आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष
BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. Nos. 1129 & 1130/CHNY/2018
निर्धारण वर्ष /Assessment years : 2012-13 and 2014-15.

M/s. City Union Bank Limited, Central Office, 149, TSR Big Street, Kumbakonam.	**Vs.**	The Assistant Commissioner of Income Tax, Circle I, Kumbakonam.

आयकर अपील सं./I.T.A. Nos. 1315& 1316/CHNY/2018
निर्धारण वर्ष /Assessment years : 2012-13 and 2014-15.

The Assistant Commissioner of Income Tax, Circle I, Kumbakonam.	**Vs.**	M/s. City Union Bank Limited, Central Office, 149, TSR Big Street, Kumbakonam. [PAN AAACC 1287E]
(अपीलार्थी/Appellant)		**(प्रत्यर्थी/Respondent)**

Assessee by : Shri. S. Ananthan,C.A.
Department by : Shri. Sailendra Mamidi, IRS, PCIT.

सुनवाई की तारीख/Date of Hearing : 16-05-2019
घोषणा की तारीख /Date of Pronouncement : 09-07-2019

आदेश / O R D E R

PER INTURI RAMA RAO, ACCOUNTANT MEMBER:

These are cross appeals filed by the Revenue as well as Assessee directed against the order of the learned Commissioner of Income Tax (Appeals)—1, Tiruchirappalli (hereinafter called as 'CIT(A)') dated 14.02.2018 for the assessment years (AY) 2012-13 & 2014-15.

2. Since, the identical facts and issues are involved in these appeals, we proceed to dispose the same vide this common order.

3. For the sake of convenience and clarity the facts relevant in ITA No.1129/Chny/2018 for assessment year 2012-13 are stated herein.

4. The brief facts of the case are as under:

The appellant namely M/s. City Union Bank Limited is engaged in the business of banking. The return of income for the AY 2012-13 was filed on 29.09.2012 disclosing total income of Rs.169,83,76,140/- and the same was revised on 08.09.2013 at total income of Rs.159,55,89,950/-. Against the said return of income, the assessment was completed by the Deputy Commissioner of Income Tax, Circle 1, Kumbakonam, (hereinafter called "AO") vide order dated 30.03.2015

passed u/s. 143(3) of the Income Tax Act, 1961 (in short 'the Act') at total income of Rs. 330,47,65,965/-. While doing so, the Assessing Officer made the following additions.

1	Disallowance u/s.14A	₹2,82,57,685
2	Bad debts written off	₹51,44,46,907
3	Interest on securities disallowed	₹25,21,72,886
4	Profit on sale of investments	₹7,25,09,632
5	Loss on shifting of securities	₹8,85,34,138
6	Deduction u/s.36(1) (viia)	₹64,64,78,669
7	Disallowance u/s.41(1) & 28(iv)	₹47,58,883 ₹47,05,085
8	Claim of deduction u/s.36(1) (viii)	₹1,70,94,716
9	Excess depreciation on ATMs	₹2,52,39,819
10	Interest on VIP deposits disallowed u/s.40(a) (ia) of the Act	₹5,49,77,592

5. Being aggrieved by the order of the Assessing Officer, an appeal was preferred before the ld. CIT(A) who vide impugned order deleted the addition of ₹2,82,57,685/- made u/s.14A of the Act placing reliance on the decision of Co-ordinate Bench of the Tribunal in the case of *Karur Vysya Bank vs. JCIT in ITA No.2325 & 2326/Mds/2016, dated 29.03.2017*, wherein it was held that investments made by the banking companies are part of business

assets i.e. stock in trade of the banking company and therefore disallowance cannot be made for the provisions of Section 14A of the Act.

6. As regards to the disallowance of provisions for bad debts of written off of ₹51,44,46,907/- in respect of non rural branches. The ld. CIT(A) after considering the submissions made on behalf of the assessee bank and the cogent reading of both provisions of Sections 36(1) (vii) and 36(1) (viia) of the Act held that amounts can be allowed only to the extent to the actual provisions created out of the total claim of Rs.51,44,46,907/- u/s.36(1)(vii) and Rs.65,33,93,780/- u/s.36(1) (viia) of the Act. The claims are restricted to the actual provisions of Rs.66,00,00,000/- debited to profit and loss account and the balance addition of Rs.50,78,40,687/- was confirmed by the ld.CIT(A).

7. Regarding addition on account of accrual of interest on Government securities of ₹25,21,72,886/-. The ld. Commissioner of Income Tax (Appeals) following the decision of Jurisdictional High Court in assessee's own case for assessment year 1994-95 reported in 2014(8)TMI 604- Madras High Court and decision of Karnataka High Court in the case of *CIT vs. Karnataka Bank, (2014) 226 Taxman 197*, held that interest on the Government Securities cannot be said to

be accrued till the due date. Accordingly directed the Assessing Officer to delete the addition.

8. Regarding addition on account of profit on sale of investments of ₹7,25,09,632/-. The addition was made on excess cost of securities over the face value. The ld. CIT(A) held that it is an allowable expenditure following the decision of Co-ordinate Bench of the Tribunal in the case of Karur Vysya Bank (supra).

9. Regarding issue on loss on shifting of securities of ₹8,85,34,138/- from AFS category to HTM category. The ld. CIT(A) confirmed the addition considering the fact that only notional loss were accounted and not the gain made.

10. Next issue is regarding addition made on account of stale drafts of ₹94,63,968/-. The ld. CIT(A) deleted the addition made on account of stale demand drafts and cheques following the decision of Co-ordinate Bench of the Tribunal in the case of Karur Vysya Bank (supra).

11. Next issue regarding allowability of depreciation on ATM machine of the claim of ₹2,52,39,819/-, the learned CIT(A) following the decision of Chandigarh Bench of the Tribunal in ITA No.215/Chd/2015, dated 28.03.2016 held that ATM machine were held to be computers. Accordingly, higher depreciation was allowed.

12. Next issue relates to disallowance on interest on recurring deposits account due to alleged non deduction of tax at source. The ld. CIT(A) deleted the addition on account of interest are recurring deposits considering the fact that it is only from the assessment year 2016-2017 that there is an obligation to deduct tax at source on such deposits u/s.194A of the Act by virtue of amendment by Finance Act, 2015.

13. Thus, the appeal of the assessee came to the partly allowed by the ld. CIT(A).

14. Being aggrieved by that part of the order of the ld. CIT(A) which is against the assessee bank, the assessee is in appeal before us in ITA No.1129/CHNY/2018 and the Revenue is in appeal on the grounds which are decided in favour of the assessee in ITA No.1315/CHNY/2018.

15. First we adjudicate assessee appeal in ITA No.1129/CHNY/2018 for assessment year 2012-2013.

16. The Assessee raised the following grounds of appeal:-

> *1. The order of the learned CIT(A) is contrary to the facts and circumstances pertaining to the case of the Appellant .*
>
> *2. The learned CIT(A) erred in sustaining the disallowance of Rs. 50,78,40,687/- claimed by the Appellant bank u/s 36(1)(vii) in respect of bad debts written off.*

2.1. The learned CIT(A) failed to appreciate the fact that there is no double deduction in respect of non rural debts written off by the Appellant bank.

2.2. The learned CIT(A) erred in holding that the total deduction u/s 36(1)(vii) & 36(1)(viia) should be restricted to the actual amount of provision created by the Appellant in the books.

2.3. The learned CIT(A) erred in sustaining the disallowance on surmises and conjunctures.

3. The learned CIT(A) erred in sustaining the disallowance of the loss on shifting of securities amounting to Rs. 8,85,34,138/-.

3.1. The learned CIT(A) erred in holding that the same is a notional loss and is not allowable.

For all these and other grounds which may be urged at the time of the hearing of this appeal, the appellant prays that its appeal be allowed".

and also raised the following additional grounds appeal.

1. Aggrieved by the appellate order passed by the Commissioner of Income Tax (Appeals), Trichy, the appellant had filed the above numbered appeal before the Hon'ble Income Tax Appellate Tribunal.

2. It is humbly stated that, while filing the appeal, the appellant did not raise specific grounds of appeal against the following issue:

2.1. Disallowance of deduction u/s 36(1)(viia) of RS.64,64,78,669/-.

3. With respect to the item mentioned in para 2.1 above, it is humbly submitted that the learned Assessing Officer had disallowed in part, the claim of the Appellant bank u/s 36(1)(viia) and Appellant Bank had challenged the same before the learned CIT(A) by taking a specific ground. The appellant bank was of the opinion that the learned CIT(A) had allowed the deduction as claimed by the Appellant bank since he had decided the issue of deduction u/s 36(1)(vii) & 36(1)(viia) together in his order and allowed the amount actually debited to the Profit & Loss Account. Since the Appellant Bank had debited the provision for bad & doubtful debts to the Profit & Loss Account, it was under

the opinion that its claim of deduction u/s 36(1)(viia) has been allowed by the learned CIT(A). However, the ARs who represent the Appellant Bank are of the opinion that it is advisable for the Appellant Bank to raise a specific ground with regard to deduction u/s 36(1) (vii a) since the learned CIT(A) has not dealt with the ground on merits. In view of the same, the additional ground, which is purely a legal ground which is raised.

4. The appellant now seeks to raise the under mentioned additional grounds of appeal. The appellant humbly prays that these Additional Grounds of Appeal may please be admitted and adjudicated upon while adjudicating the Appeal in ITA No. 1129/CHNY/2018.

ADDITIONAL GROUNDS OF APPEAL

1. The learned CIT(A) erred in not deciding the issue of deduction u/s 36(1)(viia) by a speaking order.

1.1. The learned CIT(A) failed to appreciate the fact that the learned Assessing Officer erred in considering only the rural provision made by the Appellant bank for allowing the deduction u/s 36(1)(viia).

1.2. The learned CIT(A) failed to appreciate the fact that the learned Assessing Officer erred in not considering the total provision made by the Appellant bank for allowing deduction u/s 36(1)(viia)".

17. The ground No.1 raised by the assessee is general in nature therefore, does not require any adjudication.

18. Ground No.2 challenges the decision of the ld. CIT(A) confirming the disallowance of ₹50,78,40,687/- u/s.36(1) (vii) and 36(1) (viia) of the Act.

19. The brief facts of the case are that the assessee bank made a claim towards bad debts written off u/s.36(1) (vii) of the Act, the same was disallowed by the Assessing Officer on the ground that accounts were not written off in the books of accounts. On appeal before the ld. CIT(A), the ld. CIT(A) accepted in principle that provisions for bad and doubtful debts debited to the profit and loss account and reducing the same from the debtors accounts constitutes write off in the light of the judgment of Hon'ble Supreme Court in the case of *M/s. Vijaya Bank and others vs. CIT, 323 ITR 166*. But he had considered the provision of bad debts in respect of rural branches u/s.36(1) (viia) of the Act together with amount claimed u/s.36(1) (vii) of the Act and restricted allowance to the actual amount provision created of ₹66,00,00,000/-, debited to profit and loss account. While doing so, the ld. CIT(A) had ignored the actual write off in respect of non rural branches by crediting the provisions for bad and doubtful debts and reducing the same from advance in the Balance Sheet. The disallowance was made by Assessing Officer solely on the ground that mere creation of provisions of bad and doubtful debts does not amount to write off. Now the law is settled to the extent that provisions u/s.36(1) (vii) and 36(1) (viia) of the Act are separate and independent to each other as held by Hon'ble Supreme Court in the case of *Catholic Syrian Bank Ltd. v. CIT, 343 ITR 270*.

The ld. CIT(A) had rightly followed the decision of Supreme Court in the case of Vijaya Bank(supra) and held that creation of provisions for bad and doubtful debts by debiting profit and loss account reducing the same from debtor account constitutes write off. The assessee wrote off of accounts i.e. debiting the provisions for bad and doubtful debts and reducing the same from advances in the Balance Sheet. It is an admitted fact that in the year subsequent recovery, the same credited to Profit and Loss account and offered to tax. We find merit in the submissions of the assessee bank that the learned CIT(A) grossly fell in error in combining the provisions of Section 36(1) (vii) and 36 (1) (viia) of the Act ignoring the principle emanated by the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd (supra). We find that the ld. CIT(A) considered only the provisions of bad and doubtful debts debited to profit and loss account and ignored the write off of bad debts debited to provisions for bad and doubtful debts and reduced from advance from the Balance Sheet which also constitute write off as observed by us (supra). Therefore we remand this issue back to the file of the Assessing Officer for limited purpose of verifying the amount of write off debited to provisions of bad and doubtful debts and reduced from advance account in the balance sheet and allow the same as deduction to the extent of write off.

Accordingly, this ground of appeal raised by the assessee is partly allowed for statistical purpose.

20. In the light of the above findings given by us in grounds of appeal equally hold good in respect of additional grounds of appeal filed by the assessee. Thus the additional ground of appeal as well as ground of appeal No.2 is partly allowed for statistical purpose.

21. Ground No.3 challenges the disallowance of loss on account of shifting of securities amounting of ₹8,85,34,138/-.

22. The Assessing Officer observed that during the previous year relevant to assessment year, the assessee bank had shifted certain securities from AFS to HTM in order to comply with the RBI guidelines in preparation of accounts. The Assessing Officer disallowed the claim on the ground that RBI guidelines are not binding while computing taxable income and the ld. CIT(A) confirmed the findings.

23. Being aggrieved, the appellant is in appeal before us in the present appeal. It is submitted that as on date of shifting of securities, the diminution in the value of securities was claimed as deduction and investments held by the banking companies are treated as stock in

trade and therefore fall in value of securities should be allowed as deduction based on the principle of statutory valuation stock that stock in trade should be valued at cost or market whichever is less. It is submitted that similar claim was allowed by this Tribunal in assessee's own case by placing reliance on the decision of Jurisdictional High Court in assessee's own case in 291 ITR 144. This issue was also dealt by the Bangalore Bench of the Tribunal in the case of *Canara Bank vs. JCIT*, wherein it was held as follows:-

> *"**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 IT
(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 bankingcompany 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. Thus, grounds of appeal Nos. 4, 5 & 6 are disposed of.*

Even the Jurisdictional High Court in the case of *CIT vs Karur Vysya Bank Ltd, 273 ITR 510* took a similar view. Therefore the fact that the assessee bank has shifted the investment from one category to another is of no relevance, in as much as, fall in value of investment is held to be allowable as deduction. Thus, ground of appeal No.3 filed by the assessee is allowed.

24. In the result, the appeal filed by the assessee in ITA No.1129/CHNY/2018 for assessment year 2012-2013 is partly allowed for statistical purpose.

25. Now, we take up the cross appeal of the Revenue in ITA No.1315/CHNY/2018 for assessment year 2012-13.

26. The Revenue raised the following grounds of appeal.

> *1. The Ld. CIT(A) failed to appreciate that the assessee had itself made adhoc disallowance u/s 14A of the Act in the return of income and the AO rightly worked out the correct disallowance by applying Rule 8D of Income Tax Rule.*
>
> *2. The Ld. CIT(A) erred to notice that when the assessee following mercantile system of accounting, any interest accrued on investments should be admitted as income.*
>
> *3. The Ld. CIT(A) erred to notice that the AO had rightly restricted the deductions u/s 36(1)(vii) & 36(1)(viia) of the*

Act to the credit balance of the provision for bad and doubtful debts made for rural branches as against the credit balance of provision for bad and doubtful debts made for all branches.

4. The Ld. CIT(A) erred to notice that the AO has rightly disallowed the excess cost of securities over the face value amortized, while working out the profit / loss on trading of securities.

5. The Ld. CIT(A) erred to notice that the Assessing Officer has rightly invoked the provisions of sec 41(1) and 28(iv) of the Act with regard to unclaimed money, stale drafts and cheques reflected in the balance sheet for more than three year by applying the principle of limitation and the notification of RBI was issued on 24/05/2014 only, mandating the banks to transfer such unclaimed amount to "Depositor Education and Awareness Fund Scheme" and this instruction is prospective only.

6. The Ld. CIT(A) failed to notice that the higher depreciation at 60% for ATMs could not be given on par with the computers, since the functions of both ATM and computer are not comparable.
7. The Ld. CIT(A) failed to notice that the VIP deposits are in the nature of time deposits only, hence the provisions u/s 40(a)(ia) of the Act are rightly invoked by the AO.

8. The Ld. CIT(A) failed to notice that the Assessing Officer had actually verified the nature of advances given and correctly made disallowance u/s 36(1)(viii) of the Act in respect of advances made to ineligible business activities.

For the above grounds and other grounds that may be adduced during the time of hearing the order of the CIT(A) may be cancelled and the Department appeal may be allowed.

27. Ground No.1 challenges the decision of the ld. CIT(A) in deleting the addition made u/s.14A of the Act on the ground that investments held by the assessee company is stock in trade and

therefore resort to provisions u/s.14A of the Act cannot be made. The Assessing Officer made a disallowance of ₹2,82,57,685/- u/s.14A r.w.r. 8D. On appeal before the ld. CIT(A), the ld. CIT(A) held that the provisions of Section 14A of the Act cannot be applied in case of exempt income earned from investment held in stock in trade. Reasoning of the ld. CIT(A) has been overturned by the Hon'ble Supreme Court in the case of *Maxopp Investment Ltd vs. CIT, (2018) 402 ITR 640*. Therefore contention of the assessee that provisions of Section 14A of the Act cannot be invoked, when the securities are held as stock-in-trade, cannot be accepted. As regards to other limb of the argument of the assessee that in the absences of any finding by the Assessing Officer as to how the contention of the assessee that no expenditure was incurred is incorrect no disallowance should be made. We find from the assessment order that the assessee bank itself has offered a sum of ₹2,19,751/- under the provisions of Section 14A of the Act. From the perusal of the order of the Assessing Officer, it is clear that the Assessing Officer had not assigned any reason whatsoever as to how the claim of the assessee is incorrect. In the similar facts, the Hon'ble Supreme Court in the case of *Maxopp Investment Ltd. vs. CIT, 402 ITR 640* held that in the absence of the finding of the Assessing Officer resort to provisions of Section 14A of the Act r.w.r 8D of the Rules cannot be made. This decision was

followed by the Co-ordinate Bench of the Tribunal in the case of Karur Vysya Bank (supra) cited by holding as under:-

> "Ground No. 8 challenges the addition of ₹3,88,882/- invoking the provision of Section 14A of the Act. It is the contention of the appellant that the appellant had not incurred any expenditure to earn exempt income. The Assessing Officer had not given any findings as to how the claim of the assessee- bank that no expenditure was incurred to earn the exempt income was incorrect. In the absence of this finding resort to the provisions of rule 8D of the Income Tax Rules cannot be made as held by the Hon'ble Supreme Court in the case of Maxopp Investment Ltd vs. CIT, (2018) 402 ITR 640. Therefore this ground of appeal filed by the assessee is allowed. Accordingly, this ground of appeal stands allowed in favour of the assessee".

Similar view was taken up by the Hon'ble Delhi High Court in the case of CIT vs. Taikisha Engineering India Ltd, 370 ITR 338 and PCIT vs. Moonstar Securities Trading and Finance Co. (P) Ltd, 105 taxmann.com 274. The Hon'ble Delhi High Court had firmly held that mere rejection of the explanation of the assessee per se cannot be accepted. This decision of Delhi High Court in the case of Moonstar Securities Trading and Finance Co. (P) Ltd, was affirmed by the Hon'ble Supreme Court in the case of dismissal of SLP in PCIT vs. Moonstar Securities Trading and Finance Co. (P) Ltd, 105 taxmann.com 275. In the light of the above legal positions, we are of the considered opinion that even in the present case no reason was

assigned by the Assessing Officer for rejecting the explanation of the assessee. In the circumstances, ratio of the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd (supra) is squarely applicable. We direct the Assessing Officer to delete the addition made u/s.14A of the Act. Thus, ground No.1 raised by the Revenue is dismissed.

28. Ground No.2, challenges the decision of the ld. CIT(A) to allow interest accrued on Government securities.

29. It is submitted before us that the assessee bank is offering tax on interest income received from Government securities and bonds in the year of receipt of interest. However, in the books of accounts, the interest is accounted on accrued basis but for Income Tax purposes the same is offered only in the year of receipt. It is stated before us that the interest on the Government securities is accrued only on due date, hence it cannot be said that interest income has accrued to the assessee. Accordingly, the same should be offered to tax only in the year of receipt. He placed reliance on the following decisions.

1. *CIT vs. Karnataka Bank, 226 Taxman 197.*
2. *CIT vs. City Union Bank Ltd, 291 ITR 144.*
3. *CIT vs. Union Overseas Bank, 249 ITR 491.*
4. *CIT vs. Tamilnadu Mercantile Bank, 291 ITR 131.*

30. We heard the rival submissions and perused the material on record. This issue is covered in favour of the assessee in assessee's own case by the Jurisdictional High Court in 2014 (8) TMI 604, wherein it was held at para 3 as follows:

> *"3. We find that in respect of the very same assessee, for the earlier assessment years, a Division Bench of this Court in Commissioner of Income Tax v. City Union Bank Ltd., [2007] 291 ITR 144 (Mad.) has answered both the substantial questions of law raised in this appeal in favour of the assessee and against the Revenue. The relevant portion of the said order reads as under:*
>
> > *4.1. With regard to the first substantial question of law raised in T.C.(A) No.22 of 2004 and the first substantial question of law raised in T.C.(A) No.466 of 2004, the Division Bench of this Court by judgment dated 23.1.2007 made in T.C.(A) Nos.15 and 24 of 2003 (Commissioner of Income Tax, Madurai v. Tamilnadu Mercantile Bank Ltd., Tuticorin), after referring to the decisions in Commissioner of Income-tax v. Canara Bank [1992] 195 ITR 66, CIT v. Shoorji Vallabhdas and Co. [1962] 46 ITR 144, H.M.Kashiparekh and Co. Ltd. v. CIT [1960] 39 ITR 706, Poona Electric Supply Co. Ltd. v. CIT [1965] 57 ITR 521, Morvi Industries Ltd. v. CIT, [1971] 82 ITR 835, State Bank of Travancore v. CIT [1986] 158 ITR 102 (SC), Godhra Electricity Co. Ltd., v. Commissioner of Income-tax, [1997] 225 ITR 746 held that the assessee is taxable for interest on securities only on specified dates when it becomes due for payment, in view of third proviso to Section 145(1) of the Act, which was in force during the relevant assessment years.*
> >
> > *4.2. In view of the ratio laid down in the decisions referred supra, the first substantial question of law raised in T.C.(A) No.22 of 2004 and the first substantial question of law raised in T.C.(A) No.466 of 2004 is answered in favour of the assessee and against the revenue"..*

Respectfully, following the above decision of Hon'ble Jurisdictional High Court, we decide the issue in favour of the assessee and dismiss the ground of appeal No.2 raised by the Revenue.

31. Ground No.3 challenges the direction of the ld. CIT(A) in allowing depreciation u/s.36(1) (vii) and 36(1) (viia) of the Act to the extent of the provision created by debiting the profit and loss and reducing the sundry creditors account. The decision of the ld. CIT(A) is based on the law laid down by the Hon'ble Supreme Court in the case of Vijaya Bank (supra) and *Catholic Syrian Bank Ltd(supra)* and therefore we do not find any merits in the grounds of appeal filed by the Revenue. Accordingly, ground No.3 raised by the Revenue is dismissed.

32. Ground No.4 challenges the direction of the ld. CIT(A) allowing the premium paid on purchase of securities as cost of acquisition in the year of investments itself though amortized in the books of accounts. This issue is decided against the Revenue and in favour of the assessee in assessee's own case following the decision of Hon'ble Jurisdictional High Court in assessee's own case reported in 291 ITR 144 by the Co-ordinate Bench of the Tribunal in ITA No.1801/Mds/2014, dated 28.12.2016 for assessment year 2008-2009, wherein it was held at paras 12 to 12.2 as follows.

> *12. The second ground the Revenue has challenged the action of the CIT(A) in allowing the claim of amortization charges as Revenue expenditure. The Ld. AO on perusal of annual report to the Return of*

Income found that the assessee bank has disclosed in other income an amount of Rs. 5,18,96,860/- amortization expenditure deducted from the current income and not credited to the Profit & Loss Account and the amount pertains to deduction in respect of HTM Securities and the Ld. AO relied on the RBI guidelines and is of the opinion that the assessee is required to follow accountancy principles and the capital expenditure cannot be allowed in the Profit & Loss Account unless authorized by the Act.

12.1 Further, the Ld. AO is of the opinion that the assessee included the amortization amount in the book value of HTM Securities to arrive at cost of purchase. Therefore, the assessee bank cannot claim the cost paid and face to value receivable at the time of HTM Securities as expenditure and disallowed Rs. 5,18,96,960/-. The Ld. CIT(A) considered the findings of the Assessing Officer and grounds raised before him and followed the judicial decision in the assessee's own caseand the submissions on the amortization expenses that it represents only depreciation loss written off in the books of accounts and is allowable expenditure and relied on the decision of Hon'ble Supreme Court in the case of UCO Bank 240 ITR 355 (SC), where it was held that depreciation in investments should be allowed as revenue expenditure. Since, the securities are stock in trade and valued at cost or market value whichever is less the claim has to be allowed. The Ld. CIT(A) placed reliance on Jurisdictional High Court decision in assessee's own case in 291 ITR 144 (Mds), where it was held that the depreciation on investments is allowable claim. Similarly, co-ordinate bench of Tribunal, in assessee's own case for the assessment years 2004-05, 2006-07 and 2007-08, in ITA No. 937, 940 and 770/2010, following Jurisdictional High Court decision allowed the claim, accordingly, the Ld. CIT(A) directed the Assessing Officer to allow the deduction of Amortization expenditure and allowed the ground of the assessee for statistical purpose.

12.2 Aggrieved by the order, the Revenue has challenged the action of the CIT(A) has erred in treating capital expenditure as revenue expenditure without considering the facts. The Ld. AR submitted that all the government securities are treated as stock in trade and relied on the order of the CIT(A) and Jurisdictional High Court and Tribunal orders. We heard the rival submissions, perused the material on record, judicial decisions. The Ld. DR has argued that the CIT(A) has erred in allowing the deduction and relied on the judicial decisions. Whereas, Ld. AR explained that the assesse bank has following consistency in his books of account and supported this arguments with the Hon'ble Supreme Court decision and other decisions. We heard both the sides and perused material on record and judicial decisions. We found the coordinate

bench of Tribunal in assessee's own case in ITA No. 935, 937, 940/Mds/2010 for the assessment years 2004-05, 2006-07 & 2007-08 at Para 62 to 64 at Page 28 read as:

> *" 62. Briefly stated, the facts of the case are that the Assessing Officer disallowed depreciation on securities on the ground that the bank had claimed depreciation on securities but has ignored the appreciation in value of securities.*
>
> *63. The Assessing Officer further observed that the bank has claimed depreciation on securities because they are held as stock in trade and not as investment which was not agreed to by the Assessing Officer who made the addition.*
>
> *64. On appeal, the Ld. CIT(A), observing that the issue is covered in favour of the assessee by the decision of the Hon'ble Jurisdictional High Court in assessee's own case reported in 291 ITR 144, allowed the claim of the assessee.*

" We rely on above decision and upheld the action of order of CIT(A) and dismiss the revenue ground''.

Respectfully following the above decision, we dismiss the ground No.4 raised by the Revenue.

33. Ground No.5 challenges the decision of ld. CIT(A) in deleting the addition on account of stale drafts and cheques. The Assessing Officer made an addition on account of stale drafts and cheques of ₹47,58,883/- and ₹47,05,085/- on the ground that these amounts are not payable. This issue was decided in favour of the assessee by the Co-ordinate Bench of the Tribunal in the case of *The Karur Vysya Bank Ltd vs. Addl. CIT,* wherein it was held at paras 18 to 18.2 as follows.

"18. Ground No.8 challenges the direction of ld. CIT(A) to deal with the additions unclaimed balance of Rs. 1,12,00,000/-.

18.1 The brief facts relating to this issue as under:

The customers of the assessee-bank taking demand draft/pay order in favour of various parties but this demand drafts/payee orders are not encashed within a period of six months and they are accounted under the stale draft head. It is stated that the payee of the demand draft can encash any time/pay orders bank even after lapse of ten years subject to validation by the issued bankers and some of the SBI saving banks and current bank customers, which are not operated the bank accounts are kept under inoperative accounts and the balance is transferred to the unclaimed balance account. The amounts of stale account transferred during the year under consideration is Rs. 1,12,00,000/-. The AO is of the opinion that this amount is taxable. On appeal before us the ld. CIT(A) held that the amount cannot be brought to tax as a cessation of trading liability u/s. 41(1) of the Act, where the appellant had not written off the liability placing reliance on the decision of co-ordinate Bench of the Tribunal, Chennai in the case of City Union Bank Ltd. (supra), allowed the same.

18.2 Being aggrieved, the Revenue is in appeal before us in the present appeal. It is contended that in the light of decision of Hon'ble Supreme Court in the case of CIT v. T.V. Sundaram Iyengar [1996] 222 ITR 344 (SC), the balance lying on unclaimed balance account in the bank more than three years ought to be taxed as an income. On the other hand, the ld. Authorised Representative of assessee submitted that the issue is covered in favour of the assessee company by Karnataka High Court in the case of Karnataka Vikas Gramena Bank 2015 (12) TMI 1420 (supra), wherein the Hon'ble Karnataka High Court held that the decision of Hon'ble Supreme Court in the case of T.V. Sundaram Iyengar (supra) cannot be applied to the present claim. In the light of the above decision, we do not find any merit in the grounds of appeal No.8 filed by the Revenue".

In the light of the above decision, no addition can be made on account of stale drafts and cheques. Accordingly, we dismiss the ground No.5 raised by the Revenue.

34. Ground No.6 challenges the decision of the ld. CIT(A) in allowing depreciation at 60% on ATM treating it as computers. The decision of the ld. CIT(A) is based on the decision of Hon'ble Bombay High Court in the case *of CIT vs. Saraswat Infotech Ltd, 2013 (1) TMI 861*, wherein it was held at paras 5 & 6 as follows.

> *"5) In second appeal, the Tribunal by its order dated 14/3/2012 held that UPS is an integral part of the computer system and regulate the flow of the power to avoid any kind of damage to the computer network due to fluctuation in power supply which could lead to loss of valuable data. The Tribunal relied upon the decision of the Delhi High Court dated 20/1/2011 in the matter of CIT vs Orient Ceramics and Industries Ltd. in which UPS was held to be the part of the computer system and depreciation at 60% was allowed. Similarly, so far as ATMs are concerned, the Tribunal on finding of fact concluded that ATM cannot function without the help of computer and would be a part of the computer used in the banking industry. Reliance was placed by the Tribunal upon the decision of the Delhi Bench of Tribunal in the matter of DCIT v. Global Trust Bank (ITA No.4741D/09) wherein t has been held that ATM was a computer equipment and depreciation © 60% was allowed. So far as the use of software is concerned, the Tribunal records a fact that the evidence of the use of the software on 31/3/2008 was produced before the Tribunal. Thus, the Tribunal held that depreciation @ 30% on software was rightly claimed.*
>
> *6) We note that the Tribunal has arrived at a finding of fact on all the three questions. The revenue has not been able to*

> *show that the above finding of fact is perverse. Thus, we do not see any reason to entertain question (i), (ii) and (iii) above".*

Respectfully following the above decision, we dismiss the ground No.6 filed by the Revenue.

35. Ground No.7, challenges the decision of the ld. CIT(A) that interest in respect of recurring deposit cannot be disallowed for non deduction of TDS thereon. The ld. CIT (A) had referred to the relevant provisions of Section 194A of the Act and amendment made by Finance Act, 2015. The decision of the ld. CIT(A) is based on proper appreciation of the legal position. Accordingly, we do not find any merits in the ground No.7 raised by the Revenue. Ground No.7 of the Revenue is dismissed.

36. Ground No.8 challenges the decision of the ld. CIT(A) in deleting an addition on account of Section 36(1) (viii) of the Act. The Assessing Officer had disallowed a sum of ₹1,70,94,716/- on the ground that the assessee had not made advance to eligible activities. The ld. CIT(A) taking note of the fact that the Assessing Officer had made disallowance based on the names of the borrowers without looking into purpose of the loan, deleted the addition. The ld. CIT(A) order is based on proper appreciation of the legal positions and evidence. We do not find any reason to interfere with the order of the

ld. CIT(A). Accordingly, ground No.8 filed by the Revenue is dismissed.

37. In the result, appeal of the Revenue in ITA No.1315/CHNY/2018 for assessment year 2012-13 is dismissed.

38. Now, we take up the appeal of the assessee in ITA No.1130/CHNY/2018 for assessment year 2014-2015.

39. The Assessee raised the following grounds of appeal.

> *"1. The order of the learned CIT(A) is contrary to the facts and circumstances pertaining to the case of the Appellant.*
>
> *2. The learned CIT(A) erred in sustaining the disallowance of Rs. 111,60,22,736/- claimed by the Appellant bank u/s 36(1)(vii) in respect of bad debts written off.*
>
> *2.1. The learned CIT(A) failed to appreciate the fact that there is no double deduction in respect of non rural debts written off by the Appellant bank.*
>
> *2.2. The learned CIT(A) erred in holding that the total deduction u/s 36(1)(vii) & 36(1)(viia) should be restricted to the actual amount of provision created by the Appellant in the books.*
>
> *2.3. The learned CIT(A) erred in sustaining the disallowance on surmises and conjunctures.*
> *For all these and other grounds which may be urged at the time of the hearing of this appeal, the appellant prays that its appeal be allowed".*

and also raised the following additional grounds appeal.

Additional Grounds of Appeal:

> *1. Aggrieved by the appellate order passed by the Commissioner of Income Tax (Appeals), Trichy, the appellant had filed the above numbered appeal before the Hon'ble Income Tax Appellate Tribunal.*

2. It is humbly stated that, while filing the appeal, the appellant did not raise specific grounds of appeal against the following issue:

2.1. Disallowance of deduction u/s 36(1)(viia) of Rs.131,16,10,731 /-.

3. With respect to the item mentioned in para 2.1 above, it is humbly submitted that the learned Assessing Officer had disallowed in part, the claim of the Appellant bank u/s 36(1)(viia) and Appellant Bank had challenged the same before the learned CIT(A) by taking a specific ground. The appellant bank was of the opinion that the learned CIT(A) had allowed the deduction as claimed by the Appellant bank since he had decided the issue of deduction u/s 36(1)(vii) & 36(1)(viia) together in his order and allowed the amount actually debited to the Profit & Loss Account. Since the Appellant Bank had debited the provision for bad & doubtful debts to the Profit & Loss Account, it was under the opinion that its claim of deduction u/s 36(1)(viia) has been allowed by the learned CIT(A). However, the ARs who represent the Appellant Bank are of the opinion that it is advisable for the Appellant Bank to raise a specific ground with regard to deduction u/s 36(1) (vii a) since the learned CIT(A) has not dealt with the ground on merits. In view of the same, the additional ground, which is purely a legal ground which is raised.

4. The appellant now seeks to raise the under mentioned additional grounds of appeal. The appellant humbly prays that these Additional Grounds of Appeal may please be admitted and adjudicated upon while adjudicating the Appeal in ITA No. 1130/CHNY/2018.

ADDITIONAL GROUNDS OF APPEAL

1. The learned CIT(A) erred in not deciding the issue of deduction u/s 36(1)(viia) by a speaking order.
1.1. The learned CIT(A) failed to appreciate the fact that the learned Assessing Officer erred in considering only the rural provision made by the Appellant bank for allowing the deduction u/s 36(1)(viia).

1.2. The learned CIT(A) failed to appreciate the fact that the learned Assessing Officer erred in not considering the total provision made by the Appellant bank for allowing deduction u/s 36(1)(viia)".

40. The ground No.1 raised by the assessee is general in nature therefore, does not require any adjudication.

41. Ground No.2 challenges the decision of the ld. CIT(A) confirming the disallowance of ₹111,60,22,736/- u/s.36(1) (vii) and 36(1) (viia) of the Act. This is similar to the ground No.2 raised by the assessee for the assessment year 2012-2013 in ITA No. 1129/Mds/2018. We have already partly allowed the appeal for statistical purpose in para 20 above. Fact situation being the same, ground No.2 of the assessee for assessment year 2003-04 is also partly allowed for statistical purpose. The additional ground filed by the assessee is also party allowed for statistical purpose.

42. In the result, appeal of the assessee in ITA 1130/CHNY/2018 for assessment year 2014-2015 is party allowed for statistical purpose.

43. Now, we take up the appeal of the Revenue in ITA No.1316/CHNY/2018 for assessment year 2014-15.

44. The Revenue raised the following grounds of appeal.

> *"1. The Ld. CIT(A) failed to appreciate that the assessee had itself made adhoc disallowance u/s 14A of the Act in the return of income and the AO rightly worked out the correct disallowance by applying Rule 8D of Income Tax Rule.*

2. The Ld. CIT(A) erred to notice that when the assessee following mercantile system of accounting, any interest accrued on investments should be admitted as income.

3. The Ld. CIT(A) erred to notice that the AO had rightly restricted the deductions u/s 36(1)(vii) & 36(1)(viia) of the Act to the credit balance of the provision for bad and doubtful debts made for rural branches as against the credit balance of provision for bad and doubtful debts made for all branches.

4. The Ld. CIT(A) erred to notice that the Assessing Officer has rightly invoked the provisions of sec 41(1) and 28(iv) of the Act with regard to unclaimed money, stale drafts and cheques reflected in the balance sheet for more than three year by applying the principle of limitation and the notification of RBI was issued on 24/05/2014 only, mandating the banks to transfer such unclaimed amount to "Depositor Education and Awareness Fund Scheme" and this instruction is prospective only.

5. The Ld. CIT(A) failed to notice that the higher depreciation at 60% for ATMs could not be given on par with the computers, since the functions of both ATM and computer are not comparable.

6. The Ld. CIT(A) failed to notice that the VIP deposits are in the nature of time deposits only, hence the provisions u/s 40(a)(ia) of the Act are rightly invoked by the AO.

7. The Ld. CIT(A) failed to notice that the Assessing Officer had actually verified the nature of advances given and correctly made disallowance u/s 36(1)(viii) of the Act in respect of advances made to ineligible business activities.

8. The CIT(A) failed to notice that the accrued interest on NPA is taxable as per the decision of Hon'ble SC in the case of Southern Technology Ltd.

For the above grounds and other grounds that may be adduced during the time of hearing the order of the CIT(A) may be cancelled and the Department appeal may be allowed".

45. Ground No.1 challenges the decision of the ld. CIT(A) in deleting the addition made u/s.14A of the Act on the ground that investments held by the assessee company is stock in trade and therefore disallowance u/s.14A of the Act cannot be made in respect of expenditure incurred as stock in trade. We have already dismissed the appeal of the Revenue in para 27 above in ITA No.1315/CHNY/2018 for assessment year 2012-2013. Fact situation being the same, grounds of appeal No.1 of the Revenue for assessment year 2014-15 is also dismissed.

46. Grounds 2 to 7 raised by the Revenue were already adjudicated by us in Revenue's appeal in ITA No.1315/CHNY/2018 for assessment year 2012-2013 (supra). We have already dismissed the grounds. Fact situation being the same, grounds 2 to 7 of the Revenue for the assessment year 2014-15 are also dismissed.

47. Ground No. 8, challenges the decision of the ld. CIT(A) that interest on NPA is not taxable. The Assessing Officer brought to tax interest on NPA following the decision of Hon'ble Supreme Court in the case of Southern Technology Ltd.

48. We heard the rival submissions and perused the material on record. This issue was dealt by the Co-ordinate Bench of the Tribunal

in the case of Karur Vysya Bank (supra) wherein after referring to the decision of Hon'ble Supreme Court in the case of CIT vs. Vasisth Chay Vyapar Ltd (2019) 410 ITR 244, it was held as follows:-

> *''The next ground of appeal challenges the addition on account of interest 29 accrued in non performing assets accounts of Rs. 14,00,000. The Assessing Officer had brought to tax the interest on the non performing assets accounts by holding that interest had accrued in terms of the agreement entered by the appellant with borrowers. This issue is now covered in savour of the assessee-bank by the decision of the hon'ble Supreme Court in the case of CIT v. Vasisth Chay Vyapar Ltd. [2019] 410 1TR 244 (SC), wherein the hon'ble Supreme Court had confirmed the decision of the hon'ble Delhi High Court, that the interest income cannot be said to have been accrued to the assessee on the non performing assets accounts. Accordingly, we direct the Assessing Officer to delete the addition of Rs. 14,00,000 made on interest on non performing assets accounts. Accordingly, this ground of appeal stands allowed. ''*

We further note that the decision of Hon'ble Supreme Court in the case of Vasisth Chay Vyapar Ltd (supra) is subsequent to the decision in the case of Southern Technology Ltd (supra). Therefore the decision of Hon'ble Supreme Court in the case of Vasisth Chay Vyapar Ltd (supra) shall prevail over the decision of Southern Technology Ltd. Therefore, we direct the Assessing Officer not to assess interest on NPA. Ground of appeal No.8 filed by the Revenue is dismissed.

49. In the result, appeal of the Revenue in ITA 1316/CHNY/2018 for assessment year 2014-2015 is dismissed.

50. To summarize the results, the appeals of the assessee in ITA Nos. 1129/CHNY/2018 for assessment year 2012-2013 is partly allowed for statistical purpose, ITA No. 1130/CHNY/2018 for assessment year 2014- 2015 is partly allowed for statistical purpose and appeals of the Revenue in ITA No.1315/CHNY/2018 for assessment year 2012-2013 is dismissed and ITA No.1316/CHNY/2018 for assessment year 2014-2015 is also dismissed.

Order pronounced on 9th day of July, 2019, at Chennai.

Sd/-	**Sd/-**
(जॉर्ज माथन)	(इंटूरी रामा राव)
(GEORGE MATHAN)	**(INTURI RAMA RAO)**
न्यायिक सदस्य/**JUDICIAL MEMBER**	लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai
दिनांक/Dated: 9th July, 2019.
KV
आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant	3. आयकर आयुक्त (अपील)/CIT(A)	5. विभागीय प्रतिनिधि/DR
2. प्रत्यर्थी/Respondent	4. आयकर आयुक्त/CIT	6. गार्ड फाईल/GF