

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.1884/Bang/2018
Assessment Year : 2013-14

M/s. Canara Bank (Erstwhile Syndicate Bank) FM Wing, Head Office, 112, JC Road Bangalore 560 002 PAN NO : AACCS4699E	Vs.	Deputy Commissioner of Income-tax Circle-1 Udupi
APPELLANT		RESPONDENT

ITA No.236/PAN/2018
Assessment Year : 2013-14

Deputy Commissioner of Income-tax Circle-1 Udupi	Vs.	M/s. Canara Bank (Erstwhile Syndicate Bank) FM Wing, Head Office, 112, JC Road Bangalore 560 002
APPELLANT		RESPONDENT

Appellant by	:	Shri S. Ananthan, A.R.
Respondent by	:	Shri Pradeep Kumar, D.R.

Date of Hearing	:	10.11.2021
Date of Pronouncement	:	27.12.2021

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

These cross appeals are directed against the order dated 26-03-2018 passed by Ld CIT(A), Mangaluru and they relate to the assessment year 2013-14.

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2. The assessee is a public sector Bank. Earlier it was known as M/s Syndicate Bank and it has since been merged with M/s Canara Bank. The assessing officer completed the assessment for the year under consideration u/s 143(3) of the Income-tax Act,1961 [the Act for short] making various additions. The AO determined the total income at Rs.3217.90 crores and tax thereon at Rs.1043.95 crores. The AO also determined book profit u/s 115JB of the Act at Rs.3797.21 crores and tax thereon at Rs.795.91 crores. Since the tax payable on total income under normal provisions of the Act was higher than the tax payable u/s 115JB of the Act, the AO assessed total income under normal provisions of the Act. The assessee filed appeal challenging the assessment order before Ld CIT(A) and it was partly allowed. Aggrieved by the order passed by Ld CIT(A), both the parties have filed these appeals on the issues decided against each of them.

3. The grounds urged by the assessee give rise to the following issues:-

- (a) Disallowance of deduction of Provision for bad and doubtful debts claimed u/s 36(1)(viiia) of the Act
- (b) Disallowance of bad debts claimed u/s 36(1)(vii) of the Act.
- (c) Applicability of provisions of sec. 115JB of the Act
- (d) Whether Provision for funded interest term loan is liable to be added to net profit u/s 115JB of the Act.

4. The grounds urged by the revenue give rise to the following issues:-

- (a) Disallowance u/s 14A of the Act
- (b) Disallowance u/s 40(a)(ia) of the Act
- (c) Whether the Provision for bad and doubtful debts is not liable to be added to net profit u/s 115JB of the Act.

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5. We shall first take up the appeal filed by the assessee. The first issue relates to the disallowance of Provision for bad and doubtful debts (PBDD). The assessee had created PBDD for an amount of Rs.1054.52 crores debiting the Profit and Loss account. However, in the return of income, the assessee claimed deduction of Rs.1476.30 crores, which was later revised to Rs.1469.32 crores during the course of assessment proceedings. The AO took the view that the PBDD should be restricted to PBDD created for rural debts only. The PBDD relating to rural debts was Rs.168.02 crores. Accordingly, the AO allowed deduction of Rs.168.02 crores u/s 36(1)(viiia) of the Act and disallowed the balance provision of Rs.1308.28 claimed by the assessee.

5.1 The Ld CIT(A) noticed that an identical issue was examined in the assessee's own case in AY 2011-12 in ITA No.1264 & 1352 (Bang)/2013, wherein the Tribunal, following the decision rendered by another bench in the case of ING Vysya Bank Ltd (2014)(149 ITD 611) held as under:-

“....The actual provision made in the books by the assessee on account of PBDD (irrespective of whether it is rural or non-rural) has to be seen. To the extent PBDD is so created, then subject to the permissible upper limits referred to above, the deduction has to be allowed to the assessee. The question of bifurcating the PBDD as one relating to rural advances and other advances (non-rural) advances does not arise for consideration.”

Further, the ITAT Bangalore has also held in the assessee's own case in ITA No.681, 709, 955 & 998 dated 13.06.2014 that the assessee is not entitled to deduction u/s 36(1)(viiia) of the Act on an amount greater than the amount debited to Profit and Loss account as “provision”. In this regard, the Tribunal had followed the decision rendered by Hon'ble Punjab and Haryana High Court in the case of State Bank of Patiala vs. CIT (272 ITR 53)(P&H). Accordingly, the Ld CIT(A) held that the assessee is entitled for deduction u/s 36(1)(viiia)

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to the extent PBDD is so created. Accordingly, he directed the AO to verify and allow the deduction as per the decision of ITAT.

5.2 We heard the parties and perused the record. Before us, the Ld A.R submitted that the provisions of sec.36(1)(viiia) is incentive provision and hence it should be interpreted liberally. He further submitted that the assessee has debited shortfall amount (Difference between “eligible claim u/s 36(1)(viiia)” and “amount debited to Profit and loss account as PBDD”) in the Profit and Loss account of subsequent year. Accordingly, he contended that the amount of deduction as claimed by the assessee should be allowed without restricting the same to the amount debited to Profit and Loss account.

5.3 We heard Ld D.R on this issue and perused the record. We notice that the co-ordinate benches, in the assessee’s own case, has held that the deduction is admissible u/s 36(1)(viiia) of the Act to the extent PBDD is debited to the Profit and Loss account subject to the upper limit prescribed in that section. Before us, the Ld A.R submitted that the assessee has made good the shortfall in the provision amount by debiting profit and loss account of subsequent year. However, the provisions of sec.36(1)(viiia) does not provide that the shortfall amount can be created as provision in any of the subsequent years. The computation of total income is required to be made for every year and it is determined on the basis of books of account maintained by the assessee for that year. Hence, in our view, the provision made in subsequent year cannot be considered for the purpose of allowing deduction u/s 36(1)(viiia) of the Act for the year under consideration. Accordingly, we are of the view that the Ld CIT(A) was justified in directing the AO to allow deduction u/s 36(1)(viiia) of the Act to the extent of provision created and debited in

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the Profit and Loss account. Accordingly, we confirm the order passed by Ld CIT(A) on this issue.

6. The next issue contested by the assessee relates to the deduction claimed u/s 36(1)(vii) of the Act. The assessee had claimed a sum of Rs.1297.36 crores as bad debt u/s 36(1)(vii) of the Act. The AO noticed that the above said amount was included in "Provisions and Contingencies" account. The AO noticed that the above said amount consisted of following two items:-

Provision for contingencies debited to P & L a/c –	47.63 crores
Provisions for NPA	- 1249.73 crores

Total	1297.36 crores
	=====

The AO expressed the view that the Provisions for NPA is only a provision created towards bad and doubtful debts and it cannot be considered to be actual write off. He then relied upon the decision rendered by Hon'ble Supreme Court in the case of Southern Technologies vs. ACIT (352 ITR 577)(SC), wherein it was held that the mere making of provision for NPA cannot be considered as write off u/s 36(1)(vii) of the Act. He also relied upon the decision rendered by Hon'ble Kerala High Court in the case of CIT vs. Hotel Ambassador (2002)(253 ITR 430)(Ker), wherein it was held that the deduction u/s 36(1)(vii) of the Act only if the assessee debits the same into the accounts as irrecoverable. He also observed that the "accounts" would refer to Profit and Loss account only and the assessee has not debited bad debts written off in its profit and loss account. Accordingly, the AO proposed to disallow the claim of bad debts. Before the AO, the assessee had placed reliance on the decision rendered by Hon'ble Supreme Court in the case of Vijaya Bank vs. CIT (2010)(320 ITR 166 (SC) to reiterate that it is entitled for deduction u/s 36(1)(vii) of the Act. The AO expressed the view that

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the issue considered by Hon'ble Supreme Court in the case of Vijaya Bank (supra) related to category of "Loss Assets", which is required to be provided @ 100% of the outstanding amount. He further expressed the view that the Hon'ble Supreme Court did not consider the question viz., Whether the provision for non-performing assets created by the assessee bank by debiting P & L a/c and crediting the provision account amounts to bad debts written off as per sec. 36(1)(vii) of the Income tax Act? Accordingly, the AO held that the assessee cannot place reliance on the decision rendered by Hon'ble Supreme Court in the case of Vijaya Bank (supra). The AO further noticed that the amount of Rs.1297.36 crores included bad debts relating to rural advances amounting to Rs.38.89 crores. Accordingly, the AO held that the remaining amount of Rs.1258.47 crores relating to non-rural advances have not been written off in the books by only provided as "Provision for NPA". Accordingly, the AO held that it does not result in write off within the meaning of sec.36(1)(vii) of the Act and accordingly disallowed the amount of Rs.1,258.47 crores.

6.1 Before the Ld CIT(A), the assessee explained the manner of writing off bad debts in the books of account. The Ld CIT(A) summarised the same as under:-

"6.4.3 The write off of bad debts at Head Office is carried out by debiting the Provision for bad & doubtful debts account (Code No.8602) and crediting the Prudential Write Off account (Code no.7767) at the HO level. The Prudential write off account is grouped under Loans & Advances with a credit balance which has the effect of netting off the Gross Advance. Though these accounts written off technically continue to appear in the book of the bank's branches, the same are reduced from the total advances of the Bank while preparing the Balance Sheet for the Bank as a whole. From the Gross Advances, the Prudential Write off at the HO level is reduced. In other words, the debts written off by the branches as well as by the HO are reduced from advances to that extent."

6.2 Accordingly, the Ld CIT(A) did not agree with the view expressed by AO. The observations made by Ld CIT(A) are extracted below:-

“6.4.7 It was held by the Hon’ble Supreme Court in the case of Vijaya Bank 323 ITR 166 that the prudential write off is an allowable deduction.

6.4.8 It is argued that as per section 36(1)(vii) the debts to be written off in the accounts of the assessee. The section 2(12A) of the Income tax Act, 1961 defines the terms “Books or Books of Account” in terms of an inclusive definition to include Ledgers, day books, cash books, account books and other books. Therefore, it is not legally correct to say that only Profit & Loss Account can be termed as accounts of the assessee. In this case also, the bad debts are written off in the books of the bank which include ledger and other records. The write off is debited to ledger accounts. The write off is reduced from the gross advances in the Balance Sheet. Therefore, the condition that the debt should be written off in the accounts of the assessee is fulfilled.”

We notice that the revenue has not filed appeal challenging the above said decision of Ld CIT(A) and hence it has attained finality.

6.3 The Ld CIT(A), however, proceeded to examine this aspect from another angle, i.e., he took the view that the AO has not examined the claim of write off ‘non-rural bad debts’ of Rs.1258.47 crores in terms of the proviso to sec. 36(1)(vii) read with sec. 36(1)(viia) of the Act. Before Ld CIT(A), the assessee submitted that the provision allowed u/s 36(1)(via) of the Act is related to rural debts only and hence, only rural debts written off as bad should be adjusted against the provision allowed u/s 36(1)(via) of the Act. However, the Ld CIT(A) expressed the view that the PBDD allowed u/s 36(1)(viia) of the Act is applicable to both Rural and non-Rural debts. Accordingly, he held that the entire amount of bad debts written off (both rural and non-rural) should be first adjusted against the provision allowed u/s 36(1)(viia) of the Act and only the excess should be allowed as deduction. He expressed the view that the decision by Hon’ble Supreme Court in the case of Catholic Syrian Bank (2012)(343 ITR 270)(SC) was rendered under the assumption that the banks would

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maintain separate PBDD a/c in respect of rural branches and non-rural branches and therefore it is possible to distinguish PBDD as one in respect of rural branches and non-rural branches. The Ld CIT(A) expressed the view that the claim of the bank that the provisions of sec. 36(1)(vii) are distinct and independent of sec. 36(1)(viii) is based on the old circular no. 258 dated 14.6.1979 issued in connection with old law. Accordingly the Ld CIT(A) held that the provision allowed u/s 36(1)(viii) of the Act is for single account since introduction in 1985 for all types of advances including rural advances. Accordingly, the Ld CIT(A) held that the bad debts pertaining to non-rural advances should also be first adjusted against PBDD allowed u/s 36(1)(viii) of the Act. During the year under consideration, the opening credit balance in the PBDD account stood at Rs.4365.90 crores. Since it is more than the bad debts pertaining to non-rural branches of Rs.1258.47 crores, the Ld CIT(A) held that the bad debts claim of non-rural branches is not allowable as deduction u/s 36(1)(viii) of the Act.

6.4 We heard the parties on this issue and perused the record. We notice that the Ld CIT(A) has expressed the view that the provision allowed u/s 36(1)(viii) of the Act would cover bad debts pertaining to non-rural advances also. An identical issue has been examined by Hyderabad bench of ITAT in the case of State Bank of Hyderabad vs. DCIT (ITA No.450/Hyd/2015, ITA No.498 and 499/Hyd/2015 dated August 14, 2015), wherein the Tribunal has not accepted the above said view expressed by Ld CIT(A). The relevant observations made by the Tribunal are extracted below:-

“19. We have considered the rival submissions and perused the materials on record as well as the orders of revenue authorities. As could be seen from the finding of AO as well as ld. CIT(A), only reason for which claim of deduction for Rs. 209,07,50,831 representing actual write off of bad debts

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relating to non-rural advances u/s 36(1)(vii) was denied is, assessee having already availed deduction u/s 36(1)(viiia), it is not eligible to claim deduction u/s 36(1)(vii) as it will amount to double deduction. In our view, both AO as well as ld. CIT(A) have committed fundamental error by mixing up provisions of [sections 36\(1\)\(vii\)](#) and [36\(1\)\(viiia\)](#). While 36(1)(vii) speaks of actual write off of bad debts in the books of account, [section 36\(1\)\(viiia\)](#) even allows provision made towards bad and doubtful debts in respect of rural advances to the extent of provision made in the books of account subject to the ceiling fixed under clause (viiia) of [section 36\(1\)](#). Proviso to [section 36\(1\)\(vii\)](#) operates only in a case where deduction is also claimed under [section 36\(1\)\(viiia\)](#). In other words, proviso to [section 36\(1\)\(vii\)](#) applies to write off of bad debts relating to rural advances to the extent it exceeds the provision made u/s 36(1)(viiia). If we examine the facts of the present case in the context of aforesaid statutory provision, it will be evident that assessee, though, has written off in the books of account an amount of Rs. 210.74 crore, but, in the computation of total income, the actual deduction claimed u/s 36(1)(vii) is Rs. 209.08 crore representing bad debts written off relating to non-rural/urban advances. The balance amount of bad debts relating to rural advances was not claimed as deduction by assessee in terms with the proviso to [section 36\(1\)\(vii\)](#) as it has not exceeded the provision for bad and doubtful debts relating to rural advances created u/s 36(1)(viiia). Both AO and ld. CIT(A) have misconstrued the statutory provisions while observing that proviso to [section 36\(1\)\(vii\)](#) would also apply in case of bad debts relating to non-rural advances. The Hon'ble Supreme Court in case of Catholic Syrian Bank Vs. CIT (supra) while analyzing provisions of [section 36\(1\)\(vii\)](#) and [36\(1\)\(viiia\)](#) have observed that [section 36\(1\)\(viiia\)](#) applies only to rural advances. The observations made by Hon'ble Apex Court in this regard in paras 26 & 27 of the judgment is extracted hereunder for convenience.

"26. The Special Bench of the Tribunal had rejected the contention of the Revenue that proviso to s. 36(1)(vii) applies to all banks and with reference to the circulars issued by the Board, held that a bank would be entitled to both deductions, one under cl. (vii) of s. 36(1) of the Act on the basis of actual write off and the other on the basis of cl. (viiia) of s. 36(1) of the Act on the mere making of provision for bad debts. This, according to the Revenue, would lead to double deduction and the proviso to s. 36(1)(vii) was introduced with the intention to prevent this mischief. The contention of the Revenue, in our opinion, was rightly rejected by the Special Bench of the Tribunal and it correctly held that the Board itself had recognized the position that a bank would be entitled to both the deductions. Further, it concluded that the proviso had been introduced to protect the Revenue, but it would be meaningless to invoke the same where there was no threat of double deduction.

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27. As per this proviso to cl. (vii), the deduction on account of the actual write off of bad debts would be limited to excess of the amount written off over the amount of the provision which had already been allowed under cl. (viii). The proviso by and large protects the interests of the Revenue. In case of rural advances which are covered by cl. (viii), there would be no such double deduction. The proviso, in its terms, limits its application to the case of a bank to which cl. (viii) applies. Indisputably, cl. (viii)(a) applies only to rural advances."

Concurring with the aforesaid majority view, Hon'ble CJI, S.H. Kapadia, as the then he was, held as under:

"2. Under Section 36(1)(vii) of the ITA 1961, the tax payer carrying on business is entitled to a deduction, in the computation or taxable profits, of the amount of any debt which is established to have become a bad debt during the previous year, subject to certain conditions. However, a mere provision for bad and doubtful debt(s) is not allowed as a deduction in the computation of taxable profits. In order to promote rural banking and in order to assist the scheduled commercial banks in making adequate provisions from their current profits to provide for risks in relation to their rural advances, the Finance Act, inserted clause (viii) in subsection (1) of Section 36 to provide for a deduction, in the computation of taxable profits of all scheduled commercial banks, in respect of provisions made by them for bad and doubtful debts relating to advances made by their rural branches. The deduction is limited to a specified percentage of the aggregate average advances made by the rural branches computed in the manner prescribed by the IT Rules, 1962. Thus, the provisions of clause (viii) of Section 36(1) relating to the deduction on account of the provision for bad and doubtful debt(s) is distinct and independent of the provisions of Section 36(1)(vii) relating to allowance of the bad debt(s). In other words, the scheduled commercial banks continue to get the full benefit of the write off of the irrecoverable debt(s) under Section 36(1)(vii) in addition to the benefit of deduction for the provision made for bad and doubtful debt(s) under section 36(1)(viii). A reading of the Circulars issued by CBDT indicates that normally a deduction for bad debt(s) can be allowed only if the debt is written off in the books as bad debt(s). No deduction is allowable in respect of a mere provision for bad and doubtful debt(s). But in the case of rural advances, a deduction would be allowed even in respect of a mere provision without insisting on an actual write off. However, this may result in double allowance in the sense that in respect of same rural advance the bank may get allowance on the basis of clause (viii) and also on the basis of actual write off under clause (vii). This situation is taken care of by the proviso to clause (vii) which limits the allowance on the basis of the

actual write off to the excess, if any, of the write off over the amount standing to the credit of the account created under clause (viia). However, the Revenue disputes the position that the proviso to clause (vii) refers only to rural advances. It says that there are no such words in the proviso which indicates that the proviso apply only to rural advances. We find no merit in the objection raised by the Revenue. Firstly, CBