IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "L" MUMBAI

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)

ITA No. 822/MUM/2016
Assessment Year: 2010-11

DCIT-2(1)(1), Room No. 561, 5th floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	M/s Bank of India, Star House, C-5, G-Block, Bandra Kurla Complex, Bandra (E), Mumbai-400051.
		PAN No. AAACB0472C
Appellant		**Respondent**

ITA No. 940/MUM/2016
Assessment Year: 2010-11

M/s Bank of India, Star House, C-5, G-Block, Bandra Kurla Complex, Bandra (E), Mumbai-400051.	Vs.	Assistant Commissioner of Income Tax-2(1), Aayakar Bhavan, Mumbai-400020.
PAN No. AAACB0472C		
Appellant		**Respondent**

Revenue by : Mr. M.V. Rajguru**,** DR
Assessee by : Mr. C. Naresh, AR

Date of Hearing : 13/06/2018
Date of pronouncement: 11/07/2018

ORDER

PER N.K. PRADHAN, AM

The captioned cross appeals- one by the revenue and the other by the assessee – are directed against the order of the Commissioner of

Income Tax (Appeals)-4, Mumbai [in short 'CIT(A)'] and arise out of the assessment completed u/s 143(3) of the Income Tax Act 1961 (the 'Act'). As common issues are involved, we are proceeding to dispose them off by this consolidated order for the sake of convenience. We begin with the appeal filed by the revenue.

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2. The assessee-bank filed its return of income for the impugned assessment year on 09.10.2010 declaring a total income of Rs.497,56,67,270/-. Subsequently, it filed a revised return of income on 19.03.2012 showing total income of Rs.534,74,64,138/-

The 1st ground of appeal is general in nature and requires no adjudication.

The 2nd ground of appeal

> On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition made for provision for wage revision, ignoring the fact that in the case of Bank of Baroda, the CIT(A) in order no CIT(A)-4/DCIT.2(I)/IT-16/2011-12 dated 06.02.2015 has confirmed the disallowance of provision for wage revision?

3. During the year under consideration, the assessee has claimed a deduction of Rs.375,00,00,000/-in respect of provision on account of wage revision. The Assessing Officer (AO) observed that there was no certainty as at 31.03.2010 as to whether there will be any revision or not. The final settlement between the Employees' Union and Indian Banks'

Association (IBA) was arrived only in the latter half of the subsequent financial year. The assessee had merely made a provision on the basis of what happened in earlier years since negotiations were still going on between IBA and the trade unions. The AO further observed that at best, the provision made by the assessee was an ad-hoc arrangement. Thus the same being a contingent liability cannot be allowed u/s 37(1) of the Act. On the basis of above reasons, the AO made a disallowance of Rs.375,00,00,000/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that the Ld. CIT(A) has followed the order of his predecessor for earlier year and directed the AO to allow the above amount of provision towards wage arrears as deduction.

5. Before us, the Ld. DR relies on the order of the AO. On the other hand, the Ld. counsel of the assessee relies on the order of the Ld. CIT(A) and further submits that the issue has been decided by the ITAT in assessee's own case for AY 2009-10 (ITA No. 3082/Mum/2015) dated 08.11.2017.

6. We have heard the rival submissions and perused the relevant materials on record. We find that similar issue arose before the ITAT 'L' Bench Mumbai in assessee's own case for the AY 2009-10 (ITA No. 3082/Mum/2015). The Tribunal *vide* order dated 08.11.2017 held:

"We find that the assessee had made provisions for the services rendered by the employees. There is no doubt that the assessee have to make payment once the negotiations were over. Thus, it was not an

unascertained liability. So, confirming the order of the FAA, we decide the issue in favour of the assessee".

Facts being identical, we follow the order of the Co-ordinate Bench and dismiss the 1st ground of appeal.

7. The 3rd ground of appeal

> On the facts and in the circumstances of the case and in law, the CIT(A) has erred in allowing depreciation on leased assets without appreciating the fact that the nature of the lease transaction was a finance transaction between the assessee Bank and its customers?

The 4th ground of appeal

> On the facts and in the circumstances of the case and in law, the CIT(A) has erred in allowing depreciation on leased assets without appreciating the fact that the asset in question was not used by the assessee for its own business and the title of the paid asset was kept with the bank only as a security for the loan given to the lessee, without impacting the ownership of the asset in question?

8. During the course of assessment proceedings, the AO observed that the assessee has claimed depreciation of Rs.12,47,905/- on leased assets in the computation of total income. On examination of the transaction, the AO found that the leased assets were the finance given by the assessee for purchase of assets to various persons. The AO held that the main intention is to reduce taxable income by claim of depreciation. Therefore, the AO made a disallowance of Rs.12,47,905/-.

9. In appeal, the Ld. CIT(A) followed the order of his predecessor for the AY 2009-10 and allowed the appeal.

10. Before us, the Ld. DR relies on the order of the AO. On the other hand, the Ld. counsel of the assessee relies on the order of the Ld. CIT(A) and submits that similar issue has been decided by the Tribunal in assessee's own case in AY 2009-10.

11. We have heard the rival submissions and perused the relevant materials on record. We find that the same issue has been decided in favour of the assessee by the Tribunal in assessee's own case in AY 2009-10 (ITA No. 3082/Mum/2015). Facts being identical, we follow the order of the Co-ordinate Bench and dismiss the 3rd and 4th grounds of appeal.

12. <u>The 5th ground of appeal</u>

> On the facts and in the circumstances of the case and in law, the CIT(A) has erred in holding that only that income of the foreign branches is to be included in the total income which was taxed in that foreign country without appreciating the fact that the Hon'ble ITAT in the case of Bank of Baroda in ITA No 2927/Mum/201 1 dated 25.7.2014 for AY 2005-06 had held that all the income of the foreign branches shall be taxable in India, and credit of taxes, if any, paid by the branches in the foreign country would be allowed?

<u>The 6th ground of appeal</u>

> On the facts and in the circumstances of the case and m law, the Ld. CIT(A) erred in directing the Assessing Officer to include only income which has been taxed in foreign country in violation to Central Government notification No. S.O. 2123(e) dt. 28.08.2008 which clearly indicates its inclusion while arriving at the total income.

13. In the revised return of income, the assessee has claimed exclusion of foreign income of Rs.259,41,15,847/- u/s 90 of the Act. In the assessment order, the AO relied on Notification No. S.O. 2123(e) dated 28.08.2008 published in the Gazette of India on 28.08.2009 and held that the income of foreign branches is taxable India and accordingly the claim of exclusion made by the assessee was rejected.

14. In appeal, the Ld. CIT(A) followed the order of his predecessor for earlier assessment year in the case of the assessee and also the order of the Tribunal in the case of Bank of Baroda (ITA No. 6018/Mum/2011), wherein it was held that income of foreign branches is to be taxed in India. Further as per the said Notification, the income that is to be included in the total income is such income of foreign branch that was taxed in that foreign country. The relief of tax will be allowed based on the tax paid in the foreign country. Accordingly, the Ld. CIT(A) directed the AO to follow the above direction for the impugned assessment year also.

15. Before us, the Ld. DR relies on the order of the AO. On the other hand, the Ld. counsel of the assessee submits that the issue has been decided in favour of the assessee by the order of the Tribunal in assessee's own case for the AY 2011-12.

16. We have heard the rival submissions and perused the relevant materials on record. We find that the ITAT 'I' Bench Mumbai in assessee's own case for the AY 2011-12 (ITA No. 4357/Mum/2016) held at para 48 & 49 as under:

"In ground No. 2, the Revenue has challenged certain observations of the Ld. Commissioner (Appeals) with regard to the inclusion of profit relating to foreign branches. While deciding ground no. 5 of assessee's appeal in ITA No. 4491/Mum/2016, we have allowed assessee's claim that profit of foreign branches cannot be included at the hands of the assessee. In view of the aforesaid, this ground is dismissed."

Facts being identical, we follow the above order of the Co-ordinate Bench and dismiss the 5th and 6th grounds of appeal.

17. The 7th ground of appeal

On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that the provisions of section 115JB of the Income Tax Act, 1961 are not applicable to assessees to whom proviso to sub-section- (2) of section 211 of the Companies Act, 1956 applies i.e. companies which are not required to prepare its profit & loss account in accordance with Part-II & III of Schedule VI of the Companies Act, 1956 without appreciating that under section 115JB(2) of the Income Tax Act, 1961 every company is mandatorily required to prepare profit & loss account in accordance with the provisions of Part-II & III of Schedule VI of the Companies Act, 1956 for Income Tax purposes.

The 8th ground of appeal

On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that the amendment to section 115JB of the Income Tax Act, 1961, to bring all the companies (including companies to whom proviso to sub-section (2) of section 211 of the Companies Act, 1956 applies) in its ambit, vide Finance act, 2012, with effect from 1.4.2013 is not applicable in the assessment

year under consideration without appreciating that the said amendment is clarificatory in nature and thus, retrospective in effect.

18. In the note submitted along with the revised computation of income, the assessee has claimed that the provisions of section 115JB are not applicable to it. However, the AO was not convinced with the above claim and observed that the provisions of section 115JB apply to all companies as defined in section 2(17). As per him, even if the assessee-bank is not required to prepare its accounts as per Schedule VI, sub-section (2) requires every company to prepare its accounts as per Schedule VI and follow the same accounting policies as followed for presenting its accounts before the shareholders in AGM for the purpose of computing the book profits. With that reasons, the AO rejected the contentions of the assessee that the provisions of section 115JB are not applicable in its case. However, since the tax payable by the assessee as per normal provision is higher than the tax payable u/s 115JB, the AO computed the tax liability under normal provisions.

19. In appeal, the Ld. CIT(A) followed the order of his predecessor and directed the AO not to charge tax u/s 115JB of the Act.

20. Before us, the Ld. DR relies on the order of the AO. On the other hand, the Ld. counsel of the assessee relies on the order of the Ld. CIT(A) and further submits that the issue has been decided by the ITAT in assessee's own case for the AY 2011-12. The ITAT 'I' Bench Mumbai in assessee's own case for the AY 2011-12 (ITA No. 4357/Mum/2016) held:

"50. In ground no. 3 and 4, Revenue has challenged the decision of the Ld. Commissioner (Appeals) with regard to applicability of the provisions of section 115JB of the Act to the assessee.

51. We have considered rival submissions and perused materials on record. As could be seen, Ld. Commissioner (Appeals) relying upon certain judicial precedents held that as per the provisions of section 115JB of the Act applicable to the relevant assessment year, it cannot be extended to Banking companies.

52. The Ld. Counsel appearing for the parties have fairly agreed that the issue is covered by various judicial precedents as referred to in Para 19.2 of the order of the Ld. Commissioner (Appeals). In view of the aforesaid, we dismiss this ground."

Facts being identical, we follow the above order of the Co-ordinate Bench and dismiss the 7th and 8th ground of appeal.

21. <u>The 9th ground of appeal</u>

9. On the facts and in the circumstances of the case, the CIT(A) has erred in directing the Assessing Officer to verify and grant credit for TDS on dividends received from foreign associates without appreciating that refund on such TDS and 244A interest arising thereon cannot he granted.

22. It was the contention of the assessee before the Ld. CIT(A) that the AO has not given credit for TDS on dividend received from foreign associates amounting to Rs.71,37,778/-. The Ld. CIT(A) has directed the AO at para 24.3 (page 45) of his order dated 30.11.2015 to verify and allow relief as per section 91 of the Act. There was no issue of granting of interest u/s 244A.

23. Before us, the Ld. counsel of the assessee submits that the issue has been decided in favour of the assessee by the Tribunal in assessee's own case for the AY 2011-12 (ITA No. 4357/Mum/2016).

24. We have perused the relevant materials on record. The ITAT 'I' Bench in assessee's own case for the AY 2011-12 held at para 54:

> "54. We have considered rival submissions and perused materials on record. The Assessing Officer while completing the assessment did not allow credit for TDS on dividend from foreign associates amounting to 1,03,67,614. The learned Commissioner (Appeals) after considering the submissions of the assesses observed that as per the provisions of section 199 of the Act, credit for TDS is to be given only when such tax is deposited with the Central Government. He also observed that as per section 91 of the Act if any person residing in India proves that in respect of his income which accrued or arose in the relevant previous year outside India and in respect of which he has paid tax in any country with which there is no double taxation avoidance agreement, then, such person shall be entitled to deduction from the income tax payable by him a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the same country whichever is lower or at the Indian rate of tax if both the rates are equal. He, therefore, directed the Assessing Officer to decide the issue as per law. As could be seen from the observations of the learned Commissioner (Appeals), he has simply issued a direction to the Assessing Officer to decide the issue of credit of TDS keeping in view the provisions of section 199 and section 91 of the Act. We fail to understand how the Department can be aggrieved with the aforesaid directions of the learned Commissioner (Appeals). In view of the aforesaid, ground raised is dismissed."

Facts being identical, we follow the above order of the Co-ordinate Bench and dismiss the 9th ground of appeal.

25. The 10th ground of appeal

> On the facts and in the circumstances of the case, the CIT(A) has erred in allowing credit for taxes withheld by Aban Offshore, without appreciating that no refund or interest thereon can be paid on such taxes withheld abroad.

26. Before the Ld. CIT(A), it was the submission of the assessee that it has offered interest income received from Aban Offshore in respect of loan given on which they have made TDS of which credit is to be given. However, the AO has not given credit of such TDS without any reason.

The Ld. CIT(A) held that u/s 91, there is a provision that assessee shall be entitled to the deduction from Indian Income Tax payable by such assessee. Therefore, the Ld. CIT(A) directed the AO to verify the facts and proceed with law accordingly.

27. The Ld. counsel submits that the CIT(A) has only directed the AO to verify and allow relief as per section 91.

28. We have perused the relevant materials. We find that on the above issue, the Ld. CIT(A) has only directed the AO to verify the facts and take remedial measures, if any.

In view of the above facts, we dismiss the 10th ground of appeal.

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

ITA No. 940/MUM/2016
Assessment Year: 2010-11

30. The 1st ground of appeal

> That, on the facts and in the circumstances of the case and in law, the AO has erred in restricting the deduction of Rs.200,00,00,000 claimed u/s. 36(l)(viii) of the Act to Rs.158,38,00,000 and the Ld. CIT(A) has erred in upholding the decision of the AO. The AO be directed to allow balance deduction of Rs.41,62,00,000 u/s. 36(l)(viii) of the Act and reduce the total income accordingly

31. The assessee-bank, in order to arrive at profits for the purpose of deduction u/s 36(1)(viii) has allocated expenses relating to eligible business based on funds deployed. In computing the funds deployed, the assessee has considered the amount of assets, deposits, borrowings and other liabilities. However, the AO held that only the assets or liabilities can be considered. Accordingly, the AO reallocated the expenses and restricted the deduction to Rs.158.38 crore as against Rs.200 crores claimed.

32. In appeal, the Ld. CIT(A) followed the order of his predecessor for AY 2009-10 and confirmed the order of the AO, restricting the deduction to Rs.158,38,00,000/- as against claim of Rs.200 crores.

33. Before us, the Ld. counsel of the assessee submits that the assessee-bank, for arriving at the profits, has allocated expenses based on total assets, deposits, borrowings and other liabilities whereas as per AO, only the total assets are to be considered. It is submitted by him that since the expenses were incurred for total assets, deposits, borrowings and other liabilities, the same has been considered and the claim should have been allowed. The Ld. counsel further submits that the issue stands decided in

favour of the assessee by the order of the ITAT in assessee's own case for the AY 2011-12.

On the other hand, the Ld. DR relies on the order of the Ld. CIT(A).

34. We have heard the rival submissions and perused the relevant materials on record. We find that the Tribunal has followed the order of the Co-ordinate Bench for the AY 2009-10 (ITA No. 2833 & 3082/Mum/2015) and decided the issue in favour of the assessee for AY 2011-12. We refer here to para 2 to 6 (page 2-5) of the order of the ITAT dated 25.05.2018 for the AY 2011-12.

Facts being identical, we follow the above order of the Co-ordinate Bench and allow the 1st ground of appeal.

