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

BEFORE SHRI M. BALAGANESH, AM
&
SHRI AMARJIT SINGH, JM

ITA No.3739/Mum/2018
(**Assessment Year :2012-13**)

Central Bank of India 4th Floor, Chandermukhi Building Nariman Point Mumbai – 400 021	Vs.	The Deputy Commissioner of Income Tax – 2(1) Aayakar Bhavan Mumbai – 400 020
PAN/GIR No.AAACC2498P		
(Appellant)	..	**(Respondent)**

ITA No.3673/Mum/2018
(**Assessment Year :2012-13**)

Jt. CIT (OSD)-2(1)(2) R.No.561, 5th Floor Aayakar Bhavan, M.K.Road Mumbai – 400 020	Vs.	Central Bank of India 4th Floor, Chandermukhi Building Nariman Point Mumbai – 400 021
PAN/GIR No.AAACC2498P		
(Appellant)	..	**(Respondent)**

Assessee by	Shri Nitesh Joshi
Revenue by	Shri V. Sreekar
Date of Hearing	**16/01/2020**
Date of Pronouncement	**29/01/2020**

आदेश / O R D E R

***PER M. BALAGANESH (A.M)*:**

These cross appeals in ITA Nos.3739/Mum/2018 & 3673/Mum/2018 for A.Y.2012-13 arises out of the order by the ld. Commissioner of Income Tax (Appeals)-3, Mumbai in appeal No.CIT(A)-3/DCIT2(1) IT-44/Tr.4/16-17 dated 30/01/2018 (ld. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter

referred to as Act) dated 25/03/2014 by the ld. Dy. Commissioner of Income Tax -2(1), Mumbai (hereinafter referred to as ld. AO).

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2. Ground No.1 raised by the assessee is with regard to disallowance made u/s.14A of the Act r.w.r. 8D of the rules.

3. We have heard rival submissions and perused the materials available on record. We find that the assessee had claimed exempt income of Rs.23.99 Crores towards dividend received on shares / mutual funds. The ld. AO observed that assessee had incurred a sum of Rs.13,981 Crores as interest expenses. The main business of the assessee is banking wherein lending and borrowing constitutes main activity. We find that the assessee had placed details of availability of own funds before the ld.AO and accordingly, pleaded that no disallowance of interest need to be made under second limb of rule 8D(2i) of the rules. The assessee further pleaded that since all the investments were held by it as stock in trade and that the entire income derived from such investments were offered to tax under the head 'business income' and not as 'capital gains', no expenditure *per se* were incurred by it towards administrative expenses also for the purpose of earning dividend income which is exempt. Assessee vehemently pleaded before the ld. AO by placing reliance on the decision of the Hon'ble Karnataka High Court in the case of CCI Ltd., reported in 206 Taxman 563 and certain tribunal decisions to drive home the point that disallowance u/s.14A of the Act would not come into operation in respect of investments held as 'stock in trade' especially in respect of banks. The ld. AO however, disregarded the contentions of the assessee and proceeded to compute the disallowance under second and third limb of rule 8D(2) of the rules and made total disallowance u/s. 14A of the Act in the sum of Rs.72,06,46,000/- in the assessment. The ld.

CIT(A) appreciated the availability of own funds with the assessee and accordingly, deleted the disallowance of interest under second limb of rule 8D(2) of the rules.

3.1. Against that action, the revenue is in appeal before us vide ground No.2 in their appeal. We find that the ld. CIT(A) however, upheld the disallowance of administrative expenses made under rule 8D(2)(iii) of the rules against which action, the assessee is in appeal before us. We find that the ld. AR primarily argued that there was no objective satisfaction recorded by the ld. AO as to why the computation mechanism provided in rule 8D(2) of the rules would come into operation in the instant case, having regard to the accounts of the assessee.

3.2. We have gone through the entire assessment order and we find that the ld. AO had merely stated that assessee had derived exempt income but had not disallowed any expenditure u/s.14A of the Act for the purpose of earning such exempt income. We find that the ld. AO had placed reliance on the decision of Special Bench of Mumbai Tribunal in the case of Daga Capital as well as by the Hon'ble Jurisdictional High Court in the case of Godrej & Boyce Manufacturing Co. Ltd reported in 328 ITR 81 (Bom). Thereafter, he directly proceeded to get into the computation mechanism provided in rule 8D(2) of the rules for the purpose of making disallowance u/s.14A of the Act. This action of the ld. AO, in our considered opinion, would not tantamount to recording of objective satisfaction in terms of Section 14A(2) / 14A (3) of the Act read with rule 8D(1) of the rules by the ld. AO. We hold that the ld. AO ought to have recorded objective satisfaction having regard to the accounts of the assessee by verifying each and every item of expenditure incurred by the assessee and then come to conscious conclusion that whether those expenses were indeed incurred for the purpose of earning exempt income

or taxable income. This is conspicuously absent in the hands of the instant case. We find that the Hon'ble Supreme Court in the case of Maxopp Investments reported in 402 ITR 640 had also addressed the impugned issue both on technical ground as well as on merits. We find that on the aspect of technical issue i.e. non-recording of objective satisfaction by the ld. AO having regard to the accounts of the assessee, we find that the Hon'ble Supreme Court had categorically held that in the absence of said satisfaction as contemplated in Section 14A(2) / 14A(3) of the Act read with rule 8D(1) of the rules, no disallowance u/s.14A of the Act could be made by adopting the computation mechanism provided in rule 8D(2) of the rules. Moreover, on merits, in the facts of that case, the Hon'ble Apex Court in the very same decision had categorically upheld the findings recorded by the Hon'ble Punjab and Haryana High Court in the case of State Bank of Patiala reported in 78 Taxmann.com 3(P & H) with regard to non-applicability of provisions of Section 14A of the Act in respect of investments held as stock in trade in respect of banks. For this purpose, the Hon'ble Punjab and Haryana High Court in the case referred to supra had placed reliance on the CBDT Circular No.18/2015 dated 02/11/2015 which decision had been accepted by the Hon'ble Apex Court to that limited extent though the predominant purpose theory of making investments was rejected by the Hon'ble Supreme Court. Hence, by respectfully following the aforesaid decision of Hon'ble Supreme Court, we hold that the disallowance made u/s.14A of the Act in the instant case deserves to be deleted both on technical ground as well as on merits. Accordingly, the ground Nos. 1A and 1B raised by the assessee are allowed and ground No.2 raised by the revenue is dismissed.

4. The ground No.2 raised by the assessee is with regard to claim of loss on value of securities held as 'stock in trade' in "Held For Maturity" category.

4.1. We have heard rival submissions and perused the materials available on record. It is not in dispute that the assessee had held investments under HTM category as stock in trade. It is not in dispute that the income derived from sale of these investments had been offered to tax by the assessee under the head 'business income' and assessed as such. We find that the assessee during the year under consideration had, at the end of the year valued the investments held in HTM category as 'stock in trade', at the lower of cost or market price in consonance with the guidelines prescribed by Reserve Bank of India (RBI) and had incurred loss thereof and claimed the same as deduction in the return of income. The said loss was disallowed by the ld. AO which was also upheld by the ld. CIT(A) on the ground that the investments in HTM category are to be held till their maturity and hence, the same cannot be construed as stock in trade. Accordingly, the diminution in the value of such investments cannot be allowed as deduction in the opinion of the ld. CIT(A). We find that this issue had been the subject matter of adjudication by this Tribunal in assessee's own case for A.Y.2004-05 in ITA No.1891/Mum/2011 and CO No.200/Mum/2013 and ITA No.1431/Mum/2011 dated 08/06/2018. The relevant portion of the said order is reproduced hereunder for the sake of convenience:-

> *"11. The next issue that came up for our consideration from the Revenue's appeal as well as the assessee's cross objection is disallowance of diminution in value of investment held as stock-in-trade.*
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> *12. The Assessing Officer has made addition of a sum of Rs.92.32 crs. on account of diminution in value of investment held as stock-in-trade on the ground that the loss incurred on account of diminution in value of investment is only an notional loss, therefore, cannot be allowed as deduction. It is the contention of the assessee that the bank is following the method of accounting for treatment of investment held as stock-in- trade as per which it values its closing stock at cost or market value whichever is less and/or whatever loss incurred on account of diminution in value of investment charged off to the profit and loss account as a loss. The assessee*

further contended that it is following similar method of accounting for treatment of investment held as stock-in-trade for earlier years which has been accepted by the Department. Therefore, there being any change in the facts, there is no reason for the Assessing Officer to make the additions towards loss incurred on diminution in value of investment held as stock-in-trade. In this M/s. Central Bank of India regard, he relied upon the decision of the Bank of Baroda (supra) and Hon'ble Supreme Court in the case of United Commercial Bank vs. CIT [1999] 240 ITR 355 (SC).

13. We have heard both the parties and perused the materials available on record. The Assessing Officer has disallowed diminution in value of investment held as stock-in-trade on the ground that the loss incurred by the assessee on account of diminution in value of investment is a notional loss which cannot be allowed as deduction. According to the Assessing Officer, the method of accounting followed by the assessee is not in conformity with the tax laws, therefore, the method of accounting followed by the assessee cannot determine the income taxable under the Act. Therefore, he opined that the loss incurred on diminution in value of investment is not allowable while computing the income from business. It is the contention of the assessee that the bank is following method of accounting as per which it values its investment held as stock-in-trade as on the end of the financial year at cost or market value whichever is less and the difference arising as a result of this valuation is treated as business loss. The assessee further contended that any fluctuation in valuation of the stock is to be treated as loss or income of the assessee for the year in question.

14. Having heard both the sides, we find merits in the arguments of the assessee for the reason that the issue has been considered by the Hon'ble Bombay High Court in the case of Bank of Baroda (supra), wherein it was held that the bank valued its investments at cost or market value whichever is less and the difference arising as a result of the valuation has to be allowed to the assessee as a loss. The Hon'ble Supreme Court in the case of United Commercial Bank (supra) has taken a similar view, wherein it was held that stock valuation is admittedly a method of accounting, the assessee-bank can claim the benefit of stock valuation 'at cost or market value, whichever is lower' only if such method is actually followed and adopted by it in preparing the final accounts. Yet another case, the ITAT Bangalore Bench in the case of ACIT vs. State Bank of Mysore in ITA No. 706/Bang/2008 has held that the method by which the assessee bank is valuing its securities is in accordance with the accounting principle by treating it as stock-in-trade. The ld. Commissioner of Income Tax (Appeals) after considering the relevant facts and also by following the decision of the Hon'ble Bombay High Court in the case of Bank of Baroda (supra) has rightly deleted the additions made by the Assessing Officer. The Revenue has failed to bring on record any contrary decision to support its argument. Therefore, we are of the considered view that the ld. Commissioner of Income Tax (Appeals) was right in deleting the additions towards

diminution in value of investment held as stock-in-trade. We do not find any infirmity in the orders of the ld. Commissioner of Income Tax (Appeals). Hence, we are inclined to uphold the findings of the ld. Commissioner of Income Tax (Appeals) and reject the grounds raised by the Revenue."

4.2. Respectfully following the said decision, the ground No.2A raised by the assessee is allowed. Since ground No.2A is directed to be allowed as deduction hereinabove, the adjudication of ground No.2B becomes infructuous.

5. The ground No.3 of assessee appeal and ground No.8 of revenue appeal are interconnected as they pertain to disallowance made on account of shifting of securities from investments held under "Available For Sale" (AFS) to HTM category.

5.1. We have heard rival submissions and perused the materials available on record. We find that the assessee appeal is with regard to enhancement of Rs.3,43,236/- reversing the valuation loss by the ld. CIT(A). We find that the revenue appeal is with regard to regular loss arising on account of valuation of securities at the time of shifting of securities from AFS to HTM category. We find that during the year under consideration, the assessee had shifted certain securities held in AFS category to HTM category. It is not in dispute that the entire investments were held by the assessee as 'stock in trade' and the entire income has been offered to tax as 'business income' and assessed as such. We find that the RBI vide its Circular No.RBI/2011-12/65 DBOD No.BP.BC.19/21.04.141/2011-12 dated 01/07/2011 had categorically stated that the banks are entitled to shift the securities from AFS to HTM category. The said circular categorically mandates the banks to value the shifted securities at the lower of cost or market price on the date of shifting. In case, if the market price is lower than the cost i.e. the book

value, then the provision against depreciation in the value of such shifted securities should be transferred only at the market value thereon. We have gone through the said RBI Circular and this is clear mandate provided therein by RBI for all banks. We find that the assessee during the year had made provision for diminution in the value of such investments at the time of shifting of securities from AFS to HTM category in the sum of Rs.159,74,79,854/- and claimed the same as deduction while computing the income under the head 'business'. This sum was added back by the assessee in the return of income and no claim was made by it before the ld. AO. However, the assessee vide additional ground raised before the ld. CIT(A) by taking support of the decision of Hon'ble Jurisdictional High Court in the case of Prithvi Brokers and Shareholders Pvt. Ltd reported in 349 ITR 336 (Bom) sought to make a claim of this deduction for the first time before the ld. CIT(A). The ld. CIT(A) admitted the additional ground raised by the assessee and had adjudicated the same. We find that the ld. CIT(A) had categorically agreed that the entire investments be it in AFS category, Held for Trading (HFT) category and HTM category were all held as 'stock in trade' by the assessee bank. Accordingly, the ld. CIT(A) held that the shifting loss arising due to valuation of securities from AFS to HTM category would be allowable as deduction.

6. Aggrieved by that action of the ld. CIT(A), the revenue is in appeal before us vide ground No.8. We further find that the ld. CIT(A) had also sought to make an enhancement to the assessment by reversing the shifting loss partially to the tune of Rs.3,43,236/-. For this purpose, the ld. CIT(A) had recorded the following illustration:-

Illustration:
Bank purchases a security for Rs. 100/- in F. Y 2010-17. On 31.03.2011, the market value of the security becomes Rs. 90/-. The book value of the share remains at Rs.100/-.

In FY 2011-12, bank shifts the security to HTM category. The market value of the security on the day of shifting was Rs. 80/-. The Bank records the cost at Rs, 80 in its book as per the RBI guidelines.

On 31.03.2012, the market value of the security was Rs. 85/-.
The "Computed Value" as per of the security works out to Rs.85/-. The working is given below:
Cost= Rs. 100 Market value = Rs. 85 Computed Value: = Rs. 85
As against this, the "Computed Value" works out to Rs, 80/- when the Method followed by the appellant is applied as can be seen from the working given below:
Shifting loss: Rs. 100-Rs.80 = Rs.20 Book Value = Rs. 80 Market value = Rs. 85 Computed Value Rs. 80

Thus, the method followed by the appellant yields a wrong "Computed Value"

6.1. The ld. CIT(A) concluded that the assessee had filed revised valuation of loss on account of securities and observed that a sum of Rs.3,43,236/- requires to be reversed thereon. The basis of arriving at the said figure of Rs.3,43,236/- as under:-

Original book value (cost) in Rs.	Market Value on the date of shifting - Book value post shifting	Market Value as at 31.03.2012	Value as per the original working of appellant	Revised value as per appellant's letter dated 30.12. 2017	Extent of under valuation
(A)	(B)	(C)	(D)= lower of (B) & (C)	(E) = lower of (A) & (C)	(E) minus (D)
1,694,166,394	1,585,131,384	1,585,474,620	1,585,131,384	1,585,474,620	3,43,236

6.2. Accordingly, the ld. CIT(A) made enhancement of Rs.3,43,236/- in the appellate order by holding that the valuation of investments was not made by the assessee in accordance with RBI guidelines. Against this action of ld. CIT(A), the assessee is in appeal before us vide ground No.3.

We find that as per the RBI Circular dated 01/07/2011, shifting loss incurred at the time of shifting of securities from AFS to HTM category should be debited to profit and loss account as a regular expenditure. We find that the ld. CIT(A) while allowing the additional ground of the assessee had categorically agreed that the assessee had incurred valuation loss / shifting loss to have been incurred pursuant to due compliance of RBI Circular dated 01/07/2011. While that be so, how the assessee could have violated the very same RBI Circular when it comes to enhancement of Rs.3,43,236/- by way of reversal of shifting loss. Hence, it could be safely concluded that the ld. CIT(A) had taken a contradictory stand in his order with regard to compliance with RBI Circular.

6.3. We find that in the instant case, the depreciation of investments at the time of shifting from AFS to HTM category had been debited by the assessee as an expenditure in consonance with RBI Circular dated 01/07/2011 referred to supra. The said shifting loss is squarely allowable as deduction. But the assessee had provided the revised workings of the said loss before the ld. CIT(A) which resulted in an enhancement of Rs 3,42,336/-. We find that the assessee had not provided any evidence before us to counter the said workings given before the ld. CIT(A) and hence we do not deem it fit to interfere in the said enhancement done by the ld. CIT(A) . However, the observations made by the ld. CIT(A) for justifying the addition is not warranted. Accordingly, the ground No.8 of

the revenue is dismissed and ground no.3 of the assessee is dismissed subject to removal of remarks by the ld. CIT(A) as observed hereinabove.

7. The ground No.4 raised by the assessee is with regard to initiation of penalty proceedings u/s.271(1)(c) of the Act, it would be premature for adjudication at this stage.

8. The ground No.5 raised by the assessee is general in nature and does not require any specific adjudication.

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9. The ground No.1 raised by the revenue is as to whether the ld.CIT(A) was justified in deleting the disallowance of non-rural bad debts written off u/s.36(1)(vii) of the Act in the facts and circumstances of the case.

9.1. We have heard rival submissions and perused the materials available on record. We find that the undisputed facts are that the assessee wrote off the following amounts as bad debts

- pertaining to rural branches Rs.35,13,98,530/-
- bad debts pertaining to non-rural branches Rs. 181,30,17,950/-

In the return of income, assessee claimed write off of bad debts of Rs.181,30,17,950/- pertaining to non-rural branches. In the return of income, bad debts written off pertaining to rural advances amounting to Rs.35,13,98,530/- was not claimed as deduction by the assessee as it did

not exceed opening credit balance in the provision for bad and doubtful debts account maintained u/s.36(1)(viia) of the Act.

9.2. The ld. AO disallowed the claim of bad debt pertaining to non-rural branches amounting to Rs.181,30,17,950/- in the assessment. This was deleted by the ld. CIT(A) by placing reliance on the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank vs. CIT reported in 343 ITR 270.

9.3. We find that this issue was subject matter of adjudication by the Co-ordinate Bench of this Tribunal in assessee's own case in ITA No.7485/Mum/2016 for A.Y.2011-12 dated 19/07/2018 wherein it was held as under:-

> *"8. Ground No. 1 in Revenue's appeal relates to deletion of disallowance of Rs.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.*
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> *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: -*
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> > *"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 assessees 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)(viia) 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 (viia), will be covered under the main part of Section 36(1)(vii), while the proviso will operate in cases under clause (viia) 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 (viia). The proviso to Section 36(1)(vii) will relate to cases covered under Section 36(1)(viia) 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 assessees 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 (viia) 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

(viia) 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 (viia) 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)(viia). 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 (viia) 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 (viia). 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 (viia) 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 (viia). 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 (viia), there would be no such double deduction. The proviso limits its application to the case of a bank to which clause (viia) applies. Clause (viia) 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 ld.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.

9.4. Respectfully following the same, we find no merit in the ground No.1 raised by the revenue and same is accordingly dismissed.

10. The ground No.2 is with regard to deletion of disallowance made u/s.14A of the Act which has already been adjudicated by us while adjudicating the assessee appeal hereinabove on the connected issue.

11. The ground No.3 raised by the revenue is with regard to deletion of addition made on account of interest accrued but not due on securities in the sum of Rs.165,71,10,117/- in the facts and circumstances of the case.

11.1. The brief facts of this issue are that the assessee has accounted interest on securities in its books of account on accrual basis. In the tax computation, interest income of Rs.1243,62,81,764/- which was accrued but not due as on 31st March, 2012 was reduced. In the course of the assessment proceedings the assessee submitted that :

(a) the bank is governed by guidelines/instructions issued by the Reserve Bank of India and accordingly the interest income are accounted in accordance with the guidelines and instructions issued by the RBI from time to time ;

(b) the interest on securities has been accounted in the books of the assessee on the accrual basis. However in the tax computation, interest income of Rs. 12,43,62,61,764/- which accrued but was not due as on 31.03.2012 was reduced. Similarly, interest accrued but not due of Rs. 10,77,91,71,647/- as on 31.03.2011 but which became due during the year has been offered to tax ;

(c) The method adopted by the assessee is a consistent method.

(d) Interest on securities does not accrue from day to day but only on fixed days (coupon days) and the interest so accrued and becoming due on such fixed days con alone be taxed under the provisions of the Act.

11.2. The ld. AO made addition towards this amount by observing as under:-

> *"7.3. .... The assessee follows the mercantile system of accounting and the which all interest accrued should be included as income. Further assessee itself in its accounts treated all accrued interest as income. Income accrues as and when the assessee acquires the right to receive such income of the right becomes vested in it. In the case of Government securities, although interest becomes due for payment only at six monthly intervals, such interest certainly accrues from day to day. When the assessee purchases certain securities, it pays not only cost of securities, but also the interest which has accrued on day to day basis from the last day of payment of interest to the date of purchase.*

7.4 Similarly, when the assessee sells the securities it receives not only sale value, but also the broken period interest with has accrued on the securities till the date of sale. Thus the interest not only accrues from the day to day but the quantum of interest accrued is also known. The assessee bank, accordingly, is able to determine the amount of interest accrued till the date of transfer which is to be added to the cost of securities be paid by the purchaser when the same is sold , before a due date. These facts make it clear that as on 31.03.2011 the assessee ' had the right to receive the entire accrued interest on the securities held by it. If the securities have been sold on 31.03.2011 the assessee could have received and their amount of accrued interest along with the sale consideration. There, since the amount to receive such interest vested with the assessee, it is clear that such interest is accrued to the assessee.

7.5 reference is made in this regard to Supreme Court decisions in the case of E. D. Sasoon & Co. 26 ITR 27 and Shri Govardhan Ltd. 69 ITR 675. It has further been held by the Supreme Court in the case of Morvi Inds 82 ITR 835 that once the income is accrued, it is chargeable to tax even if subsequently the same is not actually receive or is forgone. It is thus, clear that the matter is not settled in favour of the assessee.

7.6 Reliance is also pleased on the Bombay High court order in the case of American Express Bank in view of the above, it is held that in a mercantile system of accounting, profit or loss at the end of the accounting year is based not on the difference between what is actually receive of the but on the difference between the right to receive and the liability to pay.

7.7 In view of the above, an amount of Rs. 165,71,10,117/-being the interest accrued but not offered added to assessee's business income."

11.3. The assessee before the ld. CIT(A) submitted that the assessee does not have any right or claim to the interest on such securities till it becomes due, i.e., on coupon date. In the event that the assessee had sold the securities prior to the due date, then the assessee would not be entitled to interest on such securities. No doubt, that this interest is received from the buyer of such securities which is included in the selling price of the securities, the same is offered to tax being included in the profit on the sale of securities. Thus, as the said right to receive interest

income is not with the assessee, the income cannot be said to have accrued as contemplated by Sec. 5 and so it cannot be brought to tax in the year under assessment. The assessee bank has shown net interest accrued but not due of Rs. 165,71,10,117 in the P&L account only to illustrate what it is entitled to receive in due course in order to provide a better explanation of the financial position. Merely because the Assessee Bank declared it as amount receivable in the course of time, it does not mean that interest on income had in fact accrued to the Bank. This view was held by the Hon'ble Bombay High Court in the case of DIT v. Credit Suisse First Boston (Cyprus) Ltd, [2012] 23 Taxmann.com 424. Further, the said claim of the assessee bank was allowed in favour of the assessee in its own case by the Hon'ble ITAT for AY 2008-09 & AY 2009-10 and Hon'ble CIT(A) for AY 2003-04, AY 2008-09 to 2011-12 & AY 2014-15. The ld. CIT(A) deleted the addition by following the various tribunal orders passed in assessee's own case for A.Yrs. 2008-09 and 2009-10.

11.4. We have heard the rival submissions and perused the materials available on record. We find that this issue was the subject matter of adjudication by the Co-ordinate bench of this Tribunal in ITA No.1561/Mum/2013 dated 03/10/2017 for A.Y.2008-09 in assessee's own case wherein it was adjudicated as under:-

"14. The issue raised in grounds of appeal no.3 is against the decision of the ld.CIT(A) that the interest accrued at the year end on the securities qua broken period is not taxable as against the addition made by the AO on the ground that the interest accrued up to the year end has to be taxed according to the mercantile system of accounting whether or not it is fall due.

15. The facts of the case are that the assessee held the securities on which the interest was accrued on fixed days normally twice in an year on which the interest due dates were different from the year end and therefore, the interest after due date till the year end was accounted on the accrual system of accounting but not offered to tax. The AO was of the view that the interest has to be taxed on the basis of accrual irrespective of date of payment as the same accrues on day to day basis and therefore rejected the contention of the assessee that the interest falling after due date till year end is not taxable. Accordingly added an amount of Rs.86,21,931/-. Aggrieved, assessee preferred appeal before the ld.CIT(A), who after considering the submissions and on perusal of the record allowed the appeal of the assessee on this ground by observing that the the assessee has no right to receive the interest and therefore the same is not taxable.

16. The ld. AR, at the outset, submitted before us that the issue involved in this ground stands covered in favour of the assessee and against the revenue by the decision of jurisdictional High Court in the case of Director of Income tax (int.Tax. V/s Credit Suisse First Boston (Cyprus) Ltd 2012 23 taxmann.clm 424 (Bom)(supra). Therefore, the ld. AR prayed that in view of the decision of the hon"ble jurisdictional High Court, the issue be decided in assessee"s favour.

17. The ld. DR strongly opposed the submissions of the assessee by relying on the order of AO.

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 Jurisidicitonal 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.

11.5. Respectfully following the same, we do not find any merit in ground No.3 raised by the revenue and is accordingly dismissed.

12. The ground No.4 & 5 to be decided in this appeal is as to whether the ld. CIT(A) was justified in holding that the broken period interest paid on purchase of securities is allowable as deduction in the facts and circumstances of the case.

12.1. We have heard rival submissions and perused the material available on record. We find that the assessee claimed Rs.669,75,70,585/- as broken period interest paid on purchase of securities during the F.Y.2011-12 relevant to A.Y.2012-13 . Since such securities are the stock in trade of the assessee, the broken period interest paid on acquisition is in the nature of revenue expenditure. We find that this issue is covered in favour of the assessee by the decision of Hon'ble Jurisdictional High Court in assessee's own case for A.Yrs. 1980-81 and 1981-82 in Income Tax reference No.137/1997 dated 09/10/2002 wherein the order of the Hon'ble Jurisdictional High Court is as under:-

> *1 . This Reference is at the instance of the department under Section 256(1) of the Income-tax Act for the assessment year- 1980-1981 and 19.81-82.*
>
> *2. The main point which arises for determination" in this Reference is as follows :*
>
> *Whether the Tribunal was right in holding that interest paid on broken period should be allowable as Revenue expenditure.*
>
> *Mr. Desai learned fairly states that in view .of our judgment dated 25.09.2002 in I.T. Reference 173 of 1.983 along with I.T. Reference 75 of 1986 and Reference. 346 of 1987, the suggestion may foe[5] answered. Accordingly, we answer the above*

suggestion in the affirmative i.e. in favour of the assessee against the department .

Reference is accordingly disposed of. No order as to costs

12.2. We also find that the Co-ordinate Bench of this Tribunal in ITA No.7485/Mum/2016 for A.Y.2011-12 dated 19/07/2018 in assessee's own case had discussed this issue as under:-

"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."

12.3. Respectfully following the aforesaid judicial precedents, the ground Nos. 4 & 5 raised by the revenue are dismissed.

13. The ground No.6 & 7 raised by the revenue are with regard to applicability of provisions of Section 115JB of the Act to the assessee bank.

13.1. We have heard rival submissions and perused the materials available on record. We find that this issue was subject matter of adjudication by this Tribunal in assessee's own case for A.Y.2011-12 in ITA No.7485/Mum/2016 dated 19/07/2018 as under:-

> *"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 (1TA 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 Central Bank of India 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, ITA 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 Central Bank of India 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 he 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. JCIT (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.

13.2. Respectfully following the aforesaid decision, the ground No.6 & 7 raised by the revenue are dismissed.

14. The ground No.8 raised by the revenue has already been adjudicated by us hereinabove while adjudicating the ground No.3 of assessee appeal.

15. The ground No.9 raised by the revenue is general in nature and does not require any specific adjudication.

16. In the result, appeal of the revenue is dismissed.

17. In the result, appeal of the assessee is partly allowed and appeal of the revenue is dismissed.

Order pronounced in the open court on this 29/01/2020

Sd/-	**Sd/-**
(AMARJIT SINGH)	**(M.BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai; Dated 29/01/2020
KARUNA, *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.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai