

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES 'F', NEW DELHI**

**Before Sh. Bhavnesh Saini, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 2954/Del/2012 : Asstt. Year : 2013-14**

DCIT, Circle-20(1), New Delhi	Vs	M/s Punjab National Bank, HO: Finance Division, 5, Sansad Marg, New Delhi-110001
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACP0165G</b>		

**ITA No. 3041/Del/2017 : Asstt. Year : 2013-14**

M/s Punjab National Bank, HO: Finance Division, 5, Sansad Marg, New Delhi-110001	Vs	Addl. CIT, Circle-20(1), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACP0165G</b>		

**Assessee by : Sh. S. Krishnan, Adv.**

**Revenue by : Smt. Sushma Singh, CIT DR**

**Date of Hearing: 02.03.2020**

**Date of Pronouncement: 13.05.2020**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeals by the revenue and the assessee are directed against the orders of the Id. CIT(A)-7, New Delhi dated 27.02.2017.

2. The first ground of the appeal of the revenue pertains to "loss of revaluation of investment on the HTM category". At the outset, it was brought to our notice that the similar issue has been covered in favour of the assessee by the ITAT for

assessment years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12.

3. The relevant part of the order of the AO and Id. CIT (A) in the instant year is as under:

*"6.1 During the year under consideration, it is observed that the assessee has claimed losses on account of amortization of premium paid at the time of purchase of securities held under the category of HTM. The loss on account of this amortization was claimed at Rs. 212,47,18,151/-.*

*6.2 It is observed that though the securities are categorized as HTM, the same are not held till maturity but are disposed off by the bank before the period of maturity ends. Therefore, this act cannot be said to be in strict compliance of the RBI guidelines. Further, the assessee has claimed the HTM securities to be stock in trade for the purpose of Income Tax Act. These securities are considered to be long term securities and held for considerably long periods. Therefore, they continue to remain as part of the stock in trade till they are finally sold. Hence, the cost price of these securities does not change merely on the change in the categorization of the securities and booking of losses merely on account of change in the nomenclature does not result in actual losses. Thus, the losses claimed by the assessee on this account are notional in nature. In view of this, the assessee was asked to show-cause, in the notice u/s 142(1) of the I. T. Act, 1961 dated 08.03.2016, why the notional losses claimed on account of revaluation of investment held under HTM amounting to Rs.212,47,18,151/- should not be disallowed.*

*6.3 In response to the show-cause, the assessee vide its letter dated 11.02.2016, gave its explanation which is reproduced below:*

.....  
*6.4 The submission of the assessee is duly considered. It is seen that the assessee is claiming*

*above amount on account of amortization of premium paid on the securities under the category "Held To Maturity (HTM)". In the submission, the assessee has mainly stressed that the above has been done in view of RBI Guidelines. It is noted that the RBI has given special treatment to the securities under the category HTM as they are held by the banks till the maturity date. However, it is not the same in the assessee's case. It is noted that the bank is selling the securities under HTM category before their maturity. Thus, the assessee bank is not holding HTM securities till maturity. The bank is selling the HTM securities before the maturity. Therefore, it cannot be said that categorization of securities is strictly as per RBI guidelines. The losses being incurred are not actual losses but on account of the premium paid in buying securities, which is then claimed as expenses over the remaining period of maturity. The provisions of Income Tax do not provide for these notional losses.*

*6.5 The assessee is claiming that these securities have been treated as stock-in-trade for the purpose of Income Tax Act. If we examine the nature of securities, it is seen that they are required to be held for a long period. The assessee has purchased the securities during the year which are maturing in different years. As the assessee has treated the securities as stock-in-trade, they will continuously appear in opening and closing stock till they are finally sold. Thus, the cost price will not affect the trading account in years subsequent to purchase where these securities are held as it is. The real effect on profit will come only in the year of sale. Thus, till the securities are finally sold any amortization or loss will be notional in nature. Hence, such amortization distorts the picture of true profit /loss of a particular financial year. The A.O. is supposed to examine any claim under the provisions of Income Tax Act for that particular year only and there is no concept of amortization for stock-in-trade under any provisions of the Income Tax Act. As such, the above amortization is*

*only a notional expenditure and it is not an allowable expenditure under the Income Tax Act.*

*6.6 As the securities have been sold before maturity, the amortization of premium over the remaining life of the securities cannot be worked out correctly as the life of security with assessee is not certain. For working out the amortization, the period for which the assessee is going to hold the securities should be known. However, this is not available in the case of assessee as it is selling the HTM securities before maturity as per its own will. Thus, the loss on account of amortization of premium cannot be treated as provisions for ascertained liability.*

*6.7 The Hon'ble Supreme Court in the case of Electronics Corporation of India Ltd. Vs UOI & Ors. (Civil appeal No. 1883 of 2011 arising out of SLP of 2009 (SC) has held that PSUs and department would no longer be required to obtain COD approval in case of any litigation. Therefore, filing of further appeal would be done purely on the basis of merit.*

*6.8 In view of above discussions, the amortization claimed at Rs.212,47,18,151/- is disallowed and added to the total income of the assessee."*

4. Before the Id. CIT (A), the Ld. AR stated as under:

*"At the outset it is submitted that it is a covered matter. The Learned Commissioner of Income Tax (Appeal) in the Assessment Years of 2008-09 to 2012-13 has decided the issue in favour of the Assessee.*

*1. During the year under consideration, the assessee Bank has claimed loss on account of amortization of premium paid at the time of purchase of securities held under HTM category. The loss on account of this amortization was claimed at Rs. 212,47,18,151/-. The Assessee bank based on RBI guidelines had amortized the premium paid on acquisition of securities wherever the cost of securities was more than the face value of the securities. The premium paid at the time of acquisition was amortized over the remaining period*

*of these securities i.e. till the maturity of these securities.*

*1.1 The submission of the Assessee bank before the learned Assessing Officer was that these securities held under Held to Maturity category are also 'stock-in-trade' of the Assessee bank and thus, amortization of premium is an allowable deduction like depreciation or diminution in the value of securities.*

*1.2 The Assessing Officer is of the view that there is no concept of amortization of 'stock-in-trade' under the provisions of Income Tax Act. He had disallowed the above amount giving reasons that the Assessee bank also sells the securities held under HTM category and therefore, the life of the securities with the Assessee bank are not certain. In the view of the Assessing Officer, the loss provided is only notional and cannot be allowed. While disallowing the amount, the Assessing Officer has concluded that loss of account of amortization of premium cannot be treated as provisions for ascertained liability.*

*1.3 It is submitted that all investments (other than investments in joint ventures and subsidiaries of the bank) held by the Assessee bank constitute stock-in-trade and as per normally accepted principles of accounting the stock-in-trade is to be valued at cost or market price whichever is lower. The Assessee bank has consistently and regularly following the said principle. Moreover, the Assessee bank has been consistently offering the entire profit on sale of securities as business income and no part of the profits has been offered as capital gain.*

*1.4 It is submitted that the learned Assessing Officer is not justified in disallowing the claim of the Assessee giving reason that the securities held under HTM category are sold in some cases before maturity. The learned Assessing Officer should have appreciated that RBI guidelines permit sale of the securities under HTM category even before maturity. As the Assessee bank sells certain securities under HTM category before maturity, this is the precise reason that the*

*Assessee bank treats these investments as stock-in-trade. Once the investment is treated as stock-in-trade, as per generally accepted accounting principle, the same is to be valued at cost or market price whichever is lower. The loss arising on account of such valuation is allowable as legitimate deduction based on various judicial decisions including that of Hon'ble Supreme Court in the case of UCO Bank (240 ITR 355), CIT vs. Bank of Baroda (262 ITR 334 Bom.), CIT vs. Lakshmi Vitas Bank Ltd. (264 ITR 662 Mad.) Moreover, the SPL filed by the Department has also been rejected by the Hon'ble Supreme Court in the case of Federal Bank Ltd. (313 ITR 26 Stat).*

*1.5 It is further submitted that the learned Assessing Officer having concluded that the securities held under HTM category constitute its stock-in-trade is not correct in stating in para 6.5 of the Assessment Order that "cost price will not affect the trading account in years subsequent to purchase where these securities are held as it is." The Assessing Officer should have noted that as stated in the previous para, when the securities are treated as stock-in-trade, these are to be valued at cost or market price whichever is lower and the loss arising there from is allowed as deduction.*

*1.6 The Assessee bank relies on the decision of ITAT Cochin in the case of ACIT v. The Catholic Syrian Bank Ltd. (ITA 66/Coch/09 dated 11.02.2011 for the assessment year 2005-06).*

*1.7 The issue has been decided in the favour of the Assessee bank consistently by the learned Commissioner of Income Tax(Appeals) for the Assessment Year 2008-09 (Appeal No.145 /CIT(A)-XVII/Del/10-11 dated 29/06/2012) for the Assessment Year 2009-10 (Appeal No. 436/CIT(A)-XVII / Del/11-12 dated 22.02.2013) as well as for the Assessment Year 2010-11(Appeal No. 02/13-14 dated 01.04.2013) and Assessment Year of 2011-12(Appeal No.111/13-14 dated 27.02.2014) and Assessment Year 2012-13 (Appeal No 139/CIT(A)-7/DEL/15-16 dated 28.01.2016).*

*1.8 In view of the above submissions and since it is a covered matter your honour is requested to kindly delete the addition of Rs.212,47,181,151/- made by the learned Assessing Officer and allow this ground of appeal of the Assessee bank."*

*3.3 It is noted that appeal was instituted on similar facts for the A. Y. 2011-12 which was decided by the CIT(A) vide her order dated 27.07.2.014 in A. No. 111/13-14 as under:*

*"4.3 The Ld. CIT(A) on the same issue for A. Y. 2009-10 held as under:*

*"5.2. During the appellant proceedings, the appellant bank had submitted that with regard to securities held under HTM category the bank is following the RBI's Master Circular on valuation of investments dated 1.7.2002. As per the above Circular, the premium being the difference between the acquisition cost and the face value of the security is amortized over the remaining period of maturity of these securities. According to the appellant bank this method of amortization of premium with regard to the securities held under HTM category had been consistently followed by the bank from the assessment year 2001-02 and the same had been upheld by the CIT(A)s from the Assessment Year 2001-02 onwards. In the appeal order for the assessment year 2008-09, this issue was considered by me and allowed in Appeal No. 145/CIT(A)-XVII/ Del/10-11 dated 29.06.2012 and the relevant portion is as under:*

*"6.4. From the submissions of the appellant, it is dear that the bank is valuing its securities under HTM category at cost which is different from the valuation of securities under AFS and HFT categories which are valued at market price or cost whichever is lower. Though all these securities are 'stock in trade' the valuation of HTM category is different from the other two categories namely AFS and HFT. During the appellant hearing, the appellant bank vide their letter dated*

*08.06.2012 has made an alternate plea that if securities under HTM category are to be valued like AFS and HFT categories at lower of cost or market price then the diminution in the value of securities under HTM category is Rs.977,75,58,022/- and this should be allowed as a deduction instead of Rs.308.43 Crores claimed now as amortization of premium paid.*

*6.5. It is dear from the records that the Appellant bank is following the present method of valuation for securities under HTM category for a long time. Therefore, changing of this method of valuation is not warranted as of now especially since CIT(A)'s had already upheld this method of valuation from the assessment year 2001-02 onwards. This decision not to change the method of valuation of securities under HTM category is also taken in view of the alternate plea made by the appellant bank during the appellate proceedings, that the appellant bank should be given a deduction of Rs.977,75,58,022/- as the diminution in the value of securities under this category being lower of cost or market price instead of Rs.308.43 crores now claimed as amortization of premium. As a result, the addition of Rs.308.43 Crores made by the AO is hereby deleted and this ground of appeal No. 2 is decided in favour of the appellant."*

*5.3. Since the facts are the same that securities under HTM category were valued at cost and the appellant during the appellate proceedings vide their submission dated 4.8.2012 had made an alternative plea for a higher deduction of Rs.1256.42 crores being the diminution of the value of securities, the addition of Rs.338,13,24,273/- being amortization of premium made by the AO is deleted and this ground of appeal No. 2 is decided in favour of the appellant."*

*4.4. I had followed the decision for the A. Y. 2010-11 of the Ld. CIT(A). As the facts are similar, respectfully following the decision of the Ld. CIT(A) for A. Y.s*

*2009-10 & 2010-11, the addition of Rs.2,89,29,00,234/- is deleted."*

5. Further, the similar matter travelled upto the Tribunal wherein the Co-ordinate Bench for the assessment year 2006-07 in ITA No. 2469/Del/2011 adjudicated the issue against the revenue. The relevant portion of the order is as under:

*"20. This grounds relates to the disallowance of loss on revaluation of investment held in HTM category of Rs.301,34,13,448/-.*

*21. On examination of the annual accounts, Ld. AO found that the assessee claimed loss on revaluation of investment amounting to Rs. 301,34,13,448/-on account of amortization of premium paid at the time of purchase of securities under HTM (Held To Maturity) category. Assessee treated the securities under HTM category as a stock in trade. Contention of the assessee was that as per RBI guidelines dated 16 October 2000, investments classified under HTM category need not be market to market and are carried at acquisition cost unless these are more than the face value, in which case the premium should be amortized for the period remaining to maturity.*

*22. On this aspect the Ld. assessing officer had taken the view that the securities were sold before maturity and therefore the amortization of premium over the remaining life of the securities cannot be worked out correctly and for working out the amortization, the period for which the assessee held the securities are to be known, and for the want of such information coupled with the fact that the assessee sold HTM securities as per its will before maturity Ld. Assessing officer to draw the inference that the loss 19 on account of the amortization of the premium could not be treated as provision for ascertained liability.*

*23. Ld. CIT(A) considered this issue in the light of the precedent in assessee's own case and also in the case of CIT vs. Nedungadi bank Ltd (2003) 264 ITR 545*

*(Kerala), and while following the same, observed that the amortization, which is as good as depreciation, merits the same treatment which is applicable to depreciation and thereby Ld. CIT(A) held the issue in favour of the assessee.*

*24. It is the submission of Ld. AR that the issue in question has squarely been covered by the orders of a coordinate bench of this Tribunal in assessee's own case in Assessment Year 2006-07 in ITA No.4241/Del/2010 dated 16/03/2018.*

*25. Per contra, it is the argument of Ld. DR that during the course of assessment proceedings, the assessee had given the submission that they have been claiming the amortization of premium of HTM securities in the light of the RBI guidelines and master circular; that the assessing officer did not accept the claim of the assessee as securities were purchased from market at market value and the investment was shown at a lower price by writing off the premium paid which is not allowable under the provisions of the Act as per the detailed discussion made by the assessing officer in the assessment order. She further submitted that the order of the 1st appellate authority in the case of the assessee for the assessment year 2006-07 shows that the assessee had shown the securities of HTM category as capital gain.*

*26. We have gone through the record and perused the order dated 16/03/2018 in ITA No. 4241/Del/2010 in assessee's own case, wherein after considering the case law on this aspect including the decision of the Hon'ble Apex Court in the case of UCO Bank vs. CIT 240 ITR 355 (SC) and the Master Circular of the RBI on the aspect of valuation of investments applicable to all banks prescribed in case of acquisition cost of securities classified under HTM category and also the order dated 25/10/2011 of a coordinate bench of this Tribunal in assessee's own case for the assessment year 2000-06 in ITA No. 2873/Del/2007."*

6. We find that the issue is fully covered by the earlier orders right for assessment years 2001-02 to 2012-13. The learned CIT(A) has only followed the principle laid down by the Hon'ble Apex Court in the case of UCO Bank 240 ITR 355. In the light of the aforesaid binding decision of the Hon'ble Apex Court, we do not find any infirmity in the order of CIT(A). In the absence of any material change, as confirmed by both the parties, we hereby delete the addition made by the revenue.

7. The Second ground of the appeal of the revenue pertains to depreciation/loss on investments and on MTM on derivatives. At the outset, it was brought to our notice that the similar issue has been covered in favour of the assessee by the ITAT for assessment years 2006-07, 2007-08, 2008-09, 2009-10 and 2011-12.

8. The relevant part of the order of the AO and Id. CIT (A) is as under:

"4.1. On this issue, the AO held as under:

*"7.7 It is seen that in the computation of income, the assessee has claimed deduction on account of depreciation/loss on investment of Rs.1,06,50,34,039/- and MTM on derivatives of Rs.5,74,10,270/- on account of depreciation on investment. The above depreciation has been claimed on account of valuation of securities under the category Held for Trading (HFT) and Available for Sale (AFS). Vide order sheet noting dated 08.03.2016, the assessee was asked to explain why its claim on account of depreciation on investment should not be disallowed. Further, vide order sheet noting dated 09.03.2016, the assessee was asked to explain as to why MTM on Derivatives should not be disallowed.*

*7.2 The assessee submitted the reply vide letter dated 08.03.2016 and 10.12.2015. The relevant portion is reproduced below:*

.....

*7.3 Vide letter dated 10.03.2016, the assessee gave its submissions with regard to MTM loss on derivatives as below:*

.....

*7.4. The submission of the assessee is considered. Regarding the loss on account of depreciation on investment amounting to Rs. 1,06,50,34,039/- and MTM on derivatives of Rs.5,74,10,270, the assessee merely relied on RBI guidelines as per which, the diminution in value of investment is charged to profit and loss account. The assessee is claiming depreciation on two types of securities Available for Sale (AFS) and Held for Trading (HFT). The above classification has been made by the assessee in view of the RBI guidelines. The treatment given to these types of securities as per RBI guidelines is given below:*

*7.5. Available for Sale securities:*

*The individual scrips in the AFS category will be marked to market at quarterly or at more frequent intervals. Securities under this category will be valued scripwise and depreciation/appreciation shall be aggregated for each classification. Net depreciation, if any, shall be provided for. Net depreciation, if any, should be ignored. Net depreciation required to be provided for in any one classification should not be reduced on account of net appreciation in any other classification. The book value of the individual securities would not undergo any change after the marking of market. In other words, the depreciation or appreciation in value of individual schps in accordance with the above methodology would not be credited to individual scrip amounts but would be held collectively in a separate account.*

**7.6. Held for Trading securities:**

*The individual scrips in the HFT category will be marked to market at monthly or at more frequent intervals and provided for as in the case of those in the AFS category. Consequently, the book value of the individual securities in this category would also not undergo any change after marking to market.*

*7.7. Notes on accounts of balance sheet also discuss the method adopted by the bank for valuation of securities in different categories, in "Available for Sale" and "Held for Trading" categories, the bank has valued the securities at market price and net depreciation under each category is provided for and the net appreciation is ignored.*

*7.8 From the method of valuation of investments made in AFS and HFT, it is pertinent to note that first of all, valuation is done scrip wise and depreciation/appreciation is aggregated classification wise in each category but while aggregating, net depreciation is provided for and net appreciation is ignored. For example, the assessee has two securities, both purchased at Rs. 100/- each. Suppose, at the end of the year, the value of both the securities are Rs. 80/- and Rs. 120/- respectively; although the purchase value as well as the market value at the close of the accounting year is the same, but the assessee will book a loss of Rs. 20/- in its books of accounts as under:*

*Security A Rs. 80/- Market Price, being less Cost Price*

*Security B Rs. 100/- Cost Price, being less than Market Price*

*Total       Rs. 180/-*

*7.9. Thus, as per the above accounting policy the assessee will book loss of Rs. 20/- and claim the same in its P & L Account. However, as per the RBI guidelines, such adjustment of depreciation in the value of investments is not to be made up individual scrip wise, which means that the book value of the individual scrips would remain the same i.e. Rs. 200/-*

*even after the claim of depreciation of Rs. 20/- in the value of investments charged to the P & L Account in the current year.*

*7.10. The assessee has contended that the depreciation on investment is charged to Profit & Loss Account because the Investments held under AFS and HFT Categories (i.e. Current Investments) are held as Stock in trade. On perusal of the Profit and Loss Account, it is seen that there is neither any opening stock nor any closing stock. Assets side of the balance sheet also does not depict any head like Inventories. Corresponding figures of Opening Stock and Closing Stock in the return of income filed electronically also show Nil balance against the Opening Stock and Closing Stock. Not only this, even in the Auditor's Report, respective columns of Opening Stock and Closing Stock have been shown as not applicable.*

*7.11. If at all, investments are held as Stock- in-trade as per the RBI guidelines, this fact should be recorded in the Return, Audit Report, Final Accounts and the Annual Reports, which is not so in the present case. Even if it is presumed that the investments are held by the assessee company as 'Stock-in- trade', any depreciation in the value of Closing Stock is depicted in the Trading Account by showing lesser value of Closing Stock and not as an item of expense. The difference that would come out of it is that the value of Closing Stock will become the value of Opening Stock in the next year. If at all, any depreciation is claimed on account of value of Closing Stock, in that case, although the profits of the current year are reduced to that extent, but it will have a bearing on the next year's profit which will increase by corresponding amount of depreciation due to lesser Opening Stock in that year. Thus, essentials of treating any Investment as Stock in Trade is that the book value of the investment should be recorded at market/cost price at the end of the year in books and whenever it is sold or disposed off otherwise, such diminished value should be considered to arrive at the figure of net profit in the year in which such investments held as Stock- in -trade are sold.*

*However, in the present case, it may be noted in the above mentioned RBI guidelines in both the categories viz. AFS and HFT, individual scrip value is not adjusted by any depreciation charged due to revaluation, which means that such investments are held at the cost of acquisition even after providing the depreciation on it. Thus, corresponding profit in the year is reduced without having any impact on the next years' profits, which is not permitted under the Income Tax Act on account of revaluation of 'Stock-in-trade'.*

*7.12. For example, if any investment of Rs. 1,000/- is made in AY 2003-04 and a depreciation of Rs. 200/- is booked due to depreciation in its value, the carrying cost in the AY 2004-05 of these assets should be Rs-800/- -and in that year, if these investments are sold at Rs. 1,500/-, the business profit should be booked at Rs. 700/-. If in this example, the assessee continues to take the carry over amount of the investments at Rs. 1,000/- in AY 2004-05, correct profit of Rs. 700/- cannot be arrived at. In the instant case, since the assessee is not adjusting the individual scrip value by the depreciation in its value, correct profit cannot be arrived.*

*7.13. To sum up, the assessee's claim that these current investments are held as Stock-in-trade, should be reflected in the annual accounts as well as the return of income, and the profit should be deduced through such valuation of Opening and Closing Stock, which is not so in the present case.*

*7.14. After considering the submission of the assessee, I am of the opinion that though it is correct that the Depreciation/Loss is booked in accordance with the Banking Regulation Act and the revaluation is done in accordance with the guidelines of the RBI; however, the fact remains that these investments have not been shown in the books as 'Stock in Trade' and its resultant profits on sale are not enhanced by the value of depreciation in subsequent years when these investments are actually sold. As far as claim of the assessee that COD has declined permission on*

*such issue, it may be mentioned that in the subsequent years i.e., A.Y.2004-05 in the meeting held on 24.04.2008 the COD granted permission to CBDT to file at before higher authority.*

*7.15. In view of above discussions, the depreciation/loss on investment claimed by the assessee of Rs.1,06,50,34,039/- and MTM on derivatives of Rs.5,74,10,270/- is disallowed and added to the total income of the assessee."*

9. Before the Id. CIT (A), the Ld. AR stated as under:

*"2. The Assessee bank, for the purpose of Income Tax, is treating all its securities (except investment in Joint Ventures and Subsidiaries) as stock-in-trade. Accordingly, interest received on such securities and profit/loss on sale of such securities irrespective of its categorization in the books, is offered as business income/loss and the same is also assessed by the Department as business income/loss. Diminution in the value of such securities, if any, is claimed as depreciation/loss.*

*2.1 During the year under consideration, the bank had claimed deduction of Rs.106,50,34,309/- on account of depreciation on investment and MTM (Mark to Market) on derivatives of Rs.5,74,19,270/-. As per section (2)(h)(ia) of the Securities Contracts (Regulation) Act, 1956, the derivatives are securities. The said depreciation has been claimed on account of valuation of securities under the category of Held for Trading (HFT) and Available for Sale(AFS).*

*2.2 The learned assessing officer white disallowing the depreciation/loss on investment claimed by the Assessee as per para 7.14 of his Assessment Order has held that though it is correct that Depreciation/Loss is booked in accordance with the Banking Regulation Act and the revaluation is done in accordance with the guidelines of RBI; however the fact remains that these investments have not been shown in the books as "Stock-in-Trade" and its resultant profits on sale are not enhanced by the value of depreciation in subsequent years when these investments are actually sold.*

*2.3 With regard to the above it is humble submitted that the contention of the learned Assessing Officer is factually incorrect. The effect of valuation of the Investments is very much reflected in the books of accounts of the Assessee Bank and the resultant profits on sale in the subsequent years when these investments are actually sold is computed after considering the depreciated book value of the investments. It is submitted that only the difference between the book value and the market value is claimed as diminution in the value of investment or depreciation since the same method is followed by all banks, there is no reason to presume that profit on sale of investments are not correctly reflected as assumed by the Learned Assessing Officer. It is submitted that what is claimed as loss in the computation of securities sold during the year is automatically reduced as the entire accumulated depreciation is deducted while computing the incremental depreciation on securities. Therefore, only the correct profit is reflected in the P & L A/c and the presumption of the Ld. Assessing Officer that the profits on sale of investments are not correctly reflected is wrong. Moreover, the Assessee Bank has been following this Accounting Policy consistently over a period of time.*

*The Assessee Bank is consistently offering the interest received on these securities and the profit on sale of these securities as income under the head "Income from the Business or Profession". The Ld. Assessing Officer without appreciating or understanding the above method followed by the Bank consistently and regularly concluded that the securities held by the Assessee Bank were not shown as 'stock-in-trade' in the audited accounts and therefore wrongly disallowed Assessee's claim of deduction amounting to Rs. 112,24,44,309/- (Rs.106,50,34,039/-+ Rs.5,74,10,270/-) made in the computation statement filed along with the return of income.*

*2.4 It is submitted that investments (other than in Joint Ventures and Subsidiaries) held by the Assessee Bank constitute its stock-in-trade and as per accepted accounting principles the said stock in trade is to be valued at cost or market price whichever is lower. The*

*Assessee Bank has been consistently following the said principle.*

*2.5 The loss arising on account of valuation at cost or market value whichever is lower is an allowable deduction based on various judicial decisions including that of Supreme Court in the case of UCO Bank (240 ITR 355) CIT vs. Bank of Baroda (262 ITR 334 Bom.), CIT vs. Lakshmi Vilas Bank Ltd. (262 ITR 662 Mad.).*

*2.6 It is submitted that in the case of CIT vs. Nedungadi Bank Ltd 264 ITR 545, the Hon'ble Kerala High Court had given the ruling in favour of the Assessee stating that depreciation/ loss in the value of investments was allowable expenditure. The said bank merged in the Assessee Bank.*

*2.7 The Assessee bank has been offering the entire profit on sale of securities as business income and no part of profit has been offered as capital gains.*

*2.8 This issue has been decided in favour of the Assessee bank by the learned Commissioner of Income Tax (Appeals) in the past when it was held that depreciation/ loss in the value of investments is an allowable expenditure. In the assessment year 2009-10, there was no depreciation/loss in the value of the investments. But there was an appreciation of Rs.216.34 crore which was offered for taxation. A chart showing decision of CIT(A) in earlier assessment years is submitted below for your kind perusal:*

<b>Assessment Year</b>	<b>Amount (Rs.)</b>	<b>Remarks</b>
2012-13	233,19,69,576	Allowed by CIT(A) vide order dated 28.01.2016
2011-12	171,96,42,285	Allowed by CIT(A) vide order dated 27.07.2014
2010-11	68,44,01,950/-	Allowed by CIT(A) vide order dated 18.02.2014
2008-09	308,43,16,574/-	Allowed by CIT(A) vide order dated 29.06.2012
2007-08	301,34,13,448/-	Allowed by CIT(A) vide orders dated 28.02.2011 para 3.5 page no.4

2006-07	247,06,53,905/-	Allowed by CIT(A) vide order dated 14.06.2010 para 7.5 page no. 19
2005-06	48,82,82,014/-	Allowed by CIT(A) vide order dated 08.03.2007 para 7 page no. 16
2004-05	117,79,85,000/-	Allowed by CIT(A) vide order dated 27.12.2005 para 4 to 4.4 pages 2-3
2003-04	156,97,52,018/ plus 70,08,24,000/-	Allowed by CIT(A) vide order dated 05.10.2004 para 6 to 6.2 pages 7-8.
2002-03	63,32,19,000/-	Allowed by CIT(A) vide order dated 29.07.2004 para 6 to 6.1 page 7
2001-02	39,01,79,000/- plus 29,80,88,366/-	Allowed by CIT(A) vide order dated 26.03.2004 para 7 page 7

*\*During the Assessment Year 2011-12, MTM (Mark to Market) losses on revaluation of derivatives of Rs 19,41,65,641/- was disallowed by the Assessing Officer under depreciation on investment/securities. But the same was allowed by the Ld. CIT (Appeals).*

*2.9 Your honour will appreciate that on reference before the Committee on Disputes by the Department seeking permission to allow litigation against the Assessee Bank in the following assessment years, the Committee had declined the permission to the Department on this issue since in the view of the Committee there was no point of law involved.*

<b>Assessment Year</b>	<b>Case</b>	<b>COD Meeting date</b>	<b>Remarks</b>
2003-04	CBDT vs.PNB	06.12.2007	Permission declined to the Department
1992-93	PNB (eNBI)	05.05.2004	Permission declined to the Department.

*2.10 Thus, the Committee on Disputes has settled the issue once for all that depreciation/loss on investments is an allowable expenditure by not giving permission to*

*the Income Tax Department to pursue the issue before the higher courts.*

*2.11 Keeping in view the above submissions and since it is a covered matter, your honour is requested to kindly agree to our submissions and delete the addition of Rs. 112,24,44,309/- (Rs.106,50,34,039/- + Rs.5,74,10,270/-) made by the learned Assessing Officer and allow this ground of appeal."*

10. The Id. CIT (A) noted that appeal was instituted on similar facts for the A. Y. 2011-12 which was decided by the Id. CIT(A) vide her order dated 27.07.2014 in A. No. 111/13-14. The finding of the Id. CIT(A) for A. Y. 2011-12 is as under:

*"5.3 From the details submitted by the appellant, it is dear that only the difference between the book value and the market value is claimed as diminution in the value of investment or depreciation. Since the same method is followed by all banks there is no reason to presume that profit on sale of investments are not correctly reflected as assumed by the AO. As per the submissions of the appellant, what is claimed as loss in the computation is the incremental depreciation on securities. The depreciation on securities sold during the year is automatically reduced as the entire accumulated depreciation is deducted while computing the incremental depreciation on securities. Therefore, only the correct profit reflected in the P d L A/c and the presumption of the AO that the profits on sale of investments are not correctly reflected is wrong. Moreover, the appellant's bank had been following this accounting policy consistently over a period of time. The appellant bank is consistently offering the interest received on these securities and the profit on sale of these securities as income under the head 'income from business or profession'. As per the AR, the AO without appreciating or understanding the above method followed by the bank concluded that the securities held by the appellant bank were not shown as 'stock in trade' in their audited accounts and therefore wrongly disallowed appellant's claim of deduction amounting to Rs.1,71,96,42,285/- made in*

*their computation statement filed along with the return of income.*

11. The Id. CIT(A) on the same issue for A.Y. 2009-10 held as under:

*"3.5. I have decided the above issue in favour of the appellant in A. X 2008-09 following my predecessor's decision in A.Y. 2007-08 and the relevant portion of the above decision is as follows:*

*"The issue to be decided in this appeal is whether the AO is right in holding that profit on the sale or securities are not correctly reflected in the P & L A/c and therefore diminution in the value of securities claimed by the appellant bank is to be disallowed. The appellant bank's submission is that they are correctly valuing the dosing stock at lower of cost or market value and the same is permissible by law and thus the deduction in the computation of income on diminution in the value of investments is an allowable deduction. The appellant bank in its submission mentioned above had relied on Hon'ble Supreme Court's decision in case of UCO Bank Vs CIT reported in 240 ITR 355 to substantiate that their claim in this regard. In this connection, it is pertinent to note that the facts of the above case are identical to the facts in the case of the appellant. In the above case as well as in the case of the appellant bank, the dosing stock was valued at market price or cost whichever is lower for income tax purposes alone. Therefore, the decision of the Hon'ble Supreme Court is clearly applicable in the case of the appellant and the diminution in the value claimed as a deduction in the computation statement filed along with the return of income is an allowable deduction."*

*3.5. Therefore, the appellant bank had correctly valued its closing stock at lower of market value or cost and this method was acceptable one. The AO's allegation that profit on the sale of securities are not correctly reflected in the P & L A/c is not true as the bank is following the RBI guidelines strictly in this*

*regard. The appellant bank in their submissions filed on 31.07.2012 had pointed out that the calculation for depreciation on securities is worked out as per RBI guidelines and only the incremental depreciation is debited in the P & L A/c. The appellant bank debits only the incremental depreciation in the P&L A/c which is actually the difference between the total depreciation at the end of the year and the outstanding accumulated depreciation at the beginning of the year. As a result, the accumulated depreciation in respect of any security sold during the year is automatically reduced at the end of the relevant year and therefore only the correct profit is reflected in the P&L A/c when the security is finally sold. It is dear from the above submission that the correct profit only is reflected in the P & L A/c as and when the security is sold and therefore the AO's understanding that profit on the sale or the securities are not correctly reflected in the P & L A/c is not based on facts. The appellant bank also pointed out that the CIT(A)s had been upholding consistently the above mentioned decision of Hon'ble Supreme Court in the case of appellant bank right from the A.Y. 1998-99 onwards.*

*3.6. In the appeal order for the assessment year 2007-08, the then CIT(A) white giving relief to the appellant Bank had held in his order dated 27/08/2010 in para 4.2 & 4.3 of page 19 and 20 in Appeal No. 155/CIT(A)-XVII/Del/09-10 as under:*

*"4.2. I have carefully considered the facts of the case, order of the AO and submissions made by the Id. AR. I find that the appellant bank is considering all securities as stock in trade for the purpose of income tax irrespective of their category-wise classification in the books. Accordingly, interest received on securities and profit / loss on sale of such securities irrespective of its categorization in the books is consistently offered as business income / loss and the same is also being assessed by the department as business income / loss. It is, therefore, evident that the appellant bank never treated the profit on sale of securities as capital gain as concluded by the AO. Therefore, the*

*conclusion drawn by the AO is incorrect and it cannot be applied to the appellant bank. Therefore, the question of getting the benefit of lesser tax applicable in the case of long term capital gain whether on conversion of securities or otherwise does not arise. In the result, loss/ depreciation on valuation of securities is to be allowed as business loss.*

*Learned AR also referred to the judgment dated 27.02.2009 of Hon'ble Supreme Court in the case of CIT v. State Bank of Travancore (S.L.P.(C) No. 5927 of 2009), where Hon'ble Supreme Court dismissed the SLP of the Department on the issue of loss on valuation of securities. It stands settled that loss on valuation of securities is allowable to the banks. As such, the aforesaid depreciation / loss on valuation of securities is also allowable. I am, therefore, inclined to agree with the learned AR that the issue of loss on valuation of securities is squarely covered in favour of the appellant bank with the aforesaid dismissal of SLP by Hon'ble Supreme Court.*

*It has been further observed that the AO passed an order u/s 254/143 (3) dated 25.03.2009 for AY 1989-90 after examining the issue of loss on securities in terms of direction of Hon'ble ITA T following the judgment of Hon'ble Supreme Court in the case of UCO Bank vs. CIT 240 ITR 355 (SC). In that order, the AO has accepted that securities are held continuously as stock in trade and accordingly, has allowed the loss on valuation of securities. Based on such findings, the depreciation / loss on securities is also allowable to the assessee bank.*

*I find that my learned predecessors have also allowed the relief to the appellant on this issue consistently from AY 1998-99 onwards.*

*4.3. In view of the above discussions, the disallowance of Rs.9,04,35,251/- in respect of depreciation on securities is hereby deleted. This ground of appeal is allowed."*

*3.7. Respectfully following the above decisions of the Hon'ble Supreme Court mentioned in the above CIT(A)'s order, the addition made by the AO of Rs.282,98,66,388/- is hereby deleted and this ground of appeal number 1 is allowed in favour of the appellant bank."*

*3.6. The CIT(A)s had been deciding the issue consistently in favour of the appellant right from the A. Y. 1998-99 onwards. Therefore, following my own decision for A. Y. 2008-09, this issue is decided in favour of the appellant and the addition of Rs.91,47,65,766/- on disallowance of depreciation on securities is deleted. Thus, ground No. 1 is allowed in favour of the appellant.*

*5.5. I had followed the decision for the A. Y. 2010-11 of the Ld. CIT(A). Since the facts are similar, respectfully following the decision of the Ld. CIT(A) for A. Y.s 2009-10 A 2010-11, the addition of Rs.171,96,42,285/- is deleted. The ground of appeal is ruled in favour of the appellant.*

*4.4. Since the facts are similar, following the decision of the CIT(A) for A. Y. 2008-09 which was followed by my predecessor in the appeal for A. Y.s 2010-11 & 2011-12, the disallowance of Rs.112,24,44,309/- (Rs. 106,50,34,039/- + Rs.5,74,10,270/-) made by the AO is deleted. The ground of appeal is ruled in favour of the appellant."*

12. Further, the similar matter travelled upto the Tribunal wherein the Co-ordinate Bench for the assessment year 2006-07 in ITA No. 2469/Del/2011 adjudicated the issue against the revenue. The relevant portion of the order is as under:

*"28. Learned assessing officer found that the assessee had claimed deduction of Rs.288,11,30,000/- on account of depreciation on investment on account of valuation of securities under the category held for trading (HFT) and available for sale (AFS). Assessee banked upon the RBI guidelines and submitted that the investment portfolio of the banks is required to be*

*classified under 3 categories, namely, held to maturity (HTM), held for trading (HFT) and available for sale (AFS); that in the investments classified under HTM category need not be market to market and are carried at an acquisition cost unless these are more than the face value, in which case the premium should be amortized over the period remaining to maturity; that in case of HFT and AFS, the depreciation/appreciation is to be aggregated scrip wise and only netted appreciation, if any, is required to be provided for in the accounts; that the said treatment is also disclosed as per paragraph No.5 of Significant Accounting Policies (schedule-17) adopted to the audited accounts. It was further submitted by the assessee that for the purpose of income tax, bank is treating all securities (except investment in subsidiaries and joint ventures) as stock in trade; that the interest received on such securities and profit/loss on sale of such securities irrespective of its categorization into HTM, HFT and AFS in the books, is offered as business income/loss and the same is also being assessed by the Department as business income/loss; and the diminution in value of such securities is considered as business loss and likewise really been depreciation on valuation of such securities, if any, is offered to tax. Assessee placed reliance on the decision of the Hon'ble Kerala High Court in the case of CIT vs. Nedungadi bank Ltd., 264 ITR 545 for the principle that the appreciation/loss in the value of investment was allowable expenditure.*

*29. Ld. Assessing officer after considering the submissions of the assessee, formed an opinion that though it was correct that the depreciation/loss is booked in accordance with the Banking Regulation Act and the revaluation is done in accordance with the guidelines of the RBI, however, the fact remains that these investments have not been shown in the books as "stock in trade" and its resultant profits on sale are not enhanced by the value of depreciation in subsequent years when these investments are actually sold.*

30. In appeal, Ld. CIT(A) considered this issue at length and by following the orders of his predecessor in assessee's own case for the assessment years 2000-01 to 2005-06 decided the issue in favour of the assessee bank in the light of the decision of the Hon'ble Apex Court in the case of UCO Bank vs. CIT 240 ITR 355 (SC).

31. It is the argument of the learned DR that though the assessee has been relying on the orders of the Tribunal for the Assessment Years 2005-06 and 2006-07, facts involved in those matters are entirely different from the facts involved in this matter inasmuch as in Assessment Year 2005-06 the issue before the Tribunal was regarding the acquisition of broken period interest whereas for the assessment year 2006-07 the assessee debited the securities and stock in trade and claimed deduction of loss on the valuation of securities at the year-end on the basis of cost or market price, whichever is lower and confirmed by the orders of the 1st appellate authority. It is the submission of the Ld. DR that in the present appeal the fact is that the revenue is challenging the deduction on the ground that the assessee on one hand is taking benefit of deduction on diminution of the value of securities in the closing stock and on the other hand not carrying forward the impact of this claim of diminution on the value of securities in the opening stock. Ld. DR placed reliance on the decision of the Hon'ble Apex Court in the case of Southern technologies Vs. ACIT [2010] 187 Taxman 346 (SC).

32. We have perused the record and the case law relied upon by both the sides. It is an admitted fact that the assessee being a Nationalized Bank is governed by the Banking Regulation Act, 1949; that they are following mercantile system of accounting both for book keeping purpose as well as for tax purposes; that they have been valuing the stock-in-trade (investments) "at cost" in the balance sheet whereas for the same period of time the appellant has been valuing the very same investment "at cost or market value whichever is lower" for income tax purposes; that it is an established rule of commercial

*practice and accountancy that closing stock can be valued at cost or market price, whichever is lower. It could be seen from the record that the question as to the reflection of the investments being stock in trade in the audit report, profit and loss account and the annual report with the question of the value of securities as embedded in the closing stock and the corresponding figure as becoming the opening stock in the subsequent year was adverted to Indian judicial precedents.*

*33. Further as understood from the argument of the Ld. DR, her contention is that no opening stock or closing stock of securities mentioned in the profit and loss account though the assessee had claimed their investment in securities as stock in trade; and that if the investments are stock in trade, it should be reflected in the return of income, audit report, profit and loss account and the annual report and the diminution of the value of securities will be embedded in the closing stock and the corresponding figure will become the opening stock in the subsequent assessment years. On this she submitted that when once the assessee reduces the depreciation and reaches a particular figure as the book value of the securities, then naturally when the securities were sold in the subsequent years the profit should be estimated with reference to the reduced value of the Scrips in the earlier years, but however in the case of the assessee, the cost of the security after reducing the same because of the appreciation was not changed or adjusted in the books resulting in the books reflecting the low profit and the resultant offering of less amount to tax.*

*34. The plea of the assessee, on the other hand, is that the treatment of the profit on sale of securities is a two-fold. Firstly, the profit on sale of securities will be lower due to the non attachment of cost of securities with deregulated appreciation claimed, but simultaneously at the second stage of the said transaction, claim of depreciation on securities for the year is also reduced to the extent of a community depreciation claimed earlier and resultantly the profit*

*for the year is worked out correctly after taking into account both the folds of the transaction collectively.*

*35. On a careful consideration of the matter, we are of the considered opinion that it's not the case of the Ld. assessing officer that in this particular year in respect of any particular security such a thing had happened. It's not the case of the Ld. assessing officer that with reference to any particular scrip there was depreciation claimed in the earlier years, the loss was claimed as deduction but without showing the reduced value of the scrip as the opening value of the stock and thereby on the sale of the scrip the cost price but not the reduced price was taken as the cost of acquisition and thereby any less amount was offered to tax. The entire edifice of the case of revenue is based on the theoretical suspicion of the Ld. assessing officer that inasmuch as the assessee has not been showing in the balance sheet not the reduced value of the scrip but the cost price of the scrip as the value of the scrip, when the securities were sold it is the cost price of the scrip but not the reduced value of the scrip that was taken to estimate the profits and as a consequence of which the less amount has been offered to tax. It is a verifiable fact with reference to the sales of securities, if any, that took place during the year or earlier or subsequent years. Such an exercise has not been undertaken by the learned assessing officer but merely basing on the figures reflected in the balance sheet which was prepared in accordance with the RBI guidelines, learned assessing officer reached a conclusion that there was an escapement of income due to the preparation of the balance sheet in a particular way, as prescribed by the RBI.*

*36. If we appreciate the facts of this case in the light of the decision of the Hon'ble Apex Court in UCO Bank vs. CIT 240 ITR 355 (SC) it is clear that since the assessee has been maintaining its accounts on mercantile system, they are entitled to show his real income by taking into account market value of such investments in arriving at real taxable income. All the aspects argued by the Ld. DR were considered by the*

*Hon'ble Apex Court in the case of UCO Bank vs. CIT 240 ITR 355 (SC) and were held in favour of the assessee. The decision in Southern technologies Ltd (supra) has no application to the facts of the case.*

*37. There is consistency of the facts on this aspect quite for a long time and all possible arguments have come before the adjudicatory authorities. On a careful consideration of the matter in the light of the submissions on either side, we are of the considered opinion that the question is now fully covered by the orders of the Tribunal in assessee's own case for the earlier years, and while respectfully following the same, we hold the issue in favour of the assessee.*

***Gr. No.3 Loss on shifting of securities from AFS/HFT categories to HTM category***

*38. The assessee bank, at the beginning of the year had shifted securities worth Rs. 6176 crore from HTM category to AFS/HFT category. RBI guidelines provide that the transfer of scrips from one category to another, under all circumstances, should be done at the acquisition cost/book value/market value of the date of transfer, whichever is the least and interpretation, if any, on such transfer should be fully provided for. On this score the assessee booked the depreciation/loss of Rs.386,75,73,660/-.*

*39. Learned Assessing officer, however, disallowed the same by saying that the loss claimed on such transfer is merely notional loss which does not exist. Learned assessing officer had taken the view that the securities under HTM categories have also sold before maturity, and therefore they would not enjoy the special status in the books of accounts of the assessee as emphasized by the RBI guidelines; that the chain of securities from one category to another category does not amount to any financial transaction and so the loss claimed is not an allowable expenditure; that the assessee had tried to club such loss with a loss on actual sale of HTM securities which is not correct since there is only a notional loss; and therefore the shifting of the securities from one category to another*

*category under RBI guidelines should not call for any variation in profit under the provisions of the Act inasmuch as the nature and character of the security remains the same being stock in trade.*

*40. It is the submission of the Ld. AR that this question is now fully covered by the decision of a coordinate bench of this Tribunal in assessee's own case for the Assessment Year 2005-06 in ITA No.2873/Del/07 dated 25 October 2011 and Assessment Year 2006-07 in ITA number 4241/Del/2010 dated 16 March 2018.*

*41. Per contra, it is the argument of Ld. DR that the facts involved in this case for this year are entirely different from the facts involved in the case of the State Bank of Mysore, in as much as in the case of state bank of Mysore the issue was regarding the shifting of securities from stock in trade to capital asset whereas in the present appeal the Learned Assessing Officer challenged the deduction on the ground that there is no transfer of securities from one head to other for the purpose of valuation as all category is under stock in trade. She invited our attention to the circular of RBI in respect of amortization of premium to state that the RBI directions are only disclosure norms, they have nothing to do with the computation of total taxable income under the Income-tax Act or with the accounting treatment and that the RBI directions only lay down the manner of presentation of NPA provision in the balance sheet of the NBFC. She further submitted that the NBFCs have to accept the concept of income as evolved by the RBI after deducting the provision against NPA, but such treatment is confined to presentation/disclosure and has nothing to do with the computation of taxable income under the Income tax Act. She placed reliance on the decision of the Hon'ble Apex Court in Southern technologies vs CIT 328 577 in support of her about contentions.*

*42. In reply, it is submitted by the counsel for the assessee that the assessee in the present appeal is not an NBFC. According to the Ld. AR the decision of*

*the Hon'ble Apex Court in the case of United Commercial Bank versus CIT (1999) 240 ITR 355 (SC) is applicable to the facts of the case. He further submitted that the loss shown in the profit and loss account and claimed in the return is not notional, but real loss as was considered by the Hon'ble apex court in the case of UCO bank Vs. CIT 240 ITR 355.*

*43. It could be seen from the impugned order that the Ld. CIT(A) considered this aspect at length and found that the facts relating to this issue are similar to those involved in the case of the State Bank of Mysore vs. DCIT of the Bangalore bench of ITAT in ITA No. 647/Bang/2008, wherein vide paragraph number 7.2 to 7.5 it was held that in view of the clear-cut guidelines of the RBI and the order of the Tribunal in ITA No.112/bang/2008 dated 3rd December 2008 in the case of Corporate Bank vs. ACIT and ACIT vs. Vijaya Bank, the claim of the assessee towards provision of deposition on account of shifting of securities from AFS category to HTM category was allowable deduction.*

*44. It is not the case of the revenue that the facts of this case are not similar to the facts of the case for any earlier years. It shall be kept in mind that the bank will never hold the assets merely for dividends or further appreciation of the value of the asset and all the three types of assets namely, held to maturity, available for sale and held for trading of the investments to maintain the statutory liquidity requirement. We therefore do not find any difference of facts on this score and hold that the decision of the Bangalore Tribunal in the case of State Bank of Mysore (supra) is very much applicable to the facts of this case also."*

13. In the absence of any material change, as confirmed by both the parties, respectfully following the directions referred to above, we are of the considered opinion that the loss arising on shifting of securities from AFS/HFT categories to HTM category

and depreciation is allowable. Appeal of the revenue in this ground is dismissed.

14. The third ground of the appeal of the revenue pertains to deletion on account of contribution made by PNB employees pension trust. At the outset, it was brought to our notice that the similar issue has been covered in favour of the assessee by the ITAT for assessment years 2006-07, 2007-08, 2008-09, 2009-10 and 2011-12.

15. This issue stands adjudicated vide para nos. 45 to 48 of the order in ITA No. 2469/Del/2011. For the sake of ready reference, the relevant part is reproduced as under:

*"45. This ground relates to the disallowance of contribution made to PNB Employees Pension Fund Trust of Rs.215,56,00,000/- which the assessee claims to be its legitimate business expenditure.*

*46. According to the Ld. AO, this is not a contribution to the pension fund and the provisions of Section 43(B) are not applicable to the assessee bank. According to the Ld. AO, no deduction of such payment is allowable to the assessee bank, even though the same was actually paid and the provisions under section 36(1)(iv) has to be looked into, according to which any sum paid by the assessee to an employer by way of contribution to the Recognized Provident Fund or an approved superannuation fund or any fund of similar nature is allowable as a deduction, subject to condition laid down under Rule 87 and 88 of Income tax Rules, 1962. Ld. AO held that such contribution should not be in the nature of annual contributions of fixing the amounts or annual contributions on some definite basis.*

*47. Assessee argued before the Ld. CIT(A) that the Banking Companies Undertaking Act of 1970 created PNB also and provides for the creation of a pension*

*trust of which employees of bank will become members and the bank is required to contribute the fund towards pension fund trust as per actual evaluation carried out at the end of the financial year. It was further argued that carrying up banking business and funding the pension trust out of the income of banking are made obligated under the Act and the provisions of pension fund trust regulation makes it amply clear that payment directly attributable, compulsory and statutory for carrying on business on banking and should be allowed as a deduction. It was further submitted that the liability on account of contribution to pension fund is a recurring liability and not a onetime liability. It was submitted that rule 87 applies to ordinary annual contributions and not to anything other than annual contribution. It was further submitted that keeping in view the actual method of accounting, consistently followed by the bank, the aforesaid expenditure is an allowable business expenditure being incurred wholly and exclusively for the purpose of business and compliance to AS-15, subject to provisions of section 43B.*

*48. Ld. CIT(A) found that on similar issue in the assessment year 2005-06, the issue was decided in favour of the assessee vide order dated 14 June 2010 vide paragraph number 10.7 and 10.8 wherein it was held that similar expenses were allowed in earlier years in the assessments made under section 143 (3) of the Act and the decision of Delhi ITAT in the case of DCIT versus Ranbaxy laboratories Ltd (2009) 124 TTJ (Delhi) 771 wherein the allowability of expenses towards provision for Pension Fund were held to be allowable expenses and section 43B has no application, is applicable. The fact that the assessee had actually contributed/paid the amount to pension fund makes the case of the assessee even stronger. Following the above orders, Ld. CIT(A) held that the addition of Rs.215.56 crores has to be deleted."*

16. We do not find any difference in the facts of the case from their earlier years to render the binding precedents followed by

the Ld. CIT(A) inapplicable to the case on hand. In the absence of any change of facts and circumstances, we do not find it necessary to take any different view. In these circumstances, respectfully following the above line of decisions, we dismiss this ground of appeal of the revenue.

17. The fifth ground of the appeal of the revenue pertains to deletion on account expenses claimed u/s 36(1)(viii). At the outset, it was brought to our notice that the similar issue has been covered in favour of the assessee by the ITAT for assessment years 2006-07, 2007-08, 2008-09, 2009-10 and 2011-12.

18. The relevant part of the AO and Id. CIT (A) on the issue is as under:

*"7.1. On this issue, the AO held as under:*

*"10.1. For the assessment year under consideration, it was found that the assessee claimed a deduction u/s 36(1)(viii) of Rs.98,90,00,000/-. The assessee was asked to give justification for such payment vide order sheet noting dated 08.03.2016. The assessee, vide letters dated 08.03.2016 and 11.02.2016, submitted as under:*

.....

*10.2 The submission of the assessee is considered. From the reading of the above section, it is seen that the above deduction is available on fulfillment of certain conditions. The section clearly mentions that deduction is available in respect of any special reserve created and maintained by eligible entities carrying out eligible business for an amount not exceeding 20% of the profits derived from eligible business activities carried to such reserve. As per provisions of Section 36(1)(viii) of the I.T. Act, 1961, only profit derived from eligible business which*

is from "(a), the business of providing long-term finance for- (A) industrial or agricultural development; (B) development of infrastructure facility in India; or (C) development of housing in India;" is eligible for this deduction. However, in the assessee's case, the assessee has not provided the exact profit derived from eligible business but it has claimed deduction of the taxable profit in proportion to the funds deployed in eligible business vis-a-vis the total business. However, this is approximate and there is no way of knowing the exact profit from the eligible business. It is theoretically possible for the assessee to have even incurred losses from the eligible business. Moreover, when deduction is claimed by the assessee, the Department should ensure that provisions are strictly adhered to. After ensuring that the provisions have been complied with, then the Department should be liberal in granting deduction. However, in the assessee's case, it has not strictly followed the provisions of the Act for claiming this deduction. Therefore, deduction on approximate basis should not be granted.

10.3 Thus, deduction claimed by the assessee u/s 36(1)(viii) of Rs.98,90,00,000/- cannot be allowed to the assessee. In view of the above discussions, the deduction claimed by the assessee Of Rs.98,90,00,000/- u/s 36(1) (viii) of the I.T. Act, 1961 is disallowed and added to the total income of the assessee."

7.2 On this ground, the Ld. AR stated as under:

"5.0 For the assessment year under consideration, the assessee company claimed a deduction under section 36(1)(viii) of the Income Tax Act amounting to Rs. 98,90,00,000/-.

5.1 Declining the deduction as allowable expenditure, the learned Assessing Officer as per para 10.2 of the assessment order has held that the assessee has not provided the exact profit derived from eligible business, but it has claimed deduction of the taxable profit in proportion to the funds deployed in eligible

*business vis-a-vis the total business. In the view of the learned Assessing Officer this is approximate and there is no way of knowing the exact profit from eligible business.*

*5.2 In this regard it is submitted that Section 36(1)(viii) of the Income Tax Act, 1961, (substituted w.e.f. A.Y. 2008-09 provides as under:*

*"Section 36(1): the deduction provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28.*

*(viii) In respect of any special reserve created and maintained by a specified entity an amount not exceeding 20% of the profit derived from eligible business computed under the head Profits & Gains of Business or profession (before making any deductions under this clause) carried to such reserve account.*

*Provided that where the aggregates of the amounts carried to such reserve account from time to time exceeds twice the amount of paid up share capital and of the general reserve of the specified entity, no allowance under this clause shall be made in respect of such excess.*

*The relevant explanations as provided in the aforesaid section are as under:*

*Specified entity means - a banking company.*

*Eligible business means - the business of providing long term finance for industrial Development or Agricultural Development or Development of infrastructure facility in India or Construction or purchases of houses in India for residential purposes.*

*Long term Finance means - any loan and advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period not less than Five years.*

*Banking Company means a company to which the banking Regulation Act, 1949 (10 of 1949) applies and includes any Bank or Banking institution referred to in section 51 of that Act."*

*The bank is granting the long term advances towards eligible business i.e. industrial Development or Agricultural Development or Development of infrastructure facility in India or Construction or purchases of houses in India for residential purposes. Therefore, the bank is entitled for the deduction under section 36(1)(viii) of the Income Tax Act.*

*5.3 Based on the above Bank claimed the deduction of Rs. 98.90crore and created the special reserve of Rs. 98.90 crore accordingly under section 36(1)(viii) of the Income Tax Act during the assessment year 2013-14 which is evident from item No.IV-c of Schedule - 2 - Reserve & Surplus at page no.139of annual accounts of the Bank. The working of deduction under section 36(1)(viii) duly certified by the Chartered Accountant.*

*5.4 We wish to submit that the assessee bank had during the year transferred a sum of Rs.98.90 crore to Revenue and Other Reserves out of profits during the year. The same was maintained thereafter without being withdrawn and hence the compliance of condition mentioned in section 36(1)(viii) has been fulfilled. It is submitted that the requirement to transfer to a special reserve is only an act of making an accounting entry which has been duly complied with and further the amount so transferred has been maintained thereafter.*

*5.5 As per the computation made by the assessee Bank, the deduction eligible amounts to Rs. 98.90 crore. The assessee Bank has confined its claim by taking income from the head "Income from Business and Profession" only and had not considered the "Income from House Property".*

*The income from other sources represents income received from venture capital funds which is shown as "Income from Other Sources" in accordance with the*

*treatment given in venture capital funds on account of specific provisions of the Act. These do not therefore cease to be business income of the assessee Bank. The assessee Bank draws its Profit & Loss Account and Balance Sheet as per format prescribed under Banking Regulation Act. As per the said format the "other income" other than interest is disclosed. This does not mean that the said item cannot be included in computing the profits derived from eligible business since these incomes are also derived in the course of carrying on business.*

*5.6 The Ld. CIT(A) while allowing the ground of the Assessee on the same issue in A.Y. 2009-10 observed as under:*

*9.1. In the appellant proceedings, the appellant bank had relied on Hon'ble ITAT Delhi's decision in the case of Power Finance Corporation Ltd. Vs. JCIT (2008) 16 DTR (Del) (Trib.) 519 where it was held that there is no time limit for creation of special reserve under Section 36(1)(viii) of IT Act and thus the entire deduction of Rs.57,45,,97,786/- claimed in the revised return filed on 30.03.2010 is allowed. The relevant portion of the above decision is as under:*

*"Respectfully following the case law (supra) as discussed herein above, we hold that a reserve created in subsequent years, however, before finalization of grant of deduction, is required to be considered while allowing assessee's claim of deduction made under section 36(1)(viii) of the Act.*

*We further observe that for and from A.Y. 1996-97, a financial corporation engaged in providing long-term finance for development of infrastructure facility in India has also become eligible assessee and for computing deduction under section 36(1)(viii) of the Act in the hands of all eligible assessee, only the income derived from the business of providing long term finance specified in section 36(1)(viii) of the Act has to be taken into account and an amount not exceeding 40% of the profits from such business is to be carried to such reserve account. This makes out a condition that the amount so transferred to such*

*reserve account should be from such eligible business of providing long-term financing.*

*In view thereof, we hold that the increase in reserve created on 31st March, 1998, i.e. in subsequent year/years is allowable subject to the same being from the profits of eligible business of assessee of the asst, year 1997-98 and not of A.Y. 1998-99."*

*9.2 In view of the above decision of the Hon'ble jurisdiction ITAT, I have allowed the claim of the appellant in A.Y. 2008-09 in Appeal No. 145/CIT(A)/Del/10-11 dated 29.06.2012. However, since the AO was not satisfied the method followed by the appellant bank that they had not correctly calculated the deduction under Section 36 (1)(viii) of IT act as the AO was of the view that the appellant bank had computed the eligible profits on proportionate basis based on the total fund deployed method, the appellant bank is hereby directed to furnish the correct computation of eligible deduction u/s 36(1)(viii) of the I.T. Act 1961 before the AO within 30 days from the receipt of this order. The AO is hereby directed to verify the same and grant deduction as per the above provision of the I.T. Act, 1961 and after verifying whether this special fund is from the profit of eligible business for the relevant A.Y. 2009-10 as mentioned in the above order of Hon'ble jurisdictional ITAT.*

*5.7 This issue has been decided in favour of the assessee bank by the CIT(A) for the assessment year 2011-12 in appeal no.111/13-14 dated 27.07.2014 and for the Assessment Year 2012-13 in Appeal No 139/CIT(A)-7/DEL/15-16 dated 28.01.2016.*

*5.8 In view of the above submissions, your honour is requested to delete the addition of Rs.98,90,00,000/- made by the learned Assessing Officer and allow this ground of appeal."*

*7.3. Appeal was instituted on similar facts for the A. Y. 2011-12 which was decided by the CIT(A) vide her*

*order dated 27.07.2014 in A. No. 111/13-14. She had held is as under:*

*"8.3. The Ld. CIT(A) on the same issue in A.Y. 2009-10 observed as under:*

*"9.1 In the appellant proceedings, the appellant bank had relied on Hon'ble ITA T Delhi's decision in the case of Power Finance Corporation Ltd Vs JCIT (2008) 16 DTR (Del) (Trib) 519 1 where it was held that there is no time limit for creation of special reserve under Section 36(1)(viii) of IT Act and thus the entire deduction of Rs.57,45,97,7867- claimed in the revised return filed on 30.03.2010 is allowable. The relevant portion of the above decision is as follows:*

*"Respectfully following the case law (supra) as discussed herein above, we hold that a reserve created in subsequent years, however, before finalization of grant of deduction, is required to be considered while allowing assessee's claim of deduction made under section 36(1)(viii) of the Act.*

*We further observe that for and from A.Y. 1996-97, a financial corporation engaged in providing long-term finance for development of infrastructure facility in India has also become eligible assessee and for computing deduction under section 36(1)(viii) of the Act in the hands of all eligible assesses, only the income derived from the business of providing long term finance specified in section 36(1)(viii) of the Act has to be taken into account and an amount not exceeding 40 per cent of the profits from such business is to be carried to such reserve account. This makes out a condition that the amount so transferred to such reserve account should be from such eligible business of providing long term financing.*

*In view thereof, we hold that the increase in reserve created on 3ff March. 1998, i.e. in subsequent year/years is allowable subject to the same being from the profits of eligible business of the assessee of the asst, year 1997-98 and not of A.Y. 1998-99."*

*9.2. In view of the above decision of the Hon'ble jurisdictional ITAT, I have allowed the claim of the appellant in A.Y. 2008-09 in Appeal No. 145/CIT(A)/Del/10-11 dated 29.06.2012. However, since the AO was not satisfied the method followed by the appellant bank that they had not correctly calculated the deduction under Section 36(1)(viii) of IT act as the AO was of the view that the appellant bank had computed the eligible profits on proportionate basis based on the total fund deployed method, the appellant bank is hereby directed to furnish the correct computation of eligible deduction u/s 36(1)(viii) of the I.T. Act, 1961 before the AO within 30 days from the receipt of this order. The A O is hereby directed to verify the same and grant deduction as per the above provision of the I.T. Act, 1961 and after verifying whether this special fund is from the profit of eligible business for the relevant A.Y. 2009-10 as mentioned in the above order of Hon'ble jurisdictional ITA T. As a result, this ground of appeal is treated as allowed."*

*8.4. I had followed the decision for the A.Y. 2010-11 of the Ld. CIT(A). Since the facts are similar, therefore respectfully following the decision of the Ld. CIT(A) for A.Y.s 2009-10 & 2010-11, the addition of Rs.124,61,00,000/- is deleted. The ground of appeal is ruled in favour of the appellant."*

*7.4. Since the facts were similar, following the decision of the CIT(A) for A. Y. 2009-10 which was followed by my predecessor in the appeal for A. Y.s 2010-11 & 2011-12, relief was allowed to the appellant for A.Y. 2012-13. Even in the present appeal, as the facts are similar, following the orders of predecessors CIT(Appeals) on this issue, the addition of Rs.98,90,00,000/- made by AO is directed to be deleted. The ground of appeal is ruled in favour of the appellant."*

19. The ITAT on the similar issue in ITA No.4722/Del/2012 held as under:

"69. This ground relates to the disallowance of Rs.57,45,97,786/- claimed as deduction under section 36(1)(viii) of the Act. It could be seen from the record that the assessee bank did not make any claim under section 36(1)(viii) of the Act in the original return of income filed on 26/9/2008, but this claim was made only in the revised return filed subsequently.

70. Ld. AO noted that the assessee bank did not create any special reserve in the annual accounts of the company in order to claim deduction under section 36(1)(viii) of the Act and such a fact was not disputed by the assessee bank before the Ld. AO. The fact remains that the special reserve under section 36(1)(viii) of the Act to the tune of Rs.57,45,97,786/- was created only on 30/3/2010 in the financial year 2009-10 relevant for assessment year 2010-11 that is 2 years thereafter. Ld. AO had taken the view that the assessee bank being a public limited company cannot maintain a special reserve subsequent to the approval of its annual accounts by their AGM and the method followed by the assessee to calculate the direction under section 36(1)(viii) of the Act was not correct as profit derived from eligible business and computed under the head "profits and gains of business or profession" is only entitled for 43 deduction under section 36(1)(viii) of the Act while the assessee had claimed in profit "attributable" eligible business and computed the same on proportionate basis based on the total fund deployed method, as a result of which Ld. AO disallowed the entire deduction claimed under section 36(1)(viii) of the Act.

71. Before Ld. CIT(A) assessee placed reliance on the decision of a coordinate bench of this Tribunal in Power Finance Corporation limited verses JCIT (2008) 16 DTR (Delhi-Trib) 519 where it was held that there is no time limit for creation of special reserve under section 36(1)(viii) of the Act and that the entire direction claimed in the revised return filed on 30th March 2010 was allowable. Ld. CIT(A) held that such decision is binding precedent on the aspect. CIT(A),

*however, held that inasmuch as the Id. AO was not satisfied with the method followed by the assessee bank that they had not correctly calculated the deduction under section 36(1)(viii) of the Act and the Ld. AO was of the view that the assessee bank had claimed profit attributable to eligible business and computed the same on proportionate basis, based on the total fund deployed method, Ld. CIT(A) directed the assessee to furnish the correct computation of eligible deduction under section 36(1)(viii) of the Act before the Ld. AO within 30 days and the AO shall verify the same to grant deduction."*

20. Since, the matter has attained finality at this juncture, we hereby refrain from interfering with the order of the Id. CIT (A).

21. The ground no. 6 deals with the issue of depreciation on goodwill which is a recurrent issue, hence, we hereby delete the addition made by the AO following the precedence of the order of the ITAT for the earlier assessment years. Reference is being taken to the order in ITA No.2966/Del/2013.

*"This relates to the disallowance of depreciation on goodwill amounting to Rs.2,58,34,887/- in respect of the goodwill of the erstwhile Nedungadi Bank Ltd., which merged with the assessee in the Assessment Year 2003-04.*

22. Since, the merging of Nedungadi Bank in the financial year 2002-03, the depreciation on the goodwill of the Nedungadi Bank has been consistently allowed subsequent to the merger for last many years. The AO may examine the computation part of depreciation on the goodwill from the year of merger and allow the claim of the assessee.

23. The ground No. 4 of the appeal of the revenue and ground no.1 of the appeal of the assessee deals with disallowance under Rule 8D(2).

24. The finding of the AO is as under:

*"9.1 On examining the annual accounts of the assessee for the A.Y. 2013-14 under consideration, it is seen that the assessee has made investments, the resulting income from which is exempt under the provisions of the Income tax Act. The assessee has also earned exempt income amounting to Rs.143,35,22,679/-, from dividend and other tax-free income on account of such investments. Thus, the provisions of Section 14A of the I.T. Act, 1961 are applicable in the case of the assessee.*

*9.2 During assessment proceedings, vide notice u/s 142(1) of the I T Act, 1961 dated 8.03.2016, the assessee was asked to explain why disallowance u/s 14A should not be made.*

*9.3 The assessee submitted its reply vide its letter dated 08.03.2016 and 03.11.2015. The same are summarized as under:*

.....

*9.4 The submission of the assessee is duly considered. The assessee is keeping common consolidated accounts for its income earning activities. It is further noted that no separate set of accounts are maintained for the activities, income from which does not form part of the total income under the Act.*

*9.5 It is pertinent to mention that the assessee is having common infrastructure and common personnel for earning income under various heads. Thus, the company is also using its administrative, managerial and infrastructural set up for earning income which does not form part of total income under the Act. The company is incurring expenditure in quality*

*manpower, both administrative and managerial, which takes the crucial and complicated decisions regarding the investments which have yielded exempt income. It is an act of decision-making and consultancy; it should not be seen in terms of actual physical efforts made in making investment and earning income which does not form part of the total income. It is not only the treasury division which is involved in deciding the investment portfolio of the bank but also other divisions; like managerial as well as administrative division play an important role in such investment planning. Thus, there is dominant and immediate connection between the expenditure incurred by the bank and the income not forming part of total income. As such, it is held that the expenditure in relation to income not includable in total income is inbuilt in the case of assessee and debited under various heads of Profit and Loss account.*

*9.6 As regards the assessee's claim that it is an incidental income, it is mentioned that the provisions of Section 14A refers to a category of income, namely the income which, as a result of investment made by assessee, does not form part of the total income under the Act; in that case, the assessee is not entitled to claim deduction of expenditure incurred in relation to such investment. The allowability of expenditure does not depend upon the direct or incidental receipt of income as the expression used in Section 14A is "in relation to income" and it does not contemplate that there must be direct receipt of income. As the expression used in Section 14A is "in relation to income which does not form part of total income under the Act" and dividend and tax-free bond income are kinds of income which do not form part of total income under the Act, the expenditure incurred in relation to such investment which would result in such income is not liable to be deducted in view of Section 14A of the Income Tax Act, 1961. Section 14A of the Act does not require that it would operate only if the investment yields positive result by way of direct income. Section 14A is applicable whether the exempt income is direct or incidental. That the so called stock in trade in respect of securities is*

*actually investments made basically for long term and not for short term sale. This has been to me and again stressed by the assessee itself. Therefore, the assessee now can't take the stand that these securities are stock in trade. The securities are held as per RBI Guideline.*

*9.7 The provisions of Section 14A of the Act operates in relation to a subject matter of taxation of income which, in its very inherent nature, does not form part of total income under the Act. The fact that the income is direct or incidental is immaterial and once the expenditure has been incurred in relation to the tax-free income, the bar u/s 14A of the Act would operate.*

*9.8 The other claim of the assessee that the investment which is yielding both taxable and tax-free income cannot be considered under Rule 8D is not logical. There is always possibility of earning dual income from investment - one from its holding and other on its transfer. Thus, even if one of the above income is exempt, then also the expenditure in relation to such investment needs to be worked out under Section 14A read with Rule 8D. The Rule 8D has been designed in such a manner that any variation in value of investment is automatically taken care of, as it takes only the average value of the investment. Thus, if assessee earns income on transfer of investment, the disallowance under Rule 8D automatically gets reduced as the closing value of the investment reduces. If the contention of the assessee is accepted, then there will be no disallowance in cases where dividend is earned on shares and securities held on short-term basis, which cannot be the intention of the statute.*

*9.9. The Hon'ble ITAT New Delhi, in the case of Cheminvest Ltd. Vs. Income Tax Officer (2009) 317 ITR (A.T.) 0086 has held that if any income is exempt from tax by virtue of Section 10 of the IT Act, 1961 and not included in the total income of the assessee, the same would attract the provisions of Section 14A. As per the Section 14A, any expenditure incurred in*

*relation to income not forming part of total income, the same would have to be disallowed and added to the total income of the assessee. Further, the judgment also says that Section 14A would be attracted even if the investments in shares and units have been held as stock in trade and the same may or may not have yielded any exempt income in the relevant previous years.*

*9.10 In view of the above facts and having regard to the accounts of the assessee, I am not satisfied with the correctness of the claim of the assessee that no disallowance should be made u/s 14A.*

*9.11 Thus, as the claim of the assessed regarding expenditure in relation to income which does not form part of total income is not acceptable, the method suggested by Rule 8D of the Income Tax Rules, 1962 is adopted in determining the expenditure incurred by assessee company in relation to income not includable in total income.*

#### *9.12 Quantum of disallowance*

*As discussed in the preceding paragraphs that assessee is having common infrastructure and common personnel for earning income under various heads, therefore, income/expenditure cannot be separately attributed to one particular activity. Hence, interest expenditure debited in profit and loss account are considered common interest expenditure attributable to all activities of the company. It needs to be apportioned in view of provisions of Act and Rules framed in this regard. In view of above facts, the disallowance as per Rule 8D is worked out as below:*

<b>S.NO.</b>	<b>DETAILS</b>	<b>AMOUNT DISALLOWABLE (RS.)</b>
(i)	The amount of expenditure directly relating to income which does not form part of total income.	NIL
(ii)	A Amount of expenditure by way of interest as per profit and loss account [excluding the amount covered in (i) above] = Rs. 2,70,36,82,41,000/- <b>[A]</b>	
	B Average value of investment, income from which does not or shall not form part of total income	
	I. Value of such investment as appearing in the balance sheet on 1 <sup>st</sup> day of previous year = Rs.41,03,34,21,776/-	
	II. Value of such investment as appearing in the balance sheet on last day of previous year = Rs. 5,04,08,80,71,333/-	
	III. Average value of such investment (I + II)/2 =Rs. 45,72,11,14,455/- <b>[B]</b>	
	C Average value of total assets	
	IV. Value of assets as appearing in balance sheet on 1 <sup>st</sup> day of previous year = Rs.45,81,92,34,72,000/-	
	V. Value of assets as appearing in balance sheet on last day of previous year = Rs. 47,88,77,03,63,000/-	
	VI. Average value of total assets (IV + V)/2 = Rs.46,85,34,69,17,500/- <b>[C]</b>	
	D Component of interest expenditure attributable to income which does not form part of the total income =A x B/C = $\frac{2,70,36,82,41,000 \times 45,72,11,14,455}{46,85,34,69,17,500}$	=Rs.2,63,83,39,809/-

(iii)	Amount equal to one-half per cent of the average value of investment, income from which does not or shall not form part of the total income = 1/2% of [B] = $\frac{0.5 \times 45,72,11,14,455}{100}$	= Rs. 22,86,05,572/-
(iv)	Expenditure incurred in relation to income which does not form part of total income. (i) + (i1) + (ii)	=Rs.2,86,69,45,381/-

Total disallowance as per Rule 8D of the I.T. Rules, 1962 comes to Rs.2,86,69,45,381/-. In view of the above discussions, the expenses incurred in relation to income which does not form part of total income under the Act of Rs.2,86,69,45,381/- is disallowed and added to the income of the assessee."

6.2 On this ground, the Ld. AR stated as under:

"4.0 The learned Assessing Officer has invoked the provisions of section 14A of the Income Tax Act read with rule 8D and has disallowed a sum of Rs.2,86,69,45,381/- on a tax free income of Rs. 143,35,22,679/- from dividend and other tax-free income. In this connection we wish to submit as under:-

4.1 Bank has claimed the following income as exempt from tax:

<b>S. No.</b>	<b>Particulars</b>	<b>Amount</b>
(i)	Income from Tax Free Bonds	80,63,53,050
(ii)	Dividend Income	62,71,69,629
	Tax Free Income	<b>143,35,22,679</b>
	Exempted / Tax Free Income from securities held as store-in-stock	<b>126,46,82,679</b>

4.2 With reference to above, we would like to draw your kind attention to section 14A which is reproduced below:

(1) For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.

(2) The Assessing Office Shall Determine the amount of expenditure incurred in relation to such income which does not part of the total income under this act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assesses, is not satisfied with the correctness of the claim of the assesses in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act.

Provided that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or other reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year beginning on or before the 1st day of April 2001.

4.3 From the above, it is evident that section 14A provides that any expenditure in relation to income not forming part of total income has to be disallowed. Thus, the scope of this section entirely depends upon the meaning of expression "in relation to" used by the legislature in this section. Such expression has not been defined in the Act. However, such expression has been judicially defined by the constitution bench of eleven judges of Hon'ble Supreme Court in the case of

*H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior vs. Union of India (1971) 1 SCC 85. Their lordships held that such expression means "provisions having a dominant and immediate connection" It was also held that it does not mean merely having a reference to.*

*4.4 It is the settled legal position that if a word or an expression has been judicially defined by the court then it should be presumed that the legislature was well aware of such meaning while enacting an enactment and consequently, such word or expression in the enactment should be understood in the same sense in which it was judicially defined. Reference can be made to the decision of the Hon'ble Supreme Court in the case of Ahmed G.H Ariff vs. CWT 76 ITR 471 (SC) wherein it was observed as under:*

*"It is well-settled that where the Legislature uses a legal term which has received judicial interpretation, the courts must assume that the term has been used in the sense in which it has been judicially interpreted."*

*Similar view was taken by the apex court in the case of Keshavji Ravji and Company vs. CIT 183 ITR 1 by observing as under:*

*"when words acquire a particular meaning or sense because of their authoritative construction by superior courts, they are presumed to have been used in the same sense when used in a subsequent legislation in the same or similar context".*

*4.5 In view of the above legal position, it is stated that the expression 'in relation to' in section 14A of the Act must be understood in the same sense in which Lordships of the apex court understood in the case of H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior & Others (supra). Accordingly, the expression 'in relation to' would mean dominant & immediate connection. This means that disallowance of expenditure u/s. 14A can be made only when there is dominant and immediate*

*connection between the expenditure incurred and the income not forming part of the total income. As a necessary corollary, it would mean that disallowance cannot be made if the connection is not dominant and immediate but is merely incidental, ancillary or remote one.*

*4.6 Based on above, the next question is how to determine the nature of the connection between the expenditure incurred and the income earned by the assessee. The answer to this question would depend upon the intention/object with which the expenditure was incurred. If the expenditure is incurred with a view to earn the taxable income then it can be said that dominant and immediate connection exists between the expenditure incurred and the taxable income and consequently, no disallowance u/s 14A can be made even where some tax-free income is received incidentally. On the other hand, if the expenditure incurred mainly with a view to earn the tax-free income then it can be said that the dominant and immediate connection exists between the expenditure incurred and the tax-free income earned and consequently disallowance u/s. 14A can be made even though some taxable income may arise incidentally. Reliance for this view is also placed on the following case laws:*

- a. CCI Ltd. vs. JCIT (2012) 81 CCH 001 (Kar).*
- b. DCIT v. India Advantage Securities Ltd. (ITA No. 6711 (Mum) 2011- (Trib Mumbai ITAT)*

*4.7 The assessed Bank holds the securities (except investment in joint ventures /subsidiaries) as stock in trade and depreciation / amortization on valuation of securities is allowable expenditure. Accordingly, the dominant and immediate object behind acquisition of securities is to earn profit on sale of securities at the earliest point of time which is chargeable to tax under the Act. Dividend and tax free income is received incidentally.*

*4.8 During the year, the bank earned the profit on sale of securities of Rs.591.02 crore which is taxable as business income. The dividend and tax free income*

of Rs.126.47 crores has been received which is incidental to trading of securities. Therefore, there was no dominant and immediate connection between the borrowed funds for acquisition of securities held as stock in trade and dividend / tax free income earned there from by the bank.

4.9 Without prejudice to above, it is further stated that bank has not incurred any interest expenditure in earning the aforesaid exempted income as the - non-interest bearing funds are more than sufficient to take care of investments made in earning the exempted income which is evident from the following:

#### **A. Average Non-Interest Bearing Funds**

(Rs in crore)

<b>S. NO.</b>	<b>Particulars</b>	<b>As on 31.03.13</b>	<b>As on 31.03.12</b>
<b>01</b>	Capital	353.47	339.18
<b>02</b>	Reserve & Surplus (Net of Revaluation Reserve)	30894.58	26298.33
<b>03</b>	Balance in C/A i.e. Demand Deposits)	29874.28	28472.24
	Sub-Total	<b>61122.33</b>	<b>55109.75</b>
<b>04</b>	Average Non-intt Bearing Funds (61122.33 - 55109.75)/2	<b>58116.04</b>	

Note: The above figures are verifying form audited balance sheet enclosed herewith.

#### **B. Average Investment exempted Income.**

<b>S. NO.</b>	<b>Particulars</b>	<b>As on 31.03.13</b>	<b>As on 31.03.12</b>
<b>01</b>	Investments towards:		
	a. Dividend Income	3271.05	3045.78
	b. Tax Free Income	1769.83	1057.56
	Total	5040.88	4103.34
<b>02</b>	Average Investment Towards Exempted income (5040.88 + 4103.34)/2	4572.11	

4.10 From the above facts & facts & figures available on record, it is clearly established that the bank is

*having average non-interest bearing funds of Rs.58116.04crore against average investment towards the exempted income of Rs. 4572.11 crore which is sufficient proof to establish that no interest expenditure has been incurred by the bank in earning the aforesaid exempted income of Rs. 126.47crore and therefore no disallowance of interest expenditure is warranted under section 14A. It was also held by the Hon'ble High Court of Punjab & Haryana in the case of CIT vs. Hero Cycles Ltd (323 ITR 528) that where the assessee has interest free funds available which exceed the investments made in assets earning tax free income, the presumption is that the investments have come out of interest free funds only. Similar view was also taken by the Hon'ble High Court of Bombay in the case of CIT Vs. Reliance Utilities & Power Ltd (2009) 313 ITR 340.*

*4.11 Without prejudice to above, it is further submitted that even if rule 8D is made applicable to the Bank, then no disallowance in relation to income arising from the value of the investment which yield both taxable and tax free income can be made since in the formula given in rule 8D is only the average value of investment, income from which does not or shall form part of total income is to be considered. Therefore, any investment yielding both taxable income as well as exempt income cannot be considered in the value of investment in applying rule 8D. Therefore the provisions of section 14A cannot be made applicable to the assessee bank. This has been so held by Hon'ble ITAT, Jaipur in the case of State Bank of Bikaner & Jaipur vs. ACIT (ITA 578/JP/2003 for the A.Y. 2001-02. Reliance for this view is placed on the decision of ITAT Mumbai in the case of Avshesh Mercantile P. Ltd vs. DCIT (ITA 208/Mum/2009 dated 13/06/2012).*

*4.12 Out of the investment portfolio of the bank, investment are yielding exempted income in the form of dividend and interest as well as taxable income as profit on sale of securities no the investment is yielding only exempted income to the bank.*

4.13 Based on the above, computation of disallowance under section 14A terms of Rule 8D is worked out as under:

<i>Particulars</i>		<i>Amount</i>
<i>Total Interest Expenditure</i>		<i>27036.82</i>
<i>Value of Investment, Income from which do not form part of total income.</i>		<i>Nil</i>
<i>Average value of Investment, income from which do not form part total income</i>		<i>Nil</i>
<i>Total assets as per Balance Sheet</i>		<i>478877.04</i>
<i>Average total assets as per Balance Sheet</i>		<i>468534.69</i>
<i>Proportionate disallowance out of interest</i>	$= 27036.82/468534.69 * 0$ $= 0$	<i>0.00</i>
<i>1/2% average value of Investment, income from which do not form part of total income.</i>		<i>0.00</i>
<i>Total disallowance as per rule 8D</i>		<i>0.00</i>

4.14 In the assessee Bank's case the Assessing Officer having not recorded his specific reasons by conducting an objective analysis and giving cogent reasons for not being satisfied with the claim of the assessee bank should not have invoked rule 8D.

4.15 It is also submitted that it is for the Assessing Officer to establish that the assessee bank has incurred expenditure to earn tax free income and in the assessee bank's case, the Assessing Officer has not established the fact that the assessee bank has incurred any expenditure to earn tax free income. The assessee relies on the decision of ITAT Delhi in the case of DCIT vs. Jindal Photo Ltd. (814/Del/2011) for the assessment year 2008-09 dated 23.09.2011 wherein it was held that

"it has not been shown by the AO that any expenditure had been incurred by the assessee for

*earning its dividend income. Merely, an ad hoc disallowance was made. The onus was no the AO to establish any such expenditure. This onus has not been discharged."*

*In the assessee's case also it has not been shown by the AO that any expenditure has been incurred to earn tax free income.*

*4.16 Without prejudice to the above contention, it is submitted that the issue was partly decided in favour of the assessee Bank by CIT(A) for the AY 2008-09 in appeal no. 145 / CIT(A)-XVII / Del / 10-11 dated 29/06/2012.*

*4.17 We draw your kind attention to the recent order of ITAT, New Delhi (ITA 2235/DEL/2011) for the Assessment Year 2005-06 in the assessee's own case. In the said case the learned Assessing Officer had disallowed pro rata expenditure as expenditure attributable to exempt income under section 14A of the Income Tax Act. On appeal, the CIT (A) had restricted the disallowance to 10% of the exempt income. The assessee, then had treated only the pro-rata administrative expensed of its Treasury Division as expenditure attributable to exempt income. On appeal ITAT as per para 6.1 of the order agreeing with the contention of the assessee bank has stated that at the most a reasonable proportion of administrative expenses can only be disallowed which may be attributable to exempt income. The suo motto disallowance made by the Assessee has not been found fault with either by the Assessing Officer or CIT(A) in these or earlier proceedings. Thus AO or CIT(A) in two rounds of proceedings, have no where pointed out that the working offered by the Assessed suo motto is defective or deficit in any respect. The ITAT has held that under these circumstances they are unable to up-hold the order of CIT(A) retaining 10% disallowance of expenses as attributable to earning exempt income on ad hoc basis. The ITAT had accepted the submissions of the assessee bank and had allowed the appeal.*

*4.18 In view of the above, no disallowance towards the exempted income is called for even as per Rule 8D. Your honour is, therefore requested to kindly delete the addition of Rs. 2,86,69,45,381/- made by the learned Assessing Officer under section 14A of the Income Tax Act and allow this ground."*

*6.3. I have carefully considered the assessment order passed by the AO and the submissions filed by the Ld. AR. The AO invoked provisions of section 14A of the Act read with Rule 8D of the I.T. Rules, 1962 and computed disallowance under Rule 8D(2)(ii) at Rs.263,83,39,809/- and under Rule 8D(2)(iii) at Rs.22,86,05,570/- aggregating to disallowance of Rs.286,69,45,381/-. Similar issue of disallowance under Rule 8D in the case of the appellant was adjudicated by the CIT(Appeals) for A. Y. 2009-10, who observed as under:*

*"8.2. ....I have allowed the appellant's claim against the disallowance under Rule 8D(2)(ii) in Appeal No. 145/CIT(A)/Del/10-II dated 29.06.2012 relying on the Hon'ble Delhi High Court's decision in the case of M/s Maxopp Investment Ltd. & Others in ITA No. 687/2009 dated 18.11.2011. The relevant portion of the above order is as follows:*

*"9.5. In the case of the appellant, the AO has rejected the claim of the appellant bank that they have not incurred any expenditure to earn tax free income as claimed in their revised return. The AO after being satisfied adopted Rule 8D to calculate the disallowance under 14A of the I.T. Act, 1961 and thereafter disallowed Rs.80.38 crores in the assessment order. The appellant's plea during the appellate proceedings was that Rule 8D(2)(ii) is not applicable in the case of the appellant bank and therefore the AO's disallowance of Rs.72.84 Crores is not tenable. The relevant provision of Rule 8D(2)(ii) is as under:*

*"(ii) in case where the assessee has incurred expenditure by way of interest during the previous*

*year which is not directly attributable to any particular income or receipt."*

*9.6. According to the appellant bank, the entire interest expenditure incurred is attributable to taxable income only and no portion of the interest expenditure can be attributable to non-taxable income. To support this contention, the appellant bank had intimated that the net interest expenditure is a negative amount as interest received by the bank was Rs.14265 crores while the interest expenditure was only Rs.8731 crores. Therefore, the appellant bank's AR is of the view that the entire interest expenditure incurred is directly attributable to the taxable interest income earned and offered to tax in the current year and thus no disallowance under Rule 8D(2)(ii) is warranted in the case of the appellant. The appellant also points out that the interest free funds far exceeds the amount invested in assets earning in tax free income. As per the appellant bank, investments in assets earning tax free income is only 3-5% of the total interest free funds available with the appellant at any given period. The appellant bank also points out that they always had substantial balances in current accounts which are interest free funds in the current assessment year as well as in all the earlier assessment years. On verifying the earlier appeal order for A.Y. 2007-08 the submissions made before the then CIT (A) for the A.Y. 2007-08 with regard to 14A disallowance indicates that substantial balances were available in current account i.e. demand deposit for the years ending 31.03.2006 d 31.03.2007 when compared to the appellants investment in tax free assets for those years. Therefore, there is substance in the appellant's submissions that the application of Rule 8D(2)(ii) and the disallowance of Rs.72.84 crores under the above Rule is unjust and unwarranted as the expenditure incurred by way of interest can be more or less directly attributed to income earned by the appellant bank during the year. Moreover, in the case of the appellant bank the tax free income is only Rs.67.77 crores, while the disallowance made by the AO in his assessment order under Rule 8D is higher at Rs.80.38*

*crores. Considering-all the above facts and in the interest of justice, the disallowance of Rs.72.84 crores made under Rule 8D(2)(ii) is hereby deleted."*

*8.3. As per the submission of the appellant dated 14.08.2012 the net interest expenditure is a negative figure as interest received is Rs.19,326.16 crores while the interest expenditure is only Rs.12,295.30 crores and that only 3% to 5% of the interest free funds available with the appellant are invested in assets earning tax free income. Since the facts are the same and based on my decision in earlier A. V 2008-09 mentioned above, the expenditure incurred by the appellant bank on interest is more or less directly attributable to the income earned by the appellant bank during the year. Moreover, the appellant in both the original return of income and the revised return of income had disallowed Rs. 12.07 crores under Rule 80(2) (Hi) of Income Tax Rules. Taking all these aspects into consideration, I am of the opinion that the disallowance of Rs.133,16,00,0007- made under Rule 80(2)(ii) is unwarranted and the same is hereby deleted. As a result, the ground No. 5 is allowed."*

*6.4. The CIT(Appeals) had followed the above decision in the appeals for A. Y. 2010-11 & 2011-12 and had sustained the disallowance computed under Rule 8D(2)(iii) and allowed relief with respect to the disallowance under Rule 8D(2)(ii). As the facts were similar, following the decision of the CIT(Appeals) for A.Y.s 2009-10, 2010-11 & 2011-12, relief was allowed to the appellant for A.Y. 2012-13. Since in the present appeal, there is no change in facts, following the orders of predecessors CIT(Appeals) on this issue, disallowance under Rule 8D(2)(ii) of Rs.263,83,39,809/- is deleted and disallowance under Rule 8D(2)(iii) of Rs.22,86,05,570/- is sustained. The ground of appeal is ruled partly in favour of the appellant."*

25. From the facts above, we find that
- a. Exempt income earned – Rs.143,35,22,679/-

- b. Amount disallowed by the AO under Rule 8D(2)(ii) – Rs.263,83,39,809/- [deleted by Id. CIT (A)]
- c. Amount disallowed by the AO under Rule 8D(2)(iii)- Rs.25,86,05,570/- [confirmed by the Id. CIT (A)]

26. This matter has been examined by the Co-ordinate Bench of Tribunal in ITA No. 1519/Del/2016 wherein it was held as under:

*"6. Ground No. 2 relates to disallowance conformed by Ld. CIT (A) under rule 8D (iii) of Income Tax Rules, 1963.*

*6.1. At the outset, Ld.Counsel submitted that, this issue stands squarely covered by following observation by Hon'ble Supreme Court in case of Maxopp Investments vs CIT reported in (2018) 91 taxman.com 154, in favour of assessee:*

*"36. There is yet another aspect which still needs to be looked into. What happens when the shares are held as 'stock-in-trade' and not as investment, particularly, by the banks? On this specific aspect, CBDT has issued circular No. 18/2015 dated November 02, 2015.*

*37. This Circular has already been reproduced in Para 19 above. This Circular takes note of the judgment of this Court in Nawanshahar case wherein it is held that investment made by a banking concern are part of the business or banking. Therefore, the income arises from such investment is attributable to business of banking falling under the head 'profits and gains of business and profession'. On that basis, the Circular contains the decision of the Board that no appeal would be filed on this ground by the officers of the Department and if the appeals are already filed, they should be withdrawn. A reading of this circular would make it clear that the issue was as to whether income by way of interest on securities shall be chargeable to income tax under the head 'income from other sources' or it is to fall under the head 'profits and*

*gains of business and profession'. The Board, going by the decision of this Court in Nawanshahar case, clarified that it has to be treated as income falling under the head 'profits and gains of business and profession'. The Board also went to the extent of saying that this would not be limited only to co-operative societies/Banks claiming deduction under Section 80P(2)(a)(i) of the Act but would also be applicable to all banks/commercial banks, to which Banking Regulation Act, 1949 applies.*

*38. From this, Punjab and Haryana High Court pointed out that this circular carves out a distinction between 'stock-in-trade' and 'investment' and provides that if the motive behind purchase and sale of shares is to earn profit, then the same would be treated as trading profit and if the object is to derive income by way of dividend then the profit would be said to have accrued from investment. To this extent, the High Court may be correct. At the same time, we do not agree with the test of dominant intention applied by the Punjab and Haryana High Court, which we have already discarded. In that event, the question is as to on what basis those cases are to be decided where the shares of other companies are purchased by the assesseees as 'stock-in-trade' and not as 'investment' We proceed to discuss this aspect hereinafter.*

*39. In those cases, where shares are held as stock-in-trade, the main purpose is to trade in those shares and earn profits therefrom. However, we are not concerned with those profits which would naturally be treated as 'income' under the head 'profits and gains from business and profession'. What happens is that, in the process, when the shares are held as 'stock-in-trade', certain dividend is also earned, though incidentally, which is also an income. However, by virtue of Section 10 (34) of the Act, this dividend income is not to be included in the total income and is exempt from tax. This triggers the applicability of Section 14A of the Act which is based on the theory of apportionment of expenditure between taxable and non-taxable income as held in Walfort Share & Stock Brokers (P.) Ltd. case. Therefore, to that extent,*

*depending upon the facts of each case, the expenditure incurred in acquiring those shares will have to be apportioned.*

*40. We note from the facts in the State Bank of Patiala cases that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8D of the Rules and holding that section 14A of the Act would be applicable. In spite of this exercise of apportionment of expenditure carried out by the AO, CIT A) disallowed the entire deduction of expenditure. That view of the CIT A) was clearly untenable and rightly set aside by the ITAT. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of the ITAT, though we are not subscribing to the theory of dominant intention applied by the High Court. It is to be kept in mind that in those cases where shares are held as 'stock-in-trade', it becomes a business activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits. The situation here is, therefore, different from the case like Maxopp investment Ltd. where the assessee would continue to hold those shares as it wants to retain control over the investee company. In that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee. In contrast, where the shares are held as stock-in-trade, this may not be necessarily a situation. The main purpose is to liquidate those shares whenever the share price goes up in order to earn profits. In the result, the appeals filed by the Revenue challenging*

*the judgment of the Punjab and Haryana High Court in State Bank of Patiala also fail, though law in this respect has been clarified hereinabove."*

*6.2. On the contrary Ld. Sr. DR placed reliance upon the orders passed by authorities below and following decisions:*

- Godrej and Boyce Manufacturing Co. Ltd. vs. DCIT reported in (2017) 81 Taxmann.com 111 (SC);*
- India Bulls Financial Services Ltd. vs. DCIT reported in (2016) 76 Taxmann.com 268 (Del);*
- Punjab Tractors Ltd. vs. CIT reported in (2017) 78 Taxmann.com 65 (P&H).*

*7. We have perused the submissions advanced by both sides in the light of records placed before us.*

*8. It is observed that decisions relied upon by Ld. Sr. DR has been passed prior to decision of Hon'ble Supreme Court in the case of Maxopp Investment vs CIT (supra). Further, Hon'ble Supreme Court in the case of Maxopp Investment vs CIT (supra), has rendered a clear finding in respect of banking institutions which is peculiar. Present assessee before us is also a Bank, where shares were held as stock-in-trade and therefore it becomes business activity of assessee. In our opinion specific observation Hon'ble Supreme Court in the case of Maxopp Investment vs CIT (supra), reproduced hereinabove are squarely applicable to facts of present case. Respectfully following the view taken by Hon'ble Supreme Court in the case of Maxopp Investment vs CIT (supra), we allow this ground raised by assessee and hold that these were not investments made by assessee in order to fall within the ambit of Rule 8D (iii) of Income tax Rules 1963."*

27. In the result, the ground of appeal of the revenue on Rule 8D(2)(ii) is dismissed and the appeal of the assessee on the issue of Rule 8D(2)(iii) is allowed.

28. Ground No. 2 of the appeal of the assessee deals with addition on account of Leave Encashment.

29. On this ground, the AR stated as under:

*"10. We have submitted before the Ld. Assessing Officer that "Bank has made the provision towards leave encashment of Rs. 31.35 crore during the assessment year, 2013-14 which was not claimed as business expenditure in terms of provisions of section 43B (f) of Income Tax Act 1961. Accordingly, tax was also paid on this provision of Rs. 31.35crore. In Exide Industries Ltd vs UOI (2007) 292 ITR 470, the Calcutta High Court struck down 43B (f) as being arbitrary, unconscionable and de hors the apex Court decision in the case of Bharat Earth movers vs. CIT 245 ITR 428 on the ground that the objects and reasons were silent as to why the amendment was effected and that the amendment was not consistent with section 43B which was originally inserted to plug evasion of statutory liability.*

*10.1 The said judgment of Calcutta High Court in the case of Exide Industries Ltd vs UOI has been stayed by the Supreme Court and it has been clarified that assessee must pay tax as if section 43B (f) is on the statue though it is entitled to make a claim in its Return.*

*10.2 In view of the aforesaid development, bank is entitled to make claim of provision for leave encashment as allowable expenditure.*

*10.3 Despite written submissions to the above facts, the Ld. AO did not allow the claim for leave encashment of Rs. 31.35 crore made as an allowable expenditure. The Assessment order is silent on this issue.*

*10.4 Your honour is, therefore requested to kindly allow the deduction of leave encashment of Rs.31.35 crore as business expenditure and allow this ground of appeal."*

*13.2 I have carefully considered the submissions made by the Ld. AR. Provisions of 43(B)(f) reads as under:*

*"43B. Certain deductions to be only on actual payment— Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—*

.....  
*(f) any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee, shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him...*

*13.3. In view of the specific provision of the Act, deduction for provision for leave encashment is not allowable to the appellant. In view therefore, the action of the AO in not entertaining the claim of the appellant to allow deduction on account of provision of leave encashment of Rs.31.35 crores is as per provisions of law. This ground of appeal is ruled against the appellant."*

30. Before us, the Id. AR brought us to para no. 9 of the order dated 28.11.2018 in ITA No. 1519/Del/2016 wherein the disallowance made by the revenue has been directed to allow the claim in the year in which it has been paid and disallow in the year in which the provision has been made.

31. After referring to the decision in the case of Bharat Earth Movers 245 ITR 428 and the judgment of Hon'ble High Court of Delhi in the case of Exide Industries Ltd. Vs Union of India 292 ITR 470, the constitutional bench of the Hon'ble Supreme Court vide order dated 24.04.2020 has upheld the constitutional validity of Clause (f) of Section 43B of the Income Tax Act. Hence, were hereby confirm the disallowance made by the revenue.

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

Order Pronounced in the Open Court on 13/05/2020.

Sd/-

**(Bhavnesb Saini)**  
**JUDICIAL MEMBER**

**Dated: 13/05/2020**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B.R.R. Kumar)**  
**ACCOUNTANT MEMBER**

**ASSISTANT REGISTRAR**