35. <u>The 2nd ground of appeal</u>

> 2A That, on the facts and in the circumstances of the case and in law the learned AO has erred in disallowing Rs.57,54,13,081 u/s. 14A read with Rule 8D of Income-tax Rules, 1962 (hereinafter referred to as "the Rules") towards expenditure incurred in relation to income claimed exempt u/s. 10(34) and 10(15) of the Act and the Ld. CIT(A) has erred in confirming the disallowance u/s, 14A read with Rule 8D. The AO be directed not to apportion any expenditure to the income claimed exempt u/s. 10(34) and 10(15) of the Act and delete the addition of Rs.57,54,13,081 made to the total income and reduce the total income accordingly.
>
> 2B. Without prejudice to Ground no. 2A above, on the facts and in circumstances of the case and in law, assuming without accepting that Your Honours is of the opinion that expenses (other than interest) incurred by the Treasury Division of the Bank should be apportioned to income claimed

exempt u/s. 10(34) and 10(15) of the Act the AO be directed to restrict the disallowance u/s. 14A to the extent of the amount already disallowed by the Appellant Bank in its Return of Income, i.e. Rs.11,73,225 and reduce the total income accordingly.

36. During the year under consideration, the assessee-bank has claimed interest of Rs.12,45,10,480/- and dividend of Rs.12,16,60,322/- as exempt in its return of income. In response to a query raised by the AO to explain as to why the provisions of section 14A r.w. Rule 8D shall not be applied in its case, the assessee filed an explanation before the AO. However, the AO was not convinced with the said explanation and made a disallowance of Rs.57,54,13,081/- u/s 14A r.w. Rule 8D, after allowing credit of disallowance of Rs.11,73,325/- made by the assessee. The break-up of such disallowance is Rs.52,26,42,159/- under Rule 8D(2)(ii) and Rs.5,39,44,247/- under Rule 8D(2)(iii) of the Income Tax Rules, 1962.

37. In appeal, the Ld. CIT(A) followed the order of his predecessor for the AY 2009-10 and confirmed the disallowance of Rs.57,54,13,081/- made by the AO.

38. Before us, the Ld. counsel of the assessee submits that the own funds of the assessee-Bank of Rs.12801 crore in addition to interest-free funds of Rs.16382 crore aggregating to Rs.29183 crore was available against which investments in assets earning tax-free income was only Rs.1207 crore and hence as held by the Gujarat High Court in *Sintex Industries Ltd.* (2017) 82 taxmann.com 171, no disallowance u/s 14A is warranted on the facts of the case. It is further submitted by him that the SLP filed against the above decision by the revenue has been dismissed

by the Hon'ble Supreme Court as reported in (2018) 93 taxmann.com 24 (SC).

The Ld. counsel further submits that the issue has been decided partly in favour of the assessee-Bank by the ITAT (ITA No. 4491/Mum/2016) by order dated 25.05.2018 for the AY 2011-12, where this issue was remitted back to the AO to decide afresh applying the ratio laid down by the Hon'ble Supreme Court in the case of *Maxopp Ltd*. and specially para 39 and 40 of the said judgment.

On the other hand, the Ld. DR relies on the order passed by the Ld. CIT(A).

39. We have heard the rival submissions and perused the relevant materials on record. Similar issue arose before the Co-ordinate Bench in assessee's own case for the AY 2011-12. The Tribunal held as under:

> "14. We have considered rival submissions and perused materials on record. The basic contention of the assessee is, since the assessee being a Bank the shares and securities are held as stock–in–trade and it constitutes a business activity, hence, no disallowance under section 14A of the Act should be made. Notably, in assessment year 2009–10, while considering similar dispute relating to disallowance under section 14A, the Tribunal in order dated 8th November 2017 (supra) has restored the issue to the Assessing Officer. It is also relevant to mention, in the meanwhile, the judgment of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. (supra) has been delivered. It is to be noted that in the said decision the Hon'ble Supreme Court has specifically dealt with the decision of the Hon'ble Punjab & Haryana High Court in case of State Bank of Patiala (supra) on identical issue. Undisputedly, the aforesaid decision of the Hon'ble Supreme Court having been delivered recently, the Departmental

Authorities while deciding the issue did not have the benefit of it. In view of the aforesaid, we restore the issue to the file of the Assessing Officer for deciding afresh after considering the submissions made by the assessee and applying the ratio laid down by the Hon'ble Supreme Court in case of Maxopp Investment Ltd. (supra) and specifically keeping in view the observations made in Para–39 and 40 of the said judgment. This ground is allowed for statistical purposes."

Facts being identical, we follow the above order of the Co-ordinate Bench and restore the matter to the file of the AO to make a fresh order keeping in mind the above direction of the Tribunal. Thus the 2nd ground of appeal is allowed for statistical purposes.

40. <u>The 3rd ground of appeal</u>

3A. That, on the facts and in the circumstances of the case and in law, the AO has erred in disallowing Rs.2,34,95,796 being amortization of lease premium paid in respect of various leasehold properties by treating the same as capital expenditure and the Ld. CIT(A) has erred in confirming the disallowance made by the AO. The AO be directed to allow amortization of lease premium of Rs.2,34,95,796 as revenue expenditure and reduce the total income accordingly.

3B Without prejudice to Ground no. 3A above, on the facts and in the circumstances of the case and in law, assuming without accepting that Your Honours is of the opinion that amortization of lease premium of Rs.2,34,95,796 is in the nature of capital expenditure, then the AO be directed to allow depreciation u/s. 32 of the Act on the same and reduce the total income accordingly.

41. In the assessment order, the AO has not allowed the amortization of lease premium of Rs.2,34,95,796/- on the ground that the amount has been paid by the assessee on various lease hold lands. The AO held it as capital expenditure and hence cannot be allowed as deduction.

42. In appeal, the Ld. CIT(A) followed the order of his predecessor for the AY 2009-10 and confirmed the disallowance made by the AO.

43. Before us, the Ld. counsel of the assessee fairly agrees that the issue has been decided against the assessee by the order of the Tribunal in assessee's own case for the AY 2011-12.

The Ld. DR supports the order passed by the Ld. CIT(A) and also relies on the order of the Tribunal mentioned above.

44. We have heard the rival submissions and perused the relevant materials on record. The same issue arose before the Co-ordinate Bench for AY 2011-12. The Tribunal held at para 26 :

> "We have considered rival submissions and perused materials on record. As could be seen from the facts on record, this is a recurring dispute between the assessee and the Department from the preceding assessment years. While deciding identical issue arising in assessee's own case for assessment year 2004–05 in ITA no. 5977/Mum/2011, dated 26th July 2017, the Tribunal following its own order passed in assessee's case for assessment year 2003–04 has sustained the disallowance by concurring with the view expressed by the Departmental Authorities. Respectfully following the aforesaid decision of the Co–ordinate Bench in assessee's own case, we uphold the order of the learned Commissioner (Appeals) on this issue. Ground raised is dismissed."

Facts being identical, we follow the above order of the Co-ordinate Bench and dismiss the 3rd ground of appeal.

45. The 4th ground of appeal

> That, on the facts and in the circumstances of the case and in law, the AO has erred in disallowing exclusion of profits of branches in countries with whom India has entered into a Double Taxation Avoidance Agreement (DTAA) namely UK, France, Belgium, Kenya, Japan, USA, Singapore and Shenzen amounting to Rs.259,41,15,847 and the Ld. CIT(A) has erred in upholding the decision of the AO, The AO be directed to allow deduction for exclusion of profits of branches in countries with whom India has entered into a DTAA namely UK, France, Belgium, Kenya, Japan, USA, Singapore and Shenzen amounting to Rs.259,41,15,847 and reduce the total income accordingly.

46. We have discussed the above issue at para 12 to 16 hereinbefore. We have followed the order of the Co-ordinate Bench in assessee's own case for the AY 2011-12, wherein it has been held that the profit of foreign branches cannot be included at the hands of the assessee. In view of the above finding, the 4th ground of appeal is allowed.

47. The 5th ground of appeal

> That, on the facts and in the circumstances of the case and in law, the AO has erred in disallowing broken period interest paid on purchase of Government securities of Rs.111,00,00,000 and the Ld. CIT(A) has erred in upholding the decision of the AO. The AO be directed to allow broken period interest paid on purchase of Government securities of Rs.111,00,00,000 and reduce the total income accordingly.

> Without prejudice to Ground no. 5A above, on the facts and in the circumstances of the case and in law, assuming without accepting that Your Honours is of the opinion that broken period interest paid on purchase of Government securities is not an allowable deduction, then the learned ACIT be directed to reduce the income in respect of broken period interest received on sale of Government securities from the total income of the year under appeal and reduce the total income accordingly.

48. The assessee has claimed broken period of interest paid on purchase of securities as revenue expenditure. During the course of assessment proceedings, the AO observed that the assessee has not offered interest income on accrual basis on such securities, however, in the computation of income, it claimed broken period interest on securities, which remain unsold at the end of the accounting year. The AO thus disallowed the above claim of the assessee.

49. In appeal, the Ld. CIT(A) held that the broken period interest in respect of unsold security cannot not justifiably be debited against the broken period interest received in respect of sold security without violating matching principle. To arrive at correct and true picture of profit of the assessee, there should have been included broken period interest in cost of securities while making valuation of closing stock, but the assessee has not done so. In view of the above facts, the Ld. CIT(A) confirmed the disallowance of broken period interest of Rs.1,11,00,00,000/- made by the AO.

50. Before us, the Ld. counsel of the assessee submits that the Tribunal in assessee's own case for the AY 2011-12, has remitted back the above

issue to the file of the AO to decide the same in accordance with the judgment of the Hon'ble Bombay High Court in the case of State Bank of India. Reference is made by him to para 34 to 38 of the order dated 25.05.2018 passed by the Tribunal. The Ld. counsel further submits that the above order of the Tribunal may be followed in the impugned assessment year.

The Ld. DR submits that the above issue may be remitted to the file of the AO as has been done for the AY 2011-12.

51. We have heard the rival submissions and perused the relevant materials on record. Identical issue arose before the Co-ordinate Bench in assessee's own case for the AY 2011-12. The Tribunal held at para 38 as under:

> "We have considered rival submissions and perused materials on record. Before we proceed to decide the issue, it is necessary to understand the exact nature of broken period interest. As mandated by the Reserve Bank of India, every bank has to maintain Statutory Liquidity Ratio. For that purpose banks invest in Government securities. Therefore, depending on the requirement a bank purchases and sells Government securities. Generally, interest in Government securities is payable on half yearly basis. When Government securities are traded the purchaser has to pay to the seller not only the purchase price of the securities but also the interest accrued from the Government securities from the last due date of the interest till the date of purchase of the securities. This interest from the last due date till the date of purchase is referred to as broken period interest. While the purchaser of the Government security pays the broken period interest the seller receives it. It is evident on record, assessee's claim of broken period interest paid has been

disallowed by the Assessing Officer on the reasoning that the assessee is not offering broken period interest on accrual basis. In our view, the aforesaid reasoning of the Departmental Authorities do not stand to reason. If the assessee is consistently following an accounting method as per which the broken period interest is offered as income when it is received, the broken interest paid while purchasing the securities cannot be disallowed merely on the reasoning that the assessee is not showing the broken period interest income on accrual basis. As could be seen, the Hon'ble Jurisdictional High Court in case of State Bank of India, vide judgment dated 1st August 2016, after following the decision of the said Court in case of American Express International Corporation (supra) has rejected Revenue's appeal against allowance of assessee's claim of deduction in respect of broken period interest paid. While doing so, the Hon'ble High Court has also upheld the decision of the Tribunal in holding that the broken period interest income has to be taxed on due basis instead of accrual basis. It is evident, the aforesaid decision of the Hon'ble Jurisdictional High Court was neither referred to nor examined by the Departmental Authorities while deciding the issue. In view of the aforesaid, we restore the issue to the Assessing Officer for deciding afresh keeping in view the decisions of the Hon'ble Jurisdictional High Court referred to above and only after due opportunity of being heard to the assessee. This ground is allowed for statistical purposes."

Facts being identical, we set aside the order of the Ld. CIT(A) and restore the matter to the file of the AO for deciding afresh keeping in mind the direction of the Co-ordinate Bench delineated hereinbefore and after giving reasonable opportunity of being heard to the assessee. Thus the 5th ground of appeal is allowed for statistical purposes.

52. Thee 6th ground of appeal

That, on the facts and in the circumstances of the case and in law, the AO has erred in disallowing unreconciled credit balances of Rs.9,57,24,734 and the Ld. CIT(A) has erred in upholding the decision of the AO. The AO be directed to allow deduction of unreconciled credit balances of Rs.9,57,24,734 and reduce the total income accordingly.

53. The AO has disallowed unreconciled credit balances of Rs.9,57,24,734/- on the ground that it has a profit element and therefore, has to be considered as income of the assessee. Further the AO found that the assessee failed to submit any documentary evidence in support of its claim that the same was not taxable.

54. In appeal, the Ld. CIT(A) held that (i) it is evident from the reply of the assessee-Bank dated 07.03.2012 filed before the AO that it has got no convincing explanation for not offering the income which has been shown in the P&L account based on unreconciled credits, (ii) RBI has merely given a requirement of reconciliation of nostro accounts and treatment of outstanding entries vide letter No. RBI/2008-09/475 dated 11.05.2009 and Banks were advised by RBI to minimise the number of nostro accounts to have a better control over reconciliation (iii) when facts are undisputed that nostro accounts are having surplus credit and these credits have not been reconciled even after rigorous exercise, such unreconciled credit is obviously the profit of the bank and after taking all precaution, the assessee has shown it as profit in its profit and loss account.

As the assessee failed to file verifiable evidence before the AO, the Ld. CIT(A) held that such credit shown in the P&L account cannot be presumed to be non-taxable and therefore, confirmed the order of the AO.

55. Before us, the Ld. counsel of the assessee submits that as the credit made to the P&L account was not claimed or allowed in any earlier year, provisions of section 41(1) do not apply. Further the assessee was prohibited from declaring dividends from this amount and hence cannot be treated as income of the assessee as per the RBI Circular dated 11.05.2009.

The Ld. counsel files a copy of the RBI guideline dated May 11, 2009 on 'reconciliation of nostro account and treatment of outstanding entries'. Therein RBI reviewed the position regarding long pending outstanding debit and credit entries in nostro accounts and gave a decision which has been contained at para 2 of the said guideline.

56. On the other hand, the Ld. DR submits that the assessee-Bank failed to file documentary evidence in support of its claim that the unreconciled credit balance it not taxable in its hand. The assessee has credited the said amount in P&L account which shows that it has a profit element. Thus the Ld. DR supports the order passed by the Ld. CIT(A).

57. We have heard the rival submissions and perused the relevant materials on record. We find that the assessee-Bank has credited Rs.9,57,24,734/- in its P&L account in respect of credit entries in nostro account outstanding till March 31, 2002. Admittedly, the above amounts represented un-reconciled credit balances. We find that there is merit in

the order of the Ld. CIT(A) that "such reconciliation of the accounts reveals the surplus for which there is no clarity, hence un-reconciled credit balance is obviously an income of the bank because it is a financial institution and transactions are related to the money/instruments and un-reconciled credit balance is apparently the element of profit and loss account, hence, in consequence, it has to be regarded as taxable income. Such credit balance is not at all a capital receipt because the appellant has not been able to explain as to how such credit is a capital liability, hence in absence of verifiable evidence, such credit shown in the profit and loss account cannot be presumed to the non-taxable money."

We agree with the aforesaid reasons given by the Ld. CIT(A) and uphold the order of the Ld. CIT(A) confirming the addition of Rs.9,57,24,734/- made by the AO. Thus the 6th ground of appeal is dismissed.

58. The Ld. counsel of the assessee submits that the 7th ground is not pressed and may be treated as withdrawn since necessary relief was granted by the AO subsequently. Also it is submitted by him that the 8th ground of appeal is not pressed and may be treated as withdrawn since CIT(A) has given direction to the AO to verify and allow.

In view of the above written submission by the Ld. counsel the 7th and 8th ground of appeal are dismissed as not pressed.

59. In the result, the appeal filed by the assessee is partly allowed.

60. To sum up, the appeal filed by the revenue is dismissed, whereas the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 11/07/2018.

Sd/-	Sd/-
(SAKTIJIT DEY)	(N.K. PRADHAN)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai;

Dated: 11/07/2018
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai