

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “D”, KOLKATA  
BEFORE SH. M.BALAGANESH, ACCOUNTANT MEMBER &  
SH. S.S.VISWANETHRA RAVI, JUDICIAL MEMBER**

**ITA No.1972 & 1973/KOL/2017  
(ASSESSMENT YEAR-2010-11 & 2012-13)**

DCIT/ACIT, LTU-1, 9 <sup>th</sup> Floor, Aayakar Bhawan, Poorva, 110, Shantipally, E.M.Bypass, Kolkata-700107.	vs	M/s. United Bank of India, 16, Old Court House Street, Dalhousie, Kolkata-700001. PAN-AAACU5624P
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>Appellant by</b>	Sh. G.Hangshing, CIT DR	
<b>Respondent by</b>	Sh. Soumitra Choudhury, Adv.	
<b>Date of Hearing</b>	21.08.2018	
<b>Date of Pronouncement</b>	16 .11.2018	

**ORDER**

**PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

Both appeals by the Revenue against the separate order dated 28.06.2017 and 08.06.2017 passed by CIT(A)-23, Kolkata for AY 2010-11 & 2012-13 respectively.

2. Since the issues raised in both appeals of the Revenue are similar based on identical facts and with the consent of the parties, we proceed to hear both the appeals together and disposed of by a consolidated order for the sake of convenience.

First we shall take up ITA No.1972/Kol/2017 filed by the Revenue.

**ITA No.1972/KOL/2017**

3. Ground No.1 is relating to deletion of addition made on account of MAT proceedings.

3.1. Heard both and perused the material available on record. We find CIT(A) placed reliance on the decision of this Tribunal in assessee's own case for AY 2009-10 vide order dated 13.12.2015. We find that the issue is covered by the order of this Tribunal. The relevant portion in order of CIT(A) is reproduced herein below:-

*"That in Ground No. '16', relate to applying MAT u/s. 115JB of the I.T. Act.*

*That the issue is covered in. assessee Bank's own case for the assessment year 2009-10 by Ld. I.T.A.'s order dated 30.12.2015 being I.T.A. Nos. ; 1916 & 113/K/2013.*

*That following the judgement by the co-ordinate bench decision of the Tribunal in the case of UCO Bank vs. DCIT, it was held by the Tribunal that the provisions of section 115JB of the Act are not applicable in the case of the assessee bank and further held that the amendment brought in section 115JB of the LT. Act read with Explanation 3 thereon by the Finance Act 2012 is applicable only with effect from Assessment year 2013-14 onwards in line with the Notes of Clauses of Finance Act, 2012, therefore, the order of the A.O. u/s.143(3) dated 28.03.2013 should be quashed. Moreover the CIT(A) has also followed the same order of ITAT in assessment year 2011-12 and has held that provision of section 115JB of the Act are not applicable.*

*Decision:-*

*The assessee has argued that this issue is covered by the decision of jurisdictional tribunal in their own case for A.Y. 2009-10 wherein it has been held as under:*

*" It was held by this tribunal that the provisions of section 115J8 of the Act are not applicable in the case of the assessee bank and further held that the amendment brought in section 115J8 of the Act read with Explanation 3 thereon by the Finance Act 2012 is applicable only with effect from Asstt. Year 2013-14 onwards in line with the Notes to Clauses of Finance Act 2012.*

*Respectfully following the co-ordinate bench decision of this tribunal in the case of UCO Bank (supra), we also hold accordingly. Hence, the ground no.2 raised by the assessee in this regard is allowed. "*

*The above decision has been given by the Hon'ble Tribunal*

*relying on their own judgement in the case of UCO Bank vs: DCIT in ITA No.1768/KoI/2009 dated 27.11.2015 for the A.Y. 2002- 03. The Tribunal order in the case of UCO Bank was challenged by the Revenue in Kolkata High Court, the Hon'ble*

*High Court set aside the matter back to the Tribunal with certain directions. The Hon'ble Tribunal heard the matter afresh and vide their order dated 27.11.2015 have held as follows:*

*"Though, section 115JB has been amended to bring all the Companies in its ambit vide Finance Act 2012, w.e.f. 01.4.2013, however, the said amendment is not applicable in the assessment year under consideration.*

*Following the decision of co-ordinate bench of this Tribunal we decide this issue in favour of the assessee.*

*7.9. In view of the aforesaid provisions of the Act, our findings given thereon with respect to the facts and various judicial precedents relied upon hereinabove and further in view of the fact that no contrary decisions being brought to our knowledge on the same issue, we accordingly hold that the provisions of section 115JB of the act are not applicable in the case of the assessee; and the amendment brought in section 115JB of the Act read with Explanation 3 thereon by the Finance Act 2012 is applicable only with effect from A.Y. 2013-14 onwards in line with the Notes to Clauses of Finance Act 2p12. Accordingly, the ground raised by the assessee in this regard is allowed. 7.10. The directions of the Hon'ble High Court of Calcutta is compiled with in the manner stated herein above and. the appeal. is disposed off accordingly."*

*The jurisdictional Hon'ble Tribunal in assessee's own case has decided the issue in their favour. Further, it has also been decided in this case that Explanation-3 to section 115jB is applicable from A.Y. 2013-14 onwards. The impugned. A.Y. is 2010~11 where Explanation-3 to Section -115J8 would not be applicable. Respectfully following the decision of the jurisdictional Tribunal, I am of the opinion that provision of section 115JB of the Act are not applicable in the case of the assessee for the impugned assessment year. The appeal of the assessee on this issue is allowed."*

4. In view of the above, we do not find any infirmity in the order of CIT(A). Ground No.1 raised by the Revenue is dismissed.

5. Ground No.2 is relating to deletion of disallowance of expenses.

5.1. Heard both and perused the material available on record. We find that the CIT(A) by following Rule of Consistency as followed in assessee's own case for AY 2011-12 deleted the addition. The relevant portion in order of CIT(A) is reproduced hereunder:-

*"For that on the facts of the case, the A.O. was wrong in disallowing earlier year's expenses amounting to Rs.31,15,854/- without considering the fact that the liability arose and crystallized during this financial year, moreover,*

*this is the regular method of accounting followed by the assessee; bank, therefore, the disallowance of such expenses amounting to Rs.31,15,854/- is completely arbitrary, unjustified and illegal.*

*Submission of Assessee:*

*That Ground Nos. '6 to 8' relate to disallowance of Rs.31,15,854/ for earlier year's expenses. The liability arose and crystallized during this financial year. The assessee bank followed the regular method of accounting consistently year to year and has been allowed in all earlier years in assessment completed u/s. 143(3) of the I.T. Act, therefore, the disallowance of Rs. 31,15,854/- may be allowed in full. That moreover CIT(A) has allowed the said expenditure in assessment year 2011-12 by order dated 21.12.2016.*

*Decision:-*

*The liability of Rs.31,15,854/- pertain to previous years but crystallized during the year. In past assessment years also this disallowance was considered and allowed by CIT(A) in A.Y.2011-12. Hence, considering the submission of AR and nature of expenses and following consistency, I, therefore, allow these expenses of Rs. 31,15,854/- this year also. Appellant gets relief of Rs.31,15,854/-."*

6. In view of the above, we do not find any infirmity in the order of CIT(A). Ground No.2 raised by the Revenue is dismissed.

7. Ground No.3 is relating to deletion of disallowance made on account of ATM machine charges.

7.1. Heard both and perused the material available on record. We find that the CIT(A) followed the order of this Tribunal in assessee's own case for AY 2011-12 vide order dated 21.11.2016. The relevant portion in order of CIT(A) is reproduced hereunder:-

*Decision*

*"The issue is whether the expenditure incurred towards debit cards is a revenue expenditure or a capital expenditure. It has been submitted by the assessee that the issue is covered by the decision of jurisdictional ITAT in their case of A.Y. 2009-10 wherein it has been held as under:*

*"We have heard the rival submissions and we find that the issuance of ATM Cum Debit Cards to the customers of the assessee bank is part of the business activity of the assessee and there is no enduring benefit to the assessee out of incurring this expenditure. The Ld. CIT(A) had observed that in the past the department had been accepting this expenditure as a revenue expenditure and we find no change in facts and circumstances of*

*the case for the year under appeal with regard to the impugned issue warranting the department to take Cl different stand. This fact has not been' controverted by the revenue before us. Though the principle of res judicata does not apply to income tax proceedings, in our opinion the principle of consistency cannot be given a go bye. Reliance in this regard is placed en the decision of the Hon'ble Apex Court in the case of Radhasaomi Satsang reported in 193 ITR 321 (SC). Hence, we find no infirmity in the" order of the Ld. CIT (A). Accordingly, the ground no.2 raised by the revenue is dismissed. "*

*Respectfully following the decision of the jurisdictional tribunal, the debit card expenses of Rs. Rs.20,92,000/- of the assessee is allowed."*

8. In view of the above, we do not find any infirmity in the order of CIT(A). Ground No.3 raised by the Revenue is dismissed.

9. Ground No.4 is relating to deletion of addition u/s 14A of the Income Tax Act, 1961 (in short "Act").

9.1. Heard both and perused the material available on record. We find that the CIT(A) by placing reliance in the order of this Tribunal in assessee's own case for AY 2009-10 deleted the disallowance made under Rule 8D(2)(ii) and confirmed the disallowance made under Rule 8D(2)(iii). The relevant portion in order of CIT(A) is reproduced hereunder:-

*Decision*

*The issue is regarding disallowance u/s14A made by the A.O. of Rs.17,48,97348/- and Rule 8D(2)(iii) of Rs.1,57,60,500/-. The assessee had offered disallowance under Rule 8D(2)(iii) of Rs.1,58,00,000/-. Accordingly, the A.O. made disallowance of Rs.19,06,57,848/- u/s 14A. It has been submitted before me that the issue is covered by the order of ITAT in their own case fer A.Y. 2009-10. In the said order, it has been held as under:*

*"We have heard. the rival submissions and find that the assessee bank has got sufficient own funds to the extent of Rs.4532.27 crores as on 31.03.2009 which is very much available for making investment of RS.242.03 crores and hence it can safely be presumed that no part of borrowed funds were utilized for making investments yielding tax free income. Moreover, the Ld. A.O. had not brought on record any nexus between borrowed funds and amount invested by assessee. There are plethora of judgements in*

*favour of the assessee on the impugned issued. Hence the addition deleted by the Ld. CIT(A) in respect of Rs.13,10,65,100/- by invoking Rule 8D(2)(ii) of the Rules does not require any interference. Accordingly, the ground no. 4 raised by the revenue is dismissed".*

*It is observed that the Hon'ble Tribunal has deleted in the case of the assessee the disallowance under Rule8D(2)(ii). However, the disallowance under Rule 8D(2)(iii) has been confirmed by them. Respectfully following the said decision, the A.O. is directed to delete the disallowance under Rule 8D(2)(ii) of Rs.17,48,97348/-. However, the disallowance under Rule 8D(2)(iii) of Rs.1,58,00,000/- is hereby confirmed."*

10. In view of the above, we do not find any infirmity in the order of CIT(A). Ground No.4 raised by the Revenue is dismissed.

11. In the result, the appeal of the Revenue is dismissed.

**ITA No.1973/KOL/2017**

12. The view taken by us in ITA No.1972/Kol/2017 is applicable to this appeal also. Therefore, all grounds raised by Revenue in this appeal are dismissed.

13. In the result, the appeal of the Revenue is dismissed.

14. In the final result, both appeals of the Revenue are dismissed.

**Order pronounced in the open court on 16.11.2018.**

**Sd/-  
(M.BALAGANESH)  
ACCOUNTANT MEMBER**

**Sd/-  
(S.S.VISWANETHRA RAVI)  
JUDICIAL MEMBER**

*Date:- 16.11.2018*

*\*Amit Kumar\**

Copy forwarded to:

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2. Respondent- M/s. United Bank of India, 16, Old Court House Street, Dalhousie, Kolkata-700001.
3. CIT-Kolkata
4. CIT(Appeals)-Kolkata
5. DR: ITAT -Kolkata Benches

Sr.P.S./H.O.O  
ITAT, KOLKATA