



**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"C" BENCH, MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**

**SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER**

ITA no.3393/Mum./2019  
(Assessment Year : 2014-15)

IDBI Bank Ltd.  
IDBI Tower, WTC Complex  
22<sup>nd</sup> Floor, Taxation Cell  
Cuffe Parade, Mumbai 400 005  
PAN – AABC18842G

..... Appellant

v/s

Dy. Commissioner of Income Tax  
LTU-2, Mumbai

..... Respondent

ITA no.3845/Mum./2019  
(Assessment Year : 2014-15)

Dy. Commissioner of Income Tax  
LTU-2, Mumbai

..... Appellant

v/s

IDBI Bank Ltd.  
IDBI Tower, WTC Complex  
22<sup>nd</sup> Floor, Taxation Cell  
Cuffe Parade, Mumbai 400 005  
PAN – AABC18842G

..... Respondent

Assessee by : Shri C. Naresh  
Revenue by : Shri V. Sreekar

Date of Hearing – 16.03.2021

Date of Order – 11.06.2021

**ORDER****PER S. RIFAUH RAHMAN, A.M.**

The captioned cross appeals arose from the orders of even date 22<sup>nd</sup> March 2019, passed by the learned Commissioner (Appeals)-2, Mumbai, pertaining to the assessment year 2014-15. Since the assessee being same in both the appeals, therefore, as a matter of convenience, these appeals were heard together and are being disposed off by way of this consolidated order.

**ITA no.3393/Mum./2019**  
**Assessee's Appeal – A.Y. 2014-15**

2. Brief facts are, the assessee is a Public Sector Bank engaged in the business for the past several years. The assessee filed its return of income on 27<sup>th</sup> November 2014, declaring total income of ₹ 3242,84,24,670. Assessment under section 143(3) r/w section 144C(3) of the Act was completed on 29<sup>th</sup> December 2017, by making various additions and determining total income of ₹ 3447,84,24,670 under normal provisions of the Act. Consequent upon the additions so made by the Assessing Officer and confirmed by the first appellate authority, following grounds of appeal have been raised by the assessee in the present appeal which are reproduced below:–

*"1. The Ld. Cft(A) erred in not granting relief on disallowance under Rule 8D(iii) based on decision of Hon'ble Gujarat High Court*

*in case of Sintex Industries Ltd (82 taxmann.com 171) by wrongly distinguishing the case even when the facts of the case are squarely applicable to appellant.*

*2. The Ld. CIT (A) erred in confirming the disallowance of payment for non-compliance with RBI norms on KYC and under Information Technology Act treating the same as falling under Explanation-I to section 37(1) without appreciating that as held in various decisions including that of Hon'ble ITAT Mumbai in case of Mangal Kishore Securities Ltd. [46 ITR (Trib.) 458], the payment was only compensatory in nature.*

*3. The Ld. CIT(A) erred in confirming order of AO in adding the tax on non-monetary perquisite in computing book profits u/s 1151B without appreciating that the amount paid represents employee cost and not tax in the hands of appellant.”*

3. Apropos ground no.1, i.e., disallowance under section 14A of the Act is concerned, before us, at the time of hearing, the learned Counsel for the assessee submitted that identical issue has been decided by the Tribunal in assessee's own case being ITA no.3394 & 3849/ Mum./2019, order dated 9<sup>th</sup> February 2021, for the assessment year 2015-16, wherein, the Tribunal has allowed the ground of appeal by granting relief under section 14A of the Act. He, therefore, prayed that since the issue of disallowance under section 14A of the Act is covered by assessee's own case cited supra, this ground may please be allowed.

4. The learned Departmental Representative has also fairly conceded with the submissions of the learned Counsel for the assessee.

5. Considered the submissions of the learned Counsel appearing for the parties and perused the material on record. We find that the Co-ordinate Bench of the Tribunal in assessee's own case in assessment year 2015-16, has decided the issue of disallowance under section 14A of the Act, vide order dated 9<sup>th</sup> February 2021, passed ITA no.3394 & 3849/Mum./2019, a copy of which is placed on record, wherein vide Para-7 of the order, the issue has been decided in favour of the assessee and against the Revenue. Respectfully following the same, we set aside the impugned order passed by the learned Commissioner (Appeals) and allow the ground raised by assessee. Thus, ground no.1, is allowed.

6. The dispute in ground no.2, is, the learned CIT(A) erred in confirming the disallowance of payment for non-compliance with RBI norms on KYC and under Information Technology Act treating the same as falling under Explanation-I to section 37(1) of the Act.

7. Before us, at the time of hearing, the learned Counsel appearing for the parties agreed that the identical issue has been decided in favour of the assessee by the Tribunal in assessee's own case in assessment year 2015-16, vide order dated 9<sup>th</sup> February 2021, passed in ITA no.3394 & 3849/Mum./2019. He, therefore, prayed that since the issue is covered in favour of the assessee, the ground of appeal may be allowed.

8. Considered the submissions of the learned Counsel appearing for the parties and perused the material on record. We find that the Co-ordinate Bench of the Tribunal in assessee's own case in assessment year 2015-16, has decided the issue of disallowance under section 37(1) of the Act, vide order dated 9<sup>th</sup> February 2021, passed in ITA no.3394 & 3849/Mum./2019, a copy of which is placed on record, wherein vide Para-12 of the order, the issue has been decided in favour of the assessee and against the Revenue by deleting the disallowance made by the Assessing Officer. Respectfully following the same, we set aside the impugned order passed by the learned Commissioner (Appeals) and allow the ground raised by assessee. Thus, ground no.2, is allowed.

9. The issue raised by the assessee in ground no.3 is, the learned CIT(A) erred in confirming the order of the Assessing Officer in adding the tax on non-monetary perquisite in computing book profits under section 115JB of the Act.

10. Before us, the learned Counsel for the assessee submitted that identical issue raised in this ground of appeal is similar to the issue decided by the Tribunal in assessee's own case in assessment year 2015-16, vide order dated 9<sup>th</sup> February 2021, in ITA no.3394 & 3849/Mum./2019. He submitted that the issue being covered by the order

passed in assessee's own case, therefore, this ground of appeal may also be allowed.

11. The learned Departmental Representative has fairly agreed with the submissions of the learned Counsel for the assessee.

12. Considered the submissions of the parties and perused the material on record. Both the learned Counsel appearing for the parties conceded before us that identical issue has been decided by the Co-ordinate Bench of the Tribunal in assessee's own case in assessment year 2015-16, vide order dated 9<sup>th</sup> February 2021, passed in ITA no.3394 & 3849/Mum./2019, a copy of which is placed on record, wherein vide Para-16 of the order, the issue has been decided in favour of the assessee and against the Revenue by deleting the addition made by the Assessing Officer. Respectfully following the same, we set aside the impugned order passed by the learned Commissioner (Appeals) and allow the ground raised by assessee. Thus, ground no.3, is also allowed.

13. The assessee has also raised an additional ground stating that the amount of education cess and higher and secondary education cess is not taxable as the same is covered under section 40(a)(ii) of the Act and accordingly allowable as deduction in computing the income from business or profession.

14. Having considered the submissions of both the parties and on a perusal of the material on record, we find that the issue raised by way of additional ground is squarely covered in favour of the assessee and against the Revenue by the decision of the Hon'ble Jurisdictional High Court rendered in Sesa Goa Ltd. v/s JCIT, [2020] 423 ITR 426 (Bom.) and the decision of the Hon'ble Rajasthan High Court in Chambal Fertilizers & Chemicals Ltd. v/s JCIT, ITA no.52 of 2018, judgment and order dated 31<sup>st</sup> July 2018. Respectfully following the aforesaid judicial pronouncements, we set aside the impugned order of the learned Commissioner (Appeals) and allow the additional ground raised by the assessee.

15. In the result, assessee's appeal is allowed.

**ITA no.3845/Mum./2019**  
**Revenue's Appeal – A.Y. – 2014-15**

16. Ground no.1, raised by the Revenue relates to disallowance under section 14A of the Act made by the Assessing Officer.

17. After hearing both the parties, we find that this issue is similar to the issue decided by us in assessee's appeal in ground no.1, of the appeal being ITA no.3393/Mum./2019, for the assessment year 2014-15, wherein vide Para-3 of this order, the issue has been decided in favour of the assessee and against the Revenue. Consistent with the

view taken therein, we uphold the order passed by the learned Commissioner (Appeals) by dismissing the ground raised by the Revenue.

18. Ground no.2, relates to deletion of disallowance of ₹ 54,15,23,433, towards year end provision for expenses on which TDS was not deducted.

19. Before us the learned Departmental Representative submitted that first appellate authority has ignored the decision of the Tribunal, Bangalore Bench, in IBM India Pvt. Ltd., ITA no.305/Bang./2015, wherein the Tribunal has held that it is clear from the statutory provisions that the liability to deduct tax at source exists when the amount is credited to a suspense account or any other account by whatever name called which will also include a provision created in the books of account. Referring to this decision, the learned Departmental Representative prayed for upholding the order passed by the Assessing Officer.

20. The learned Counsel for the assessee submitted before us that identical issue has been decided by the Tribunal in assessee's own case in assessment year 2015-16, in an appeal filed by the Revenue wherein the issue has been decided against the Revenue and in favour

of the assessee. He, therefore, prayed that the issue may please be decided in favour of the assessee.

21. Having considered the submissions of the learned Counsel appearing for the parties and having perused the material on record as well the case law relied upon by the learned Departmental Representative, we find that identical issue relating to deletion of disallowance of ₹ 54,15,23,433, towards year end provision for expenses on which TDS was not deducted, has been decided by the Co-ordinate Bench vide order 9<sup>th</sup> February 2021, passed in an appeal filed by the Revenue being ITA no.3849/Mum./2019, for assessment year 2015-16, a copy of which is placed on record, wherein the Bench has decided this issue against the Revenue and in favour of the assessee. The facts and circumstances of the case in IBM India Pvt. Ltd. (supra) relied upon by the learned Departmental Representative are distinguishable in nature hence not applicable to the facts and circumstances of the present case. Rather the facts of the present case are similar to the facts raised in ground no.2, raised by the Revenue in its appeal being ITA no.3849/Mum./2019 as aforesaid. Consistent with the view taken therein, we uphold the order passed by the learned CIT(A) and dismiss the ground raised by the Revenue.

22. Ground no.3, relates to deletion of disallowance of ₹ 8,17,81,446, on account of provisions for expenses and write-off.

23. The Assessing Officer observed that the amount of ₹ 8,17,81,446 has been shown in the Profit & Loss Account as provision for other expenses but the same has been claimed as deduction in computation of total income under normal provisions of the Act as well as under book profit under section 115JB of the Act. The Assessing Officer sought explanation from the assessee as to why the disallowance claimed cannot be deleted. In response, the assessee filed submissions, however, the same was not accepted as the assessee failed to substantiate its claim by supporting evidences. Therefore, the Assessing Officer added the said amount both under normal provisions as well as under section 115JB of the Act. Aggrieved, the assessee went in appeal before the first appellate authority.

24. The learned Commissioner (Appeals) observed that the Assessing Officer did not find any justification in deletion of disallowance made by the Assessing Officer and, hence, allowed the claim of the assessee. The relevant portion of the observations made by the learned Commissioner (Appeals) in his order is reproduced below:—

*"93. I have considered the AO's order and the submission made by the appellant. I find that this amount of Rs.817,81,448/- is part of the expense head other provisions arid write offs' amounting to Rs.26,80,85,106/- and has been added back in the computation of total income. However, out of above, the appellant has claimed a deduction of the amount of Rs.8,17,81,448/-, as an allowable expense in the computation of total income.*

9.3.1 From the submissions made and details filed, I find that out of the above said amount of Rs.8,17,81,448/- the expenditure claimed amounting to Rs. 350,82,974/- is in the nature of actual write off of various charges in the nature of loan recovery expenses, which is to be recovered from the borrowing party, write off of Master Card POS acquired charges and other write offs relating to ATM like cash shortage. The appellant has explained with the help of ledger account and screen shots of the related account entries appearing in the Finacle system, that the expenses in respect of loan recovery are maintained party wise and when it was found that the same could not be recovered, these have been written off.

As regards the balance amount of ₹ 466,98,472, it has been submitted that these are the nature of operation losses, arising

from its banking business, I find that the major amount under this head relate to loss on account of compensation paid to Gold loan borrowers of Palsadeo branch, Indapur, Distt. Pune, following a theft of gold jewellery from the lockers in the strong room of the bank. Other small items are on account of write-off on account of balance outstanding in suspense accounts of various types, loss on account of cash loot, fire accident etc of different branches. I am of the considered opinion that these write-offs/payments are in the nature of operational loss and allowable expenditure/deduction. Reliance is placed on the decision in the case of CIT vs. Nainital Bank Ltd. 11965155 hR 707 (SC) where in it was held by the Hon'ble Supreme Court of India as under-

Under section 10(1) of the Act the trading loss of a business is deductible for computing the profit earned by the business. But every loss is not so deductible unless it is incurred in carrying out the operation of the business and is incidental to the operation. Whether loss is incidental to the operation of a business is a question of fact to be decided on the facts of each case, having regard to the nature of the operations carried on and the nature of the risk involved in carrying them out. The degree of the risk or its frequency is not of much relevance but its nexus to the nature of the business is material.

In the instant case the respondent was carrying on the business of banking. It was an integral part of the process of banking that sufficient money should be kept in the bank duly guarded to meet the demands of the constituents. The retention of the money in the bank was a part of the operation of banking. The retention of money in the bank premises carried with it the ordinary risk of its being subject of embezzlement, theft, dacoity or destruction by fire and such other things. Such risk of loss was incidental to the

*carrying on of the operations of the business of banking. In this view, the loss incurred by dacoity in the instant case was incidental to the carrying on of the business of banking.*

*Therefore, the above said losses, incurred in the course of carrying out of its business are held to be allowable as business loss/ expen, deductible u/s 37(1) of the Act.*

*9.3.2 In view of above discussion, the addition of Rs.817,81,448/- made to total income as per normal provisions of Act is deleted.*

*9.3.3 The appellant had debited this amount of Rs.817,81,418/-, as part of other provisions for expenses amounting to Rs.26,80,85,106/-, in the profit and loss account. In its computation of book profit, it has added back the entire amount of Rs.26,80,85,106/-, being shown as provisions and has claimed the deduction of Rs.817,81,448/-, being in the nature of expenses. As noted in para 9.3 and 9.3.1 above, the said amount of Rs.817,81,448/- is not in the nature of provision but are in the nature of allowable expenditure. Therefore, the claim of the said amount as deduction is found to be in line with the provisions of section 1153B, as what is to be added back is the provision of unascertained nature and not the actual ascertained expenses/ losses incurred in the course of business. Therefore, the addition of Rs.817,81,448/- to the book profits, is found to be without justification and is hereby deleted. The ground no.7 is allowed."*

25. The Revenue being aggrieved by the aforesaid order filed appeal before the Tribunal.

26. Considered the rival submissions and perused the material on record. We find that the assessee has debited the amount of ₹ 817,81,448, as part of other provisions for expenses amounting to ₹ 26,80,85,106 in the Profit & Loss Account and in the computation of book profit, it has added back the entire amount of ₹ 26,80,81,106 and being shown as provisions and has claimed the deduction of ₹ 817,81,448/-, being in the nature of expenses. We do not find any

cogent reason to disturb the findings of the learned CIT(A) in observing that the said amount of ₹ 817,81,448/- is not in the nature of provision but are in the nature of allowable expenditure relating to running of business and relatable risk involved. The write-off of loss due to theft of jewellery in one of the branches and write-off of various charges relating to loan recovery expenses will fall within the banking business loss / expenses. Therefore, we decline to interfere warranting any interference at the instance of the Revenue.

27. In the result, Revenue's appeal is dismissed.

28. To sum up, assessee's appeal is allowed and Revenue's appeal Order pronounced in the open court on 11.06.2021

**Sd/-**  
**MAHAVIR SINGH**  
**VICE PRESIDENT**

**Sd/-**  
**S. RIFAUR RAHMAN**  
**ACCOUNTANT MEMBER**

**MUMBAI, DATED: 11.06.2021**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai