

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"F" Bench, Mumbai**

**Before Shri B.R. Baskaran, Accountant Member  
and Shri Pawan Singh, Judicial Member**

**ITA No. 7428/Mum/2016**  
(Assessment Year: 2011-12)

Central Bank of India 4th Floor, Chandermukhi Bldg. Nariman Point Mumbai 400021	Vs.	D C I T - 2(1)(2) Aayakar Bhavan M.K. Road Mumbai 400020
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PAN – AAACC2498P  
**Appellant** **Respondent**

**ITA No. 7485/Mum/2016**  
(Assessment Year: 2011-12)

AC I T - 2(1)(2) Room No. 562, 5 <sup>th</sup> Floor Aayakar Bhavan, M.K. Road Mumbai 400020	Vs.	Central Bank of India 4th Floor, Chandermukhi Bldg. Nariman Point Mumbai 400021
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PAN – AAACC2498P  
**Appellant** **Respondent**

Assessee by: Shri Rajnikant V. Chaniyar  
Revenue by: Ms. S. Padmaja

Date of Hearing: 12.06.2018  
Date of Pronouncement: 19.07.2018

**ORDER**

**Per Pawan Singh, JM**

These cross appeals filed by the assessee and Revenue are directed against the order of the CIT(A)-4, Mumbai dated 06.09.2016 and it relates to A.Y. 2011-02.

2. Assessee has raised the following grounds of appeal: -

“1A *On the facts and in the circumstances of the case and in law, the learned Deputy Commissioner of Income-Tax - 2 (1) (herein after referred to as 'DCIT') has erred in disallowing Rs.44,50,73,900 u/s. 14A of the Income-tax Act, 1961 read with Rule 8D of Income-tax Rules, 1962 towards expenditure*

*incurred in relation to income claimed exempt u/s. 10 of the Act and the Hon'ble CIT(A) has erred in confirming the disallowance u/s. 14A read with Rule 8D.*

*The learned DCIT be directed not to disallow any expenditure in relation to the income claimed exempt u/s. 10 of the Act by applying provisions of Rule 8D and delete the addition of Rs.44,50,73,900 made to the total income and reduce the total income accordingly.*

*IB Without prejudice to Ground no. 1A above, on the facts and in circumstances of the case and in law, the Appellant Bank prays that the disallowance made u/s. 14A read with Rule 8D is highly excessive and the learned DCIT be directed to make disallowance u/s. 14A on a reasonable basis and reduce the total income accordingly.”*

Revenue, in the cross appeal, has raised the following grounds: -

- “1. On the facts and in the circumstances of the case and in law, the LD. CIT(A) has erred in allowing the claim of bad debts of Rs.208,57,64,535/- without appreciating the fact that the claim of bad debts written off is allowable to the extent it exceeds the credit balance in the provision account.*
- 1(b) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that in the Finance Bill 2013, Explanation 2 has been inserted below clause (vii) of Section 36(1) to clarify that for the purposes of the proviso to clause (vii) of this sub-section and clause (v) of sub-section and clause (v) of sub-section (2), the account referred to therein shall be only one account in respect of provision for bad and doubtful debts under clause (viii) and such account shall relate to all types of advances, including advances made by rural branches.*
- 2(a) On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in holding that the broken period interest is allowable on matching principles, without realizing that the same has not been incurred for realizing the interest on securities as enunciated by the Apex Court in Vijaya Bank Ltd. (57 Taxman 152)(SC).*
- 2(b) On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in relying on the ratio of the Apex Court in the case of Citi Bank (Civil Appeal No. 1549 of 2006) where the income from securities were treated as business income which was not the same in the present case.*
- 3(a) Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was correct in law, in holding that the provisions of Sec. 15JB of the Income tax Act, 1961, are not applicable to assess 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 u/s. 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?*

- 3(b) Whether on the facts and in the circumstances of the case, the Ld.CIT(A) was correct in law, 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) is not applicable in the assessment year under consideration without appreciating that the said amendment is clarificatory in nature and thus, retrospective in effect?*
- 4. The Ld.CIT(A) erred in allowing the loss on account of valuation of securities while shifting from Available for sale (AP'S) to Hold to maturity (HTM) without appreciating that shifting from one category to another cannot give rise to loss or profit as one cannot make profit or loss with one self."*

3. The brief facts of the case are that the assessee filed original return of income for A.Y. 2011-12 on 28.09.2011 declaring total income at ₹138,19,35,392/-. Assessee was selected for scrutiny assessment and assessment order was passed on 19.03.2013 under Section 143(3) of the Income Tax Act, 1961 (hereinafter "the Act"). The AO, while passing the assessment order, made various additions/disallowances, which were subject matter of first appeal before the CIT(A) wherein the assessee was given partial relief. Therefore, further aggrieved by the order on various issues both parties have filed their cross appeals raising grounds of appeal recorded above.

4. We have heard the rival contentions and perused the material on record. At the outset of hearing the learned A.R. of the assessee submits that all the grounds raised by the parties are covered in favour of the assessee. The learned A.R. filed a chart referring to various decisions in assessee's own case and decision of the Hon'ble High Court wherein similar issues are stated to be covered in favour of the assessee. On going through the chart furnished by the learned A.R., the learned D.R. submits that the grounds of appeal are covered.

5. Ground No. 1 in assessee's appeal relates to disallowance under Section 14A of the Act read with Rule 8D of I.T. Rules, 1962. The learned A.R. submits that similar disallowance was made in assessment years 1998-99, 1999-2000, 2004-05, 2008-09, 2009-10 and 2010-11. In all cases the Tribunal granted relief to the assessee. The learned A.R. further submits that recently in appeal for assessment years 2004-05 and 2010-11 the Tribunal, vide its order dated 08.06.2017 in ITA Nos. 1891/M/2011 & 3958/M/2014, CO No.200/M/2013 and in 1891/M/ 2011& 1431/M/2011 & 3757/M/2014 dated 08.06.2018 restricted the disallowance under section 14A @ 2% of the exempt income. On the other hand the ld DR for the revenue relied on the order of the authorities below.

6. We have considered the rival submission of the parties and have gone through the orders of the authorities below. We have noted that almost on identical facts on identical issues the Tribunal in assessee's own case in ITA No. 1431/Mum/2011 & 3757/Mum/2014 for assessment years 2004-05 & 2010-11 held as under: -

*"8. The next issue that came up for our consideration in the assessee's appeal for assessment year 2004-05 is disallowance of expenditure incurred in relation to exempt income u/s. 14A of the Income Tax Act, 1961. The Assessing Officer has disallowed a sum of Rs.1,28,93,92,000/- u/s. 14A of the Act on the ground that the assessee has earned exempt income in the form of dividend, however, failed to disallow the expenditure incurred in relation to exempt income being interest expenditure and other expenditure. The ld. Authorized Representative for the assessee, at the time of hearing submitted that the issue is squarely covered in favour of the assessee by the decision of the ITAT in assessee's own case for assessment year 2009-10, wherein the ITAT under similar set of facts has deleted the additions made by the Assessing Officer and also directed to restrict the disallowance of expenditure @ 2% of exempt income.*

*9. Having heard both the parties and perusing the materials available on record we find that the ITAT, in assessee's own case for assessment year 2009-10 in ITA No. 1561 and 3438/Mum/2013 dated 03.10.2017 has considered the issue of disallowance of expenditure in relation to exempt income u/s. 14A of the Act. The Co-ordinate Bench after considering the relevant facts in light of section 14A has deleted the additions made by the Assessing Officer and restricted the addition to the extent of 2% of the exempt income by holding that the assessee's own interest free funds compressing its*

share capital and reserves are more than the investments made which yield tax free exempt income. The ITAT further observed that on perusal of the Assessing Officer's order, it is clear that the Assessing Officer has not recorded any satisfaction with regard to the claim of the assessee that it has earned exempt income without attributing any expenses relating thereto with reference to the books of accounts which is a pre-condition for invoking the provisions of the section 14A of the Act. The relevant portion of the order is extracted below:

9. We have carefully considered the submissions of rival parties and perused the orders of lower authorities. The undisputed facts of the case are the assessee's own interest free funds comprising its own funds and other interest free funds availed with the assessee were far more than the investment made in securities which yielded tax free exempt income. Moreover, the perusal of the AO's order reveals that the AO has not recorded any satisfaction with regard to the claim of the assessee of exempt income without attributing any the expenses relating thereto with reference to the books of accounts which is a pre-condition for invoking the provisions of the section 14A r.w.r 8D as has been decided by the Hon'ble Apex Court in the case of *Godrej & Boyce Manufacturing Co. Ltd. V/s DCIT (2017) 81 taxmann.com 111(SC)*, wherein it has been held that the AO has to record the satisfaction that the assessee has incurred any expenditure in relation of the earning of earning income after examining the records and books of accounts maintained by the assessee and thus the AO has to be record his satisfaction I.T.A. No.1525 and 364 9/Mum/2013 And I.T.A. No.1561 and 3438/Mum/2013 with regard to the correctness of the claim of the assessee otherwise the provisions of section 14A cannot be applied. We find merit in the plea of the ld.AR that in absence of any satisfaction recorded by the AO no disallowance could be made u/r 14A r.w. rule 8D. However, to maintain the consistency with the decision of the co-ordinate bench of the Tribunal, we think it fit and reasonable which has been an alternative prayer by the counsel during the course of hearing that the disallowance of 2% be made as has been made by the Tribunal in the assessment year 1998-99 and 1999- 2000. The operative part of ITA No 4449/Mum/2003 AY 1998-99 is reproduced as under (para 5):-

"5. Before us, Ld Counsel for the assessee demonstrated that assessee has sufficient funds and therefore, no disallowance is called for on account of interest vide Rule 8D(2)(ii) of IT Rules, 1962. In this regard, he relied on various decisions including that of the judgment of the Hon'ble jurisdictional High Court in the case of *Reliance Utilities & Power Ltd [2009] 313 ITR 340*, with which we agree. Regarding the disallowance out of administrative expenses, Ld Counsel for the assessee submitted that disallowance of a reasonable percentage of the exempt income is an accepted method of quantifying the disallowance of expenses for the AYs prior to AY 2008-2009, the year of amendment to Rule 8D of IT Rules, 1962. In this regard, Ld Counsel

*for the assessee filed decisions of the Tribunal in the cases of DCIT vs. HDFC Bank Ltd in ITA Nos. 4529/M/2005 and others, dated 29.6.2011 and order of the Tribunal in the case of Bank of India vs. ACIT in ITA No.1498/Mum/2011 for the AY 2001-2002, dated 9.4.2014 and submitted that disallowance @ 1% of the exempt income in the case of Banks is accepted as a „reasonable basis“. Further, he also referred to the decision of the Tribunal in the case of M/s. Godrej Agrovet Ltd vs. ACIT in ITA No.1629/Mum/2009, dated 17.9.2010, which was subsequently ratified by the Hon'ble jurisdictional High Court in the same case. This case is relevant for the proposition that the I.T.A. No.1525 and 364 9/Mum/2013 And I.T.A. No.1561 and 3438/Mum/2013 disallowance of 2% of the exempt income is found reasonable by the Hon'ble High Court."*

*Accordingly, we set aside the order of the ld.CIT(A) and direct the AO to make addition to the 2% of the exempt income. This ground of appeal is partly allowed.*

*10. In this view of the matter and consistent with the view taken by the Co-ordinate Bench in the assessee's own case for earlier years, we direct the Assessing Officer to restrict the disallowance worked out u/s. 14A to 2% of the exempt income."*

Respectfully following the decision of coordinate bench, we direct the AO to restrict the disallowance under Section 14A to 2% of the exempt income. in the result the ground of appeal raised by the assessee is allowed.

7. In the result the appeal of the assessee is allowed.

#### **ITA No. 7485/M/2016 for AY 2011-12 by Revenue**

8. Ground No. 1 in Revenue's appeal relates to deletion of disallowance of ₹208,57,64,535/- made by the AO on account of bad debts written off under Section 36(1)(vii) of the Act. The learned A.R. submits that this ground of appeal is covered in favour of assessee as similar disallowance was made in assessment years 1989-90( ITA No. 3062/Bom/1993), 1999-2000( ITA No.4157/Mum/1993), 2008-09 & 2009-10(ITA No.1561/M/2013 & 3438/M/2013) and consolidated order for AY 2000-01 to 2007-08 in ITA's No. 3639, 3640/M/2004, 2557,2558,1432,1528,7652/M/2011 respectively. In all cases the Tribunal granted relief to the assessee. On the other hand the ld. DR for the revenue relied on the order of the authorities below.

