

IN THE INCOME TAX APPELLATE TRIBUNAL "G", BENCH MUMBAI

BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

&

SHRI RAM LAL NEGI, JUDICIAL MEMBER

ITA No.2608/Mum/2018

(Assessment Year: 2015-16)

DCIT-2(2)(1) Room No.545, 5 th Floor Aaykar Bhawn, M.K.Road Mumbai-40 0020	Vs.	M/s. State Bank of Hyderabad 3 rd Floor, SBI Bhawan FRT Department Madam Cama Road Nariman Point, Mumbai-400 021
		PAN/GIR No.AADCS4009H
(Appellant)	..	(Respondent)

&

ITA No.2772/Mum/2018

(Assessment Year: 2015-16)

M/s. State Bank of India (successor to State Bank of Hyderabad) FRT Department, 3 rd Floor, Corporate Centre Madam Cama Road Nariman Point, Mumbai-400 021	Vs.	ACIT, Circle-2(2)(1) Mumbai
		PAN/GIR No.AADCS4009H
(Appellant)	..	(Respondent)

&

ITA No.2647/Mum/2018

(Assessment Year: 2014-15)

DCIT-2(2)(1) Room No.545, 5 th Floor Aaykar Bhawn, M.K.Road Mumbai-40 0020	Vs.	M/s. State Bank of Hyderabad 3 rd Floor, SBI Bhawan FRT Department Madam Cama Road Nariman Point, Mumbai-400 021
		PAN/GIR No.AADCS4009H
(Appellant)	..	(Respondent)

ITA No.2771/Mum/2018
(Assessment Year: 2014-15)

M/s. State Bank of India (successor to State Bank of Hyderabad) FRT Department, 3 rd Floor, Corporate Centre Madam Cama Road Nariman Point, Mumbai-400 021	Vs.	ACIT, Circle-2(2)(1) Mumbai
PAN/GIR No.AADCS4009H		
(Appellant)	..	Respondent)

Assessee by	Ketan Ved
Revenue by	Narendra Singh Janpangi
Date of Hearing	03/10/2019
Date of Pronouncement	15/10/2019

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

These cross appeals filed by the assessee, as well as the revenue are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals)-5, Mumbai, all dated 31/01/2018 and they pertain to AY 2014-15 and 2015-16. Since, the facts are identical and issues are common, for the sake of convenience, these appeals filed by the assessee, as well as the revenue were heard together and are disposed-off by this consolidated order.

ITA.No's 2608 & 2772/Mum/2018 for AY's 2015-16:-

2. At the time of hearing, the Ld. AR for the assessee submitted that the appeals filed by the assessee, as well as the revenue for AY 2015-16 are not maintainable, because the assessee, as well as the revenue have challenged the findings of the Ld.CIT(A) insofar as set aside the assessment to the file of the AO for verification of certain facts with regard to additions made by the AO towards deduction claimed u/s 36(1) (vii) and 36(1)(viii) of the I.T.Act, 1961. Further, the Ld. AO in order giving effect to Ld.CIT(A) order dated 31/01/2018 allowed relief to the assessee in respect of disallowances of deduction claimed u/s 36(1) (vii) and 36(1)(viii) of the I.T.Act, 1961. Therefore, there is nothing to challenge before the ITAT by the assessee, as well as the revenue and hence, appeal filed by the assessee and revenue may be dismissed. We find that the Ld. CIT(A) has set aside the issue of additions made towards disallowance of deduction claimed u/s 36(1) (vii) and 36(1)(viii) of the I.T.Act, 1961 and said findings have been challenged by the assessee, as well as the revenue. We, further noted that the Ld. AO had allowed relief to the assessee in order giving effect to Ld.CIT(A) order, in order dated 29/03/2019. Therefore, we are of the considered view that the appeals filed by the assessee, as well as the revenue for AY 2015-16 becomes infructuous and hence, both

appeals filed by the assessee, as well as the revenue are dismissed as non maintainable.

3. In the result, appeals filed by the assessee and revenue are dismissed.

ITA.NO.2647 and 2771/Mum/2018 for AY's 2014-15:

4. In these cross appeals filed by the assessee, as well as the revenue facts and issues are identical to the facts and issues, which we had already considered in ITA No.2608 and 2772/Mum/2018 for AY 2015-16, except limited changes in fact to the extent of partial relief allowed by the AO in order giving effect to the order of the Ld.CIT(A), dated 08/11/2018, in respect disallowance of deduction claimed u/s 36(1)(viii) of the I.T.Act, 1961. The Ld. AR submitted that as regards disallowances u/s 36(1)(viia) there is no dispute, because the Ld. AO has allowed relief to the assessee in order giving effect to the order of the Ld.CIT(A). However, in respect of disallowance u/s 36(1)(viii) of the I.T.Act 1961, the Ld. AO has allowed relief to the extent of reserves created by the assessee for the relevant financial year amounting to Rs. 116 crores, as against total deduction claimed by the assessee for Rs. 311 crores. The Ld. AR, further submitted that the assessee limited submissions in this regard is that any amount transferred to special reserve u/s 36(1)(viii) of the I.T.,Act,

1961 before completion of assessment proceedings relevant assessment year shall needs to be considered, instead of reserves created during the relevant financial year. If, reserve created by the assessee during subsequent financial years and also, amount transferred to general reserves have been considered, then amount transferred to special reserve account u/s 36(1)(viii) of the I.T.Act, 1961 is more than the amount of deduction claimed u/s 36(1)(vii) for the AY 2014-15 and hence, no disallowance could be made. In this regard, he relied upon the decision of ITAT, Bangalore Bench in the case of Vijaya Bank vs JCIT (LTU) in ITA No. 750/Bang/2017, vide order dated, 05/01/2018.

5. The Ld. DR, on the other hand submitted that as regards disallowance of deduction claimed u/s 36(1)(viii), there is no dispute with regard to the fact that the assessee has transferred to special reserve account a sum of Rs. 116 crores. Therefore, there is no error in the findings recorded by the Ld.AO to allow actual amount transferred to special reserve account during the relevant financial year.

6. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. Insofar

as, disallowance of deduction claimed u/s 36(1)(viiia), there is no dispute, because the Ld.AO in order giving effect to the order of CIT(A), dated 08/11/2019 allowed relief to the assessee. Therefore, nothing is survived to challenge before the AO, in respect of said addition and hence, ground taken by the assessee, as well the revenue in this regard are rejected. Insofar as, disallowance of deduction claimed u/s 36(1)(viii) of the I.T.Act, 1961, amounting to Rs. 311 crores, the Ld. AO has allowed an amount of Rs. 116 crores, on the basis of amount transferred to special reserve account for the year under consideration and balance addition has been sustained. The assessee has argued for deletion of balance amount sustained by the AO, in the light of decision of ITAT, Bangalore bench, in the case of Vijaya Bank (Supra) and argued that even, reserve created in subsequent/succeeding years, however before finalization grant of deduction u/s 36(1)(viii) of the I.T.Act, 1961, i.e., as per date of order of assessment is required to be considered, while allowing the claim for deduction u/s 36(1)(viii) of the I.T.Act, 1961. We find that provision of section 36(1)(viii) is very clear as per which deduction is allowed only, if assessee creates and transfers amount to special reserve account. Unless, the assessee transferred amount to special reserve account created and maintained subject to certain conditions during the relevant financial year itself,

deduction for the same cannot be allowed u/s 36(1)(viii) of the I.T.Act, 1961. Although, the co-ordinate bench of ITAT, Bangalore has held that reserve created in subsequent /succeeding years however, before the finalization of deduction u/s 36(1)(viii) of the I.T.Act, 1961 needs to be considered while allowing claim for deduction, but on consideration of provisions of section 36(1)(viii) of the Act, we are of the considered view that the findings recorded by the Tribunal is contrary to the law as set out in provisions of section 36(1)(viii) of the I.T.Act, 1961 and hence, the case laws relied upon by the assessee is not considered. Therefore, we are of the considered view that there is no error in the findings recorded by the Ld. AO, while allowing relief to the assessee to the extent of Rs. 116 crores, which is equivalent to amount transferred to special reserve account created and maintained by the assessee u/s 36(1)(viii) of the I.T.Act, 1961. Accordingly, we reject ground taken by the assessee, as well as the revenue.

7. In the result, appeals filed by the assessee, as well as the revenue are dismissed.

8. As a result, appeals filed by the assessee and revenue for both assessment years are dismissed.

Order pronounced in the open court on this 15 /10/2019

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 15/10/2019
Thirumalesh Sr.PS

Copy of the Order forwarded to :

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai