks. However, the charges paid is in respect of service being used by the accountholders of the bank and hence the bank was bound to deduct tax, which it failed to do so, thereby not complied with the provisions of section 40a (ia) of the Income-tax Act 1961. Accordingly, in view of the assessee banks failure to deduct tax, the amount of Rs.6,29,30,020/- paid to NFS and Cash tree is disallowed u/s.40a(ia) of the Income-tax Act 1961. Similarly, payments of Rs.15,63,337/- have been made to VISA for POS transaction on which tax has not been deducted. Hence, this amount of Rs.15,63,337/- is also disallowed. Addition on this account is **Rs.6,44,93,357/-**

17.1 On appeal Id.CIT(A) confirmed the addition.

17.2 Being aggrieved, the assessee is in appeal before us in the present appeal.

17.3 The learned AR of the assessee argued that charges are paid to other banks for use of ATMs by the customers and payments are made to National Financial Switch and Cash Tree Consortium. The charges are not liable for TDS in the light of the CBDT circular No.56 of 12 dated 31/12/2012 and the decision of the Honorable Supreme Court in the case of *CIT vs. Kotak Securities Ltd.*(383 ITR 1)(SC).

17.4 On the other hand, the learned CIT(DR) placed reliance on the orders of the lower authorities.

17.5 We heard rival submissions and perused the material on record. The only issue in the present grounds of appeal is whether the assessee

is liable for tax deduction at source on the charges paid to National Financial Switch and Cash Tree Consortium for use of ATM of other banks by its customers and whether failure to do so attracts the disallowance u/s 40(a)(ia) of the Act. These charges are known as cash management service charges which does not attract TDS provisions in the light of the CBDT circular No.56 of 12 dated 31/12/2012 :

NOTIFICATION NO. SO 3069(E) [NO.56/2012 (F. NO. 275/53/2012-IT(B)), DATED 31-12-2012

[SUPERSEDED BY NOTIFICATION NO. SO 2143(E) (NO.47/2016 (F.NO.275/53/2012-IT(B), DATED 17-6-2016]

In exercise of the powers conferred by sub-section (1F) of section 197A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that no deduction of tax under Chapter XVII of the said Act shall be made on the payments of the nature specified below, in case such payment is made by a person to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934), excluding a foreign bank, namely:

- (i) bank guarantee commission;
- (ii) cash management service charges;
- (iii) depository charges on maintenance of DEMAT accounts;
- (iv) charges for warehousing services for commodities;
- (v) underwriting service charges;
- (vi) clearing charges (MICR charges);
- (vii) credit card or debit card commission for transaction between the merchant establishment and acquirer bank.

2. This notification shall come into force from the 1st day of January, 2013.

Furthermore, the Hon'ble Supreme Court in the case of *Kotak Securities* (supra) held that consultancy managerial services involving services rendered by human efforts where services are made available to all customers and there is nothing special, exclusive or customer service charges, it does not partake character of managerial or Technical Services. In the light of this decision we hold that the assessee bank is not liable for tax deduction at source on these payments. We direct the Assessing Officer to delete addition on account of technical service.

18. In the result the appeal filed by the assessee is allowed.

19. The revenue raised the following grounds of appeal in ITA No.1369/Bang/2012:

- 1 The order of learned CIT(A) is opposed to law and facts of the case.
- 2.1 The learned CIT(A) erred in allowing relief to the assessee on the issue of broken period of interest, accrued, on government securities.
- 3 The learned CIT(A) has failed to appreciate the fact that there is no ambiguity in respect of the date of accrual of the interest on Govt. securities and accordingly the bank should have offered this income for taxation, when it is following mercantile system of accounting.
- 4 The appellant craves leave to add, alter or amend all or any of the grounds of appeal before or at the time of the hearing.
- 5 For these and such other grounds that may be urged at the time of hearing it is prayed that the order of the CIT (A) may be cancelled and that of the Assessing Officer restored.

20. Ground Nos.1, 4 and 5 are general in nature and do not require adjudication.

21. Ground Nos.2 and 3 challenge the finding of the Id.CIT(A) deleting the addition on account of Broken period interest. This issue is decided in favour of the assessee bank by us in the revenue appeal for assessment year 2008-09 in ITA No.753/Bang/2011 For the same reasons, the grounds of appeal filed by the revenue are dismissed.

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

ITA Nos.1335 & 1397/Bang/2012 (Assessment year: 2010-11):

23. These are cross appeals filed by the assessee as well as the revenue directed against the order of the Id. Commissioner of Income-tax (Appeals), Mysore [CIT(A)], dated 29/05/2012 for the assessment year 2010-11.

24. Brief facts of the case are that the return of income for the assessment year 2010-11 was filed on 23/09/2010 declaring loss of Rs.46,02,49,411/- and income under section 115JB of Income Tax Act,1961 [hereinafter referred to as 'the Act']. Subsequently, this return was revised declaring Nil income under the provisions of section 115-JB of the Act. Against the said return of income, the assessment was completed by the Assessing Officer under section 143(3) vide order dated 09/02/2012 at total income of Rs.123,81,35,120/-. While doing so, the assessing officer made the following disallowances:

- i. Addition on account of disallowance u/s 14A -Rs.2,13,44,978/-
- ii. Addition on account of Broken period interest on Government securities - Rs17,73,56,324/-
- iii. Addition on account of bad debts written off -Rs.41,85,00,000/-
- iv. Depreciation on investments- Rs. 96,12,04,010/-.

25. Being aggrieved by the above order, an appeal was preferred before the Id.CIT(A) who, vide order dated 29/05/2012, confirmed(i) liability to tax under section 115 JB of the Act and (ii) addition on account of 40 (a)(ia) of the Act. However, the Id.CIT(A) deleted the addition on account of (i) Broken period interest (ii) addition on account of bad debts written off and (iii) depreciation in the value of investments.

26. Being aggrieved, the assessee is in appeal before us in ITA No.1335/Bang/2012 and the revenue is in appeal in ITA No. 1397/Bang/2013.

27. The assessee raised the following grounds of appeal in ITA No.1335/Bang/2012:

**NON
APPLICABILITY
OF SEC. 115JB**

1. The learned CIT(A) failed to note that it is only the amendment brought by the Finance Act 2012 that has covered all other forms of Companies by introducing sub Sec. 2, Clause (a) & (b) to Sec.115JB. The amendment has made it clear that all other Companies presenting Balance Sheet in any other form other than under provisions of Part II & III of Schedule VI of the Companies Act 1956 are not exigible to Sec. 115JB prior to the Assessment year 2013-14.

2. The CIT(A) also has failed to note the decision in the following cases wherein similar issue is considered.

- (i) Krung Thai Bank PCL vs. JDIT (International Taxation) (2010) 133 TTJ (Mum) 435 & (2010) 45 DTR 218
- (ii) State Bank of Hyderabad vs. DCIT – ITAT, Hyderabad Bench Order dated 07/09/2012 in ITA No.578/Hyd/2010

**ALLEGED
ESTIMATED
EXPENDITURE
Rs.2,13,44,978/-**

3. The learned Assessing Officer & CIT(A) is not justified in adopting Rule 8D for disallowance u/s.14A of the Income Tax Act which gives an unrealistic result of more than three times more expenditure than the exempted income.

4. The learned Assessing Officer & CIT(A) both had failed to note that there is absolutely no interest cost in investment yielding exempted income. The total accumulated investment in Securities yielding exempted income till 31.03.2010 is only Rs.17,144 Lakhs as against the total cost free funds available for such investment of Rs.3,53,923 Lakhs. Therefore there is absolutely no real interest cost on such investments.

5. The Assessing Officer also has failed to note the principles laid down in the decision of the Karnataka High Court in re. Maharashtra Apex Corporation Ltd. vs. CIT (2006) 286 ITR 585 (Kar). The said decision holds good to the instant case.

FIRST MAIN
PURPOSE OF
HOLDING
INVESTMENT TO
MAINTAIN SLR –
SEC. 24

6. The appellant submits that u/s.24 of the Banking Regulation Act, 1949 the appellant Bank's main business being banking "shall maintain in India in unencumbered approved securities valued at a price not exceeding the current market price, an amount which shall not at the close of business on any day be less than 20 per cent of the total of its demand and time liabilities in India. (such approved Securities shall also include Securities lodged with another institution for an advance or any other credit arrangement to the extent to which securities have not been drawn against or availed of.)"

Note: The percentage for the appeal year is 25%.

This clearly indicates the main purpose of holding of investments in Securities is a very essential requirement to be in banking business under the Banking Regulation Act, 1949

SECOND
PURPOSE OF
HOLDING
SECURITIES –
BUSINESS –
SEC. 24

7. The Banking business under Banking Regulation Act is defined u/s.5 as follows:
'(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise;
(c) "banking company" means any company which transacts the business of banking in India.'

Again Sec.6 of the Banking Regulation Act lists out Banking business as follows:

"Forms of business in which banking companies may engage – (1) In addition to the business of banking, a banking company may engage in any one or more of the following forms of business namely:-

- (b) the borrowing, raising, or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting; discounting, buying, selling collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scripts and other instruments, and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, traveler's cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on

commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others, the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposits or for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities;

The combined reading of Section 5(b) & (c) [definition of banking] and Section 6(a) [business of banking] clearly indicates that the Securities and shares held as investment is for the purpose its business activities of dealing in the same.

DEALING IN
INVESTMENTS
&
SECURITIES

8. The learned Appellate had ignored the following details regarding the dealing in the investments/Securities:

- (i) Total purchases of investments during the year : Rs.44276.82 Cr.
- (ii) Total Sales during the year : Rs.44083.27 Cr.
- (iii) Income earned in dealings in Investment and Securities included in the total income : Rs. 182.20 Cr.

The incidental tax free income received because of the investment unsold as on the declaration of the other income of Rs.311.26 Cr.

9. The Assessing Officer has failed to note that the dealing in investments are taking place with an intention of making profit in such dealings and not with the main object of earning income which is incidental to the trade.

10. The Assessing Officer also has failed to note that any expenditure direct or indirect incurred in acquisition of the investment is a charge against the income earned in dealing in such investments.

11. The twin object of holding the Securities is to comply with the statutory liquid ratio required u/s.24 of the Banking Regulation Act and as part of Banking business in accordance with Sec.5(b) & (c) and 6(a) of the Banking Regulation Act. The shares are held and dealt in accordance with the mandatory statutory requirements of Banking business. The income earned in dealing in shares is significant portion of the overall banking income. In the overall activity the Bank earns incidentally the exempted income the interest and dividend.

12. The very purpose of holding investment is not to earn the interest or dividend and it is only incidental. As it is an incidental income, no expenditure can be alleged to be directly or indirectly related to earn the said income. The entire expenditure incurred to hold and dealing in the investments is pertaining to the business activity of holding investment to comply the twin statutory requirement i.e. SLR coupled with carrying on dealing in the same.

13. The Appellate and the Assessing Officer has not considered the decision of the Karnataka High Court in re CCI Limited v. JCIT (2012) 71 DTR (Kar) 141 which is on all fours with the facts of the instant case. In the said case the Hon'ble High Court has held as follows:

"When no expenditure is incurred by the assessee in earning the dividend income, no notional expenditure could be deducted from the said income. It is not the case of the assessee retaining any shares so as to have the benefit of dividend. 63 per cent of the shares, which were purchased, are sold and the income derived therefrom is offered to tax as business income. The remaining 37 percent of the shares are retained. It has remained unsold with the assessee. It is those unsold shares have yielded dividend, for which, the assessee has not incurred any payment of tax, if any

expenditure is incurred in earning the said income, the said expenditure also cannot be deducted. But in this case, when the assessee has not retained shares with the intention of earning dividend income and the dividend income is incidental to his business of sale of shares, which remained unsold by the assessee, it cannot be said that the expenditure incurred in acquiring the shares has to be apportioned to the extent of dividend income and that should be disallowed from deductions. In that view of the matter, the approach of the authorities is not in conformity with the statutory provisions contained under the Act. Therefore, the impugned orders are not sustainable and require to be set aside."

14. In the above case decided by the High Court it was a case where Rule 8D was invoked and disallowance was made. Thus the decision referred is on all fours with the facts of the appellant's case and as such squarely applies to the appellant.

Disallowance
u/s.40a(ia) :
Rs.11,99,79,215

15. The Assessing Officer has failed to note that this is not an instance which can be covered u/s.40a(ia) as it is an expenditure recovered by NFS network managed by the IDRB, Hyderabad set by the RBI and Cash Tree set up by a consortium of Banks led by Bank of India to share their ATMs among themselves. This expenditure was incurred and paid / recovered by the Assessee in the course of business during the year and it is not unpaid or outstanding expenditure on year end date. Hence this is not exigible for disallowance u/s.40a(ia).

16. The CIT(A) and the Assessing Officer have failed to note that this expenditure is not one unpaid for which provision is made in account but one which is incurred and paid during the year. Sec. 40a(ia) is exigible only in case where as per Section itself the amount of expenditure is "payable" as on the year end date and not already paid before the accounting year end.

17. The Assessing Officer and the CIT(A) also have failed to consider the decisions in the following decisions which is applicable to the instant case:

- (i) Karnavathi Cooperative Bank Ltd vs. DCIT (2012) 134 ITD 486 (Ahmedabad)
- (ii) Meriline Shipping Transporters (Vishakhapatnam) v. ACIT (2012) 70 DTR (Visakha) (SB) Trib 81

18. Any other grounds to be urged at the time of hearing.

28. Ground Nos.1 and 2 challenge the finding of the Id.CIT(A) that the assessee bank is liable to tax under section 115 JB of the Act. This issue is covered by the decision of the co-ordinate bench of Tribunal in the case of *Canara Bank vs. Joint CIT* in ITA Nos.979 & 1035/Bang/2013, 1440 & 1493/Bang/2014 and 903 & 931/Bang/2016 dated 15/09/2017 wherein it was held as follows:

"13. Ground of appeal No.5 is on the applicability of the provisions of section 115JB of the Act. This issue had come up before the co-ordinate bench in the case of assessee for asst. year 2005-06 in ITA No.305/Bang/2011 dated 18/06/2012 wherein it was held as follows:

7. We have heard rival submissions and considered the facts and material on record. There is no dispute about the fact that the assessee is a bank and in this assessee's case, provisions of sec.115JB have been invoked. There are at least two decisions of this Tribunal in the case of banking companies itself as listed below:

(i) *Union Bank of India vs. ACIT* (ITA 4702 & 4706/2010 dated 30-6-2011)

(ii) *Indian Bank vs. Addl. CIT* (ITA 469/Mds/2010 dt.3-8-2011)

In both these decisions, the respective Benches have followed the decision of the Mumbai Bench in the case of *Krung Thai Bank PCL* (supra) and held that 115JB is not applicable to banking company. The decision relied on by the learned Departmental Representative in the case of *HCL Comnet Systems & Services Ltd.* (supra) is not applicable. In that case, the assessee is not a banking company and hence, in our considered view that decision will not help the revenue. Since there are more than one decision in favour of the assessee, following the same, we are inclined to hold that the provisions of sec.115JB are not applicable to the assessee being a banking company. Hence, we are of the view that invoking of sec.263 is not correct and accordingly quash the action u/s 263 of the Act.

Respectfully following decision of the co-ordinate bench we hold that the assessee-bank is not liable for tax u/s 115JB for the year under consideration. The ground Nos.1 & 2 filed by the assessee are allowed.

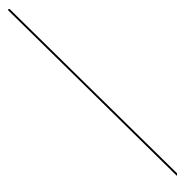
29. Ground Nos. 3 to 14 challenge the finding of the Id.CIT(A) confirming the addition of Rs.2,13,44,978/- under section 14A read with rule 8D of the Act. This issue is decided in favour of the assessee for assessment year 2008-09 in ITA No.753/Bang/2011. For the reasons stated therein, grounds of appeal No.3 to 14 filed by the assessee are allowed.

30. Ground Nos.15 and 16 challenge the finding of the Id.CIT(A) confirming the addition under section 40(a)(ia) of the Act on the payments made to NFS for use of ATM of other banks by its customers, This issue was also decided in favour of the assessee bank in assessment year 2009-10 in ITA No.1334/Bang/2012. For the reasons stated therein, the grounds of appeal filed by the assessee are allowed.

31. In the result, the appeal filed by the assessee is allowed.

32. The revenue raised the following grounds of appeal in No.1397/Bang/2012:

- 1 The order of learned CIT(A) is opposed to law and facts of the case.
- 2 The learned CIT(A) erred in allowing relief to the assessee on the issue of broken period of interest, accrued, on government securities.
- 3.1 The learned CIT(A) has failed to appreciate the fact that the assessee bank has followed the RBI guidelines for valuation of investment portfolio for the purpose of books but has treated the entire investments as stock-in-trade and valued the same as per least of cost or market value, values for income tax purpose only thereby making a claim for a notional loss. Only real profit/loss can be recognized under the I T Act and not the notional loss arrived at by valuing investment portfolio as per LCM Values.



- 3.2 The CBDT Circular No.665 directs the Assessing Officers to approach the issue of valuation of investment portfolio held by the banks in line with the RBI guidelines issued from time-to-time. The Ld. CIT(A) has not considered this Circular properly.
- 4 The appellant craves leave to add, alter or amend all or any of the grounds of appeal before or at the time of hearing.
- 5 For these and such other grounds that may be urged at the time of hearing it is prayed that the order of the CIT (A) may be cancelled and that of the Assessing Officer restored.

33. Ground Nos.1, 4 and 5 are general in nature and do not require any adjudication.

34. In ground No.2, the revenue challenges the finding of the Id.CIT(A) allowing relief to the assessee bank on the issue of Broken period interest. This issue was decided in the favour of the assessee in revenue's appeal for the assessment year 2009-10 in favour of the assessee. For the reasons stated therein, the grounds of appeal filed by the revenue are dismissed.

35. Ground No.3 challenges the finding of the Id.CIT(A) granting relief on account of fall in the value of investments held by the assessee Bank. This issue was decided in favour of the assessee in the revenue's appeal for assessment year 2008-09 in ITA No.753/Bang/2011. For the reasons stated therein, we dismiss the grounds of appeal filed by the revenue.

36. In the result the appeal filed by the revenue is dismissed.

ITA Nos.1265 & 1335/Bang/2013 (Assessment year: 2011-12):

37. These are cross appeals filed by the assessee as well as the revenue directed against the order of the learned Commissioner of Income-tax(Appeals), Mysore, [CIT(A)] dated 18/07/2013 for the assessment year 2011 12.

38. Brief facts of the case are that the assessee-bank filed return of income for the assessment year 2011-12 declaring total income of Rs.21,02,59,270/- on 26/09/2011. The said return was revised on 09/03/2012 declaring income of Rs.21,52,90,550/-. Against the said return of income, the assessment was completed by the assessing officer vide order dated 19/02/2013 under section 143(3) at total income of Rs.146,04,21,978/- and also computed liability under section 115JB of Rs.72,71,14,332/-. While doing so, the assessing officer made the following disallowances:

- i. Addition under section 14A Rs.2,66,30,863/-;
- ii. Addition on account of Broken period interest - Rs.3,79,90,970/-
- iii. Provision for bad and doubtful debts - Rs.58,53,14,051/-;
- iv. Disallowance under section 40(a)(ia) - Rs.12,69,81,187/- and
- v. (v) depreciation on investment Rs.32,68,90,162/-.

39. Being aggrieved, an appeal was preferred before the Id.CIT(A) who vide impugned order, confirmed (i) liability under section 115JB (ii) addition on account of provision for bad and doubtful debts, and (iii) addition u/s 40(a)(ia). However Id.CIT(A) granted relief on broken period of interest and fall in value of investments.

40. Being aggrieved, both the assessee and the revenue of are in appeal before us.

41. The assessee raised the following grounds of appeal in ITA No.1335/Bang/2013:

GENERAL

- 1.1 The learned Appellate Officer is not justified both in law and on facts of the instant case in sustaining of the huge disallowance and additions to returned income to the extent retained.
- 1.2 The Appellate Officer has erred in summarily rejecting the reasoning, legal support and merits of the disputed items urged before him.

**NON-
APPLICABILITY
OF
SEC.115JB**

- 2.1 The Appellate Authority has erred in rejecting the claim that Sec.115JB is not exigible in the instant case as the P&LA/c. and the Balance Sheet is not drawn under Schedule-VI of the Companies Act as required under the provisions; whereas the Appellant Bank's P&L a/c. and Balance Sheet is drawn and presented u/s.29 r.w. III Schedule to the Banking Regulation Act 1949.
- 2.2 The Appellate Officer and the Assessing Officer also has failed to note that the Parliament extended the exigibility of Sec.115JB to Banking and other Companies only with effect from 01/04/2013 by amending and inserting sub-section 2 of Section 115JB by Finance Act, 2012.
- 2.3 The Appellate Authority also has failed to appreciate the judicial pronouncement in this regard.

**ESTIMATED
EXPENDITUR
E U/S.14A
/RULE 8D
Rs.2,66,30,863**

- 3.1 The learned Appellate Authority has failed to note that the very purpose of Banks investment in Securities is to comply the statutory and business object of Banking Companies as prescribed under Banking Regulation Act.

Business Purpose

3.2 The Appellate Authority also has failed to note that the investment and dealing in Securities has resulted in huge business income against which only relevant expenditure, if any, is chargeable.

Substantial Business Income

4.1 The Assessing Officer also has failed to note that out of the total/gross income of Rs.44.26 Cr. from dealing in Securities, the Appellant has earned a sum of Rs.14.97 Cr. as income only in dealing in Tax free Securities and as such any expenditure in relating to those Securities should be only charged against such business income; (while the exempted/incidental total income from dividend and interest on tax free Securities is only Rs.2.66 Crores earned because the Securities remained unsold on the due date).

Incidental/Accidental/Windfall income

5.1 The Appellate Authority also has erred in ignoring the fact that the exempted income is only incidental/accidental/windfall – without any cost - as the stock was in stock pending sale, resulting in such incidental income as approved and held by the Karnataka High Court in several cases.

Cost Free Funds

6.1 The Appellate Authority also has failed to note the usual presumption – as held by various Courts – when large amount of cost free funds are available as in the instant case, such tax free investments are made out of such cost free funds.

6.2 The Assessing Officer has failed to note the accepted judicial precedent that “if there were funds available, both interest-free and interest-bearing, then a presumption would arise that interest-free funds have been generated for tax free investments-No disallowance could be made under S.14A” Re: Bunge Agrebusiness (India) (P) Ltd. vs. DCIT (2011) 142 TTJ (Mumbai) 817 (Para-16 to 22).

Satisfaction

- 7.1 The Appellate Authority has failed to note that the Assessing Officer has not complied with the pre conditions prescribed u/s.14(2) & (3) and Rule 8D before applying Rule 8D for disallowance.
- 7.2 The Assessing Officer has summarily applied Rule 8D without examining the accounts and being '**satisfied**' before applying disallowance u/s.14A/Rule 8D.
- 7.3 The Appellate Authority has failed to note that recording **pre satisfaction** for rejecting the contention of the appellant is very essential and only on the basis of examining the accounts by him he should have been satisfied by cogent reason before applying Rule 8D.
- 7.4 "**Satisfaction**" which is the essence and a pre-condition to invoke Section 14A(2) and Rule 8D is not made before invoking the said rule. The claim of the appellant that '**no expenditure**' has been incurred is rejected without any justification.
- 7.5 The Assessing Officer has erred in invoking Rule 8D only on the basis of suspicion and surmise and without justifiable/cogent reason.

Unworkable Law

- 8.1 The Assessing Officer and Appellate Authority have failed to note that in applying computation provision under Rule 8D (2)(ii) & (iii) fails, disallowance under the said Provision cannot be made as the said Provision is rendered unworkable [CIT vs. B.C. Srinivas Shetty (1981) 128 ITR 294 (SC)]
- 8.2 The Appellate authority should not have enforced a law when working of the disallowance by applying Rule 8D does not get a justifiable result.

8.3 The Appellate Authority is not justified in confirming application of Section 14A and Rule 8D for the purpose of disallowance of expenditure in respect of exempted/incidental income.

**Deduction
u/s.36(1)(viiia) –
Provision made
for Bad &
Doubtful debts :
Rs.58,53,14,051**

9.1 The Assessing Officer is not justified in twisting the facts with an intention of avoiding the law as laid down by the Supreme Court in the earlier year in the case of this appellant.

9.2 The Appellate Authority is not justified in alleging zero deduction u/s.36(1)(viiia) when in fact there is provision for Reserve for Doubtful debts (after writing off of Bad debts) available for deduction as claimed.

9.3 The Assessing Officer and Appellate Authority has erred in disallowing the full claim u/s.36(1)(viiia) ignoring in toto the law and facts of the instant case. The balance provision available is only surplus after the bad debts written off and which is available for a set off against provision u/s.36(1)(viiia).

**Disallowance
u/s.40a(ia) :
Rs.6,44,93,357**

**Expenditure
not specified**

10.1 The Assessing Officer and the Appellate Authority has failed to note that the items disallowed u/s.40(a)(ia) is not exigible under the said section for disallowance as the same does not fall in any of the specified expenditure to be disallowed.

10.2 The Authorities have erred in rejecting a Special Bench Order of the ITAT pronouncing that the Sec.40a(ia) is applicable only to such payments payable/outstanding as on the year end date and not to expenditure paid during the year as in the instant case.

10.3 In the instant case the share of expenditure of the members is directly debited to the member's a/c. in RBI and not directly paid.

10.4 Also the said payment does not fall under Chapter XVII of the I.T.Act for TDS.

**Sec. 25
Company**

10.5 The Appellate Authority has failed to note that it is an arrangement made by the Reserve Bank for settlement of accounts for ATM and other services by setting up a Company u/s.25 of Companies Act which has no taxable income.

10.6 The Appellate authority has failed to note that the expenditure is not to an income assessable entity liable to TDS. It is a Sec.25 Companies without any liability to Tax.

**Reimbursing
share of
expenditure**

10.7 The Assessing Officer also has failed to note that the debit is only sharing of the common expenditure between the different Banks as per the arrangement made by the RBI.

General

11. Any other Grounds to be urged at the time of hearing.

42. Ground Nos.1 and 11 are general in nature and do not require any adjudication.

43. Ground No.2 challenges the finding of the Id.CIT(A) confirming the liability of the assessee-bank under section 115-JB of the Act. This issue is covered in favour of the assessee-bank by our decision in ITA No.1335/Bang/2012 for the assessment year 2010-11. For the reasons stated therein, we hold that the assessee-bank is not liable to tax under section 115 JB of the Act. Ground No.2 filed by the assessee is allowed.

44. Ground Nos. 3 to 8.2 challenge the findings of the Id. CIT(A) confirming the addition under section 14A. This issue is also decided in favour of the assessee-bank in ITA No.1334/Bang/2012 ITA No.1335/Bang/2012 for assessment years 2009-10 and 2010-11 respectively. For the reasons stated therein, the grounds of appeal filed by the assessee are allowed.

45. Ground No.9 challenges the finding of the Id.CIT(A) confirming the disallowance of provision for bad and doubtful debts under section 36(1)(viiia) of the Act. Now the law is quite settled by the decision of the Hon'ble High Court of Karnataka in the assessee's own case reported in 349 ITR 705 and the decision of the Hon'ble Supreme Court in the case of *Catholic Syrian Bank Ltd. vs. CIT* (343 ITR 270) wherein Hon'ble Supreme Court held that the provisions of section 36(1)(vii) and 36(1)(viiia) are independent of each other. We remit this issue back to the file of the Assessing Officer to compute the amount of allowance in accordance with the provisions of section 36(1)(viiia) after affording a reasonable opportunity of being heard to the assessee.

46. Ground No.10 challenges the findings of the Id.CIT(A) confirming disallowance under section 40(a)(ia) for non-deduction of tax at source on the payments made to NFM for use of ATM of other banks by its customers. This issue was decided in favour of the assessee-bank in the assessee's appeals in ITA No.1334/Bang/2012 and ITA No.1335/Bang/2012 for assessment years 2009-10 and 2010-11 respectively. For the reasons stated therein, we allow this ground of appeal.

47. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

48. Now we shall take up the revenue's appeal in ITA No.1265/Bang/2013 for the assessment year 2011-12. The revenue raised the following grounds of appeal:

- 1 The order of learned CIT(A) is opposed to law and facts of the case.
- 2 The learned CIT(A) erred in allowing relief to the assessee on the issue of broken period of interest, accrued, on government securities.
- 3 The learned CIT(A) has failed to appreciate the fact that there is no ambiguity in respect of the date of accrual of the interest on Govt. securities and accordingly the bank should have offered this income for taxation, when it is following mercantile system of accounting.

4. The learned CIT(A) has failed to appreciate the fact that the assessee bank has followed the RBI guidelines for valuation of investment portfolio for the purpose of books but has treated the entire investments as stock-in-trade and valued the same as per least of cost or market value, values for income tax purpose only thereby making a claim for a notional loss. Only real profit/loss can be recognized under the I T Act and not the notional loss arrived at by valuing investment portfolio as per LCM Values.
5. The CBDT Circular No.665 directs the Assessing Officers to approach the issue of valuation of investment portfolio held by the banks in line with the RBI guidelines issued from time-to-time. The Ld. CIT(A) has not considered this Circular properly.
6. The appellant craves leave to add, alter or amend all or any of the grounds of appeal before or at the time of hearing.
7. For these and such other grounds that may be urged at the time of hearing it is prayed that the order of the CIT (A) may be cancelled and that of the Assessing Officer restored.

49. Ground Nos.1, 6 and 7 are general in nature and do not require any adjudication.

50. Ground Nos. 2 and 3 challenge the finding of the Id.CIT(A) deleting addition on account of broken period interest. This issue was decided by us in favour of assessee-bank in revenue's appeals in ITA No.753/Bang/2011 for assessment year 2008-09 and ITA No.1397/Bang/2012 for assessment year 2010-11. For the reasons stated therein, these grounds of appeal filed by the revenue are dismissed.

51. Ground No.5 challenges the finding of the Id.CIT(A) granting relief on depreciation on investments held by the bank. This issue is also decided in favour of the assessee-bank in revenue's appeal for assessment year 2010-11. For the reasons stated therein, this ground of appeal filed by the revenue is dismissed.

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

53. In the result, appeals filed by the revenue viz., ITA No.753/Bang/2011 is partly allowed, ITA Nos.1396 & 1397/Bang/2012 and ITA No.1265/Bang/2013 are dismissed. The appeals filed by the

assessee viz., ITA Nos.1334 & 1335/Bang/2012 are allowed and ITA No.1335/Bang/2013 is partly allowed for statistical purposes.

Order pronounced in the open court on 19th January, 2018.

Sd/-

(LALIT KUMAR)
JUDICIAL MEMBER

sd/-

(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Place : Bengaluru
Date : 19/01/2018
srinivasulu, sps

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order

Senior Private Secretary
Income-tax Appellate Tribunal
Bangalore