9. We have considered the rival submission of the parties and have gone through the orders of the authorities below. We have noted that almost on identical facts on identical issues the Tribunal in assessee's own case in ITA Nos. 1561/M/2013 & 3438/M/2013 for assessment years 2008-09 & 2009-10 held as under: -

*"13. We have heard the rival contentions and perused the material placed before us including the orders relied upon by the parties and impugned orders. We find from the record the co-ordinate Bench of the Tribunal that an identical issue has been decided in assessee's case in the earlier years by following the decision of the Hon'ble Supreme Court in (2012) 343 ITR 270 (SC). For the sake of convenience, we reproduce the operative part of the judgement as under:*

*"41. To conclude, we hold that the provisions of Sections 36(1)(vii) and 36(1)(viii) of the Act are distinct and independent items of deduction and operate in their respective fields. The bad debts written off in debts, other than those for which the provision is made under clause (viii), will be covered under the main part of Section 36(1)(vii), while the proviso will operate in cases under clause (viii) to limit deduction to the extent of difference between the debt or part thereof written off in the previous year and credit balance in the provision for bad and doubtful debts account made under clause (viii). The proviso to Section 36(1)(vii) will relate to cases covered under Section 36(1)(viii) and has to be read with Section 36(2)(v) of the Act. Thus, the proviso would not permit benefit of double deduction, operating with reference to rural loans while under Section 36(1)(vii), the assessee would be entitled to general deduction upon an account having become bad debt and being written off as irrecoverable in the accounts of the assessee for the previous year. This, obviously, would be subject to satisfaction of the requirements contemplated under Section 36(2).*

*42. Consequently, while answering the question in favour of the assessee, we allow the appeals of the assesseees and dismiss the appeals preferred by the Revenue. Further, we direct that all matters be remanded to the assessing officer for computation in accordance with law, in light of the law enunciated in this judgment.*

*I have gone through the judgment of my esteemed brother Swatanter Kumar, J. and I agree with the conclusions contained therein. However, I would like to give my own reasons.*

*The question for our consideration is - whether on the facts and circumstances of the case, the assessee(s) is eligible for deduction of the bad and doubtful debts actually written off in view of Section 36(1)(vii) which limits the deduction allowable under the proviso to the excess over the credit balance made under clause (viii) of Section 36(1) of Income Tax Act, 1961 ("ITA" for short)*

2. Under Section 36(1)(vii) of the ITA 1961, the tax payer carrying on business is entitled to a deduction, in the computation of taxable profits, of the amount of any debt which is established to have become a bad debt during the previous year, subject to certain conditions. However, a mere provision for bad and doubtful debt(s) is not allowed as a deduction in the computation of taxable profits. In order to promote rural banking and in order to assist the scheduled commercial banks in making adequate provisions from their current profits to provide for risks in relation to their rural advances, the Finance Act, inserted clause (viiia) in sub-section (1) of Section 36 to provide for a deduction, in the computation of taxable profits of all scheduled commercial banks, in respect of provisions made by them for bad and doubtful debt(s) relating to advances made by their rural branches. The deduction is limited to a specified percentage of the aggregate average advances made by the rural branches computed in the manner prescribed by the IT Rules, 1962. Thus, the provisions of clause (viiia) of Section 36(1) relating to the deduction on account of the provision for bad and doubtful debt(s) is distinct and independent of the provisions of Section 36(1)(vii) relating to allowance of the bad debt(s). In other words, the scheduled commercial banks would continue to get the full benefit of the write off of the irrecoverable debt(s) under Section 36(1)(vii) in addition to the benefit of deduction for the provision made for bad and doubtful debt(s) under Section 36(1)(viiia). A reading of the Circulars issued by CBDT indicates that normally a deduction for bad debt(s) can be allowed only if the debt is written off in the books as bad debt(s). No deduction is allowable in respect of a mere provision for bad and doubtful debt(s). But in the case of rural advances, a deduction would be allowed even in respect of a mere provision without insisting on an actual write off. However, this may result in double allowance in the sense that in respect of same rural advance the bank may get allowance on the basis of clause (viiia) and also on the basis of actual write off under clause (vii). This situation is taken care of by the proviso to clause (vii) which limits the allowance on the basis of the actual write off to the excess, if any, of the write off over the amount standing to the credit of the account created under clause (viiia). However, the Revenue disputes the position that the proviso to clause (vii) refers only to rural advances. It says that there are no such words in the proviso which indicates that the proviso apply only to rural advances. We find no merit in the objection raised by the Revenue. Firstly, CBDT itself has recognized the position that a bank would be entitled to both the deduction, one under clause (vii) on the basis of actual write off and another, on the basis of clause (viiia) in respect of a mere provision. Further, to prevent double deduction, the proviso to clause (vii) was inserted which says that in respect of bad debt(s) arising out of rural advances, the deduction on account of actual write off would be limited to the excess of the amount written off over the amount of the provision allowed under clause (viiia). Thus, the proviso to clause (vii) stood introduced in order to protect the Revenue. It would be

*meaningless to invoke the said proviso where there is no threat of double deduction. In case of rural advances, which are covered by the provisions of clause (viiia), there would be no such double deduction. The proviso limits its application to the case of a bank to which clause (viiia) applies. Clause (viiia) applies only to rural advances. This has been explained by the Circulars issued by CBDT. Thus, the proviso indicates that it is limited in its application to bad debt(s) arising out of rural advances of a bank. It follows that if the amount of bad debt(s) actually written off in the accounts of the bank represents only debt(s) arising out of urban advances, the allowance thereof in the assessment is not affected, controlled or limited in any way by the proviso to clause (vii).*

*3. Accordingly, the above question is answered in the affirmative, i.e., in favour of the assessee(s). For the above reasons, I agree that the appeals filed by the assessees stand allowed and the appeals filed by the Revenue stand dismissed with no order as to costs.”*

*We, respectfully following the decision of the co-ordinate bench of the Tribunal uphold the order of the Id.CIT(A) and dismiss the ground taken by the revenue.”*

10. Respectfully following the same we dismiss the ground raised by Revenue on this issue.

11. Ground No. 2 in Revenue's appeal relates to deletion of disallowance made by the AO on account of broken period interest. The learned A.R. submits that similar disallowance was made in assessment years 1998-99, 1999-2000, 2004-05, 2008-09, 2009-10 and 2010-11. In all cases the Tribunal granted relief to the assessee. The learned A.R. further submits that recently in appeal for assessment years 2008-09 and 2009-10 the Tribunal, vide its order dated 03.10.2017 in ITA Nos. 1561/M/2013 & 3438/M/2013, dismissed the appeal of the Revenue on this ground. On the other hand the learned DR for the revenue relied on the order of the authorities below.

12. We have considered the rival submission of the parties and have gone through the orders of the authorities below. We have noted that almost on identical facts on identical issues the Tribunal in assessee's own case in ITA Nos. 1561/M/2013 & 3438/M/2013 for assessment years 2008-09 & 2009-10 held as under: -

*“18. We have carefully considered the contentions of the rival parties and perused the material placed before us including the impugned orders. We find that in the instant case, the issue is with regard to the taxability of the interest relating to the broken period after due date of interest till the close of accounting year. Acceding to the assessee the same is not taxable as the assessee has no right to receive the said interest though accrued on day to day basis. The ld. CIT(A) allowed the appeal of the assessee on the same reasoning. We have perused the decision of the Hon'ble Jurisdictional High Court in the case of Director of Income tax (int.Tax. V/s Credit Suisse First Boston (Cyprus) Ltd (supra) and find that the identical issue has been decided by holding that the said interest is not liable to tax qua the broken period. The relevant para of the judgment is reproduced below:*

*“18. In CIT v. Canara Bank [1992] 195 ITR 66/61 Taxman 79 another Division Bench of the Karnataka High Court followed the above judgments. The High Court construed the last sentence quoted above from the judgment of the Supreme Court emphasised by us as under :-*

*"The last sentence conveys the idea that actually the income fructifies to the assessee only when the securities yield the interest and only in such a situation Section 18 is attracted and that the securities do not yield any income during the broken period of any year."*

*We are in respectful agreement with this interpretation of the judgment of the Supreme Court. It logically follows from the fact that the Supreme Court upheld the judgment of the High Court in Vijaya Bank Ltd. ( supra).*

*19. The right to receive interest on the Government securities vested in the respondent only on the due date mentioned in the securities. Consequently, interest accrued on the securities only on the due dates and cannot be said to have accrued to the respondent on any date other than the date stipulated therein. The contention that interest accrues for broken periods between two consecutive dates stipulated in the agreement/instrument for payment of interest is without any basis in law.*

*If the respondent held the security upto 31st March, 2001 and sold the same thereafter, but before the date on which interest was payable as stipulated in the security, interest cannot be said to have accrued to the respondent.*

*It is not disputed that in respect of the securities held by the respondent on 31st March, 2001, the due date for payment of interest thereon had not arrived on 31st March, 2001 and that the respondent sold some of such securities prior to the next due date for payment of interest. It is only the holder of the security on such date to whom interest can be said to have accrued. In any event interest did not accrue to the respondent on 31st March, 2001, as admittedly interest was not payable on that date as per the terms of the said securities.*

**20.** *The appellate authorities, therefore, rightly deleted the addition of Rs.1,21,57,517/- by the Assessing Officer as interest income.”*

*We, therefore, respectfully following the ratio laid down by the Hon'ble jurisdictional High Court, dismiss the ground raise by the revenue. Resultantly, the appeal of the revenue is dismissed.”*

Respectfully following the same we dismiss this ground of Revenue.

13. Ground No. 3 in Revenue's appeal relates to application of Section 115JB to assessee's case. The learned A.R. submits that similar issue has come up before the Tribunal in assessee's own case for A.Y. 3639/Mum/2004 for A.Y. 2000-01 wherein the issue has been decided in favour of the assessee vide order dated 16.08.2016. On the other hand the learned DR for the Revenue relied on the order of the authorities below.

14. We have considered the rival submission of the parties and have gone through the orders of the authorities below. We have noted that almost on identical facts on identical issues the Tribunal in assessee's own case in ITA Nos. 3639/Mum/2004 for A.Y. 2000-01 and others held as under: -

*“3. We have heard ld AR for the assessee and ld CIT-DR for Revenue. While making the submission, Ld. AR of the assessee argued that additional Ground raised in the present appeal may be taken up first as the MAT provisions u/s. 115JA/115JB are not applicable against the Banking Companies and relied upon the following decision of ITAT Mumbai and other Benches of the Tribunal:*

- (a) *Krung Thai Bank PCL v. JD1T (2011)16 taxinann.com 239 (Mum),*
- (b) *The Union bank of India v. ACIT (ITA No. 4702 to 4706/Mum/10),*
- (c) *Times bank Ltd. v. ACIT (ITA No. 4355/Mum/2008),*
- (d) *State bank of Hyderabad v. DCIT (2013) 33 taxmann.com 312 (Hyd. ITAT),*
- (e) *Dena Bank v. ACIT. (ITA No. 237/M/2002),*
- (f) *UCO Bank v. DCIT (2015) 64 taxmann.com 51 (Kolkata ITAT).*

*The Ld. AR for assessee further submitted that all the other Grounds raised in the appeals are also covered in favour of assessee-bank and furnished a chart along with the copies of the decisions. Ld AR for the assessee further argued that in case the assessee succeeds on the*

*additional Grounds of appeal, the discussions on other grounds of appeals would become academic. Ld DR for Revenue relied upon the order of authorities below, however, on raising query regarding the applicability of various decisions cited by AR of assessee with regard to additional Ground of appeals, the same was not disputed by him.*

*4. We have considered the rival contentions of the parties and perused the various decisions cited by Id. AR of the assessee. In the case of Krung Thai Bank (supra), the identical Grounds of appeal was considered by the Coordinate Bench of this Tribunal i.e. the applicability of provisions of Section 115JB and after considering the applicability with regard to section 115JB, the Co-ordinate Bench held as under:*

*"Learned Counsel for the assessee, however, contends that the provisions of MAT do not apply to the assessee, and, for this reason, very foundation of impugned re-assessment proceedings is devoid of legally sustainable merits. His line of reasoning is this. The provisions of MAT can come into play only when the assessee prepares its profits and loss account in accordance with Schedule 17 to the Companies Act. It is pointed out that, in terms of the provisions of Section 115 JB {2}, every assessee is required to prepare its profit and loss account in terms of the provisions of Part II and III of Schedule VI to the Companies Act. Unless the profit and loss is so prepared, the provisions of Section 115JB cannot come into play at all. However, the assessee is a banking company and under proviso to Section 211(2) of the Act the assessee is exempted from preparing its books of accounts in terms of requirements of Schedule VI to the Companies Act, and the assessee is to prepare its books of accounts in terms of the provisions of Banking Regulation Act. It is thus contended that the provisions of Section 115JB do not apply in the case of banking companies which are not required to prepare the profit and loss account as per the requirements of Part II and III of Schedule VI to the Companies Act. Since the provisions of Section 115 JB do not apply to the assessee company, the reasons recorded for re-opening the assessment are clearly wrong and insufficient. We are urged to quash the reassessment proceedings on this short ground.*

*Learned Departmental Representative, on the other hand, vehemently relies upon the orders of the authorities below and submits that there is no specific exclusion clause for the banking companies, and in the absence of such a clause, it is not open to us to infer the same. The submission of the learned counsel, 1TA No. 4355/Mum/2008 M/s. Times Bank Limited, 8 according to the departmental representative, are clearly contrary to the legislative intent and plain wordings of the statute. The plea of the assessee is indeed well taken, and it meets out approval. The provisions of Section 115JB can only come into play when the assessee is required to prepare its profit and loss account in accordance with the provisions of Part II and III of Schedule VI to the Companies Act. The starting point of computation of minimum alternate tax under section*

*115JB is the result shown by such a profit and loss account. In the case of banking companies, however, the provisions of Schedule VI are not applicable in view of exemption set out under proviso to Section 211(1) of the Companies Act. The final accounts of the banking companies are required to be prepared in accordance with the provisions of the Banking Regulation Act. The provisions of Section 115JB cannot thus be applied to the case of a banking company.*

*In view of the above discussions, and following the view taken by a coordinate bench in the case of Maharashtra State Electricity Board Vs. JCJT (82 JTD 422), which holds that provisions of MAT cannot be applied to electricity companies for mutually similar reason we uphold the plea of the assessee. The provisions of Section 115JB do not apply to the assessee, and, as such, the Assessing Officer was in error in concluding that income had escaped assessment in the hands of the assessee. The very initiation of reassessment proceedings was bad in law, and we quash the same".*

*5. The similar view was approved by the Co-ordinate Bench in case(s) of Union Bank of India, Times Bank Ltd., State Bank of Hyderabad, Dena Bank and UCO Bank (Supra) by Mumbai Tribunal, and in case of UCO Bank (supra) by Co-ordinate Bench of Kolkata Tribunal, thus the Ground of appeal raised by assessee is allowed."*

Respectfully following the same we dismiss this ground of Revenue.

15. Ground No. 4 in Revenue's appeal relates to valuation of securities while shifting from Available for sale to Hold to Maturity. The learned A.R. submits that the issue is covered in favour of the assessee by the decision of the Hon'ble Bombay High Court in the case of CIT vs. HDFC Bank Ltd. 368 ITR 377. On the other hand the learned DR for the Revenue relied on the order of the authorities below.

16. We have considered the rival submission of the parties and have gone through the orders of the authorities below. We have noted that almost on identical facts on identical question of law the Hon'ble High Court in the case of CIT vs. HDFC Bank Ltd 368 ITR 3777 held that loss incurred on account of security held under category "available for sale" to 'held to maturity' was to be allowed as business loss. Therefore, respectfully following the decision of jurisdictional high court this ground of appeal raised by revenue is dismissed.

17. In the result the appeal of the revenue is dismissed.

18. In the result, the appeal filed by the assessee is allowed and the appeal filed by revenue is dismissed.

Order pronounced in the open court on 19<sup>th</sup> July, 2018.

Sd/-  
**(B.R. Baskaran)**  
**Accountant Member**

Sd/-  
**(Pawan Singh)**  
**Judicial Member**

Mumbai, Dated: 19<sup>th</sup> July, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -4, Mumbai*
4. *The Pr. CIT - 2, Mumbai*
5. *The DR, "F" Bench, ITAT, Mumbai*

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Mumbai Benches, Mumbai*

n.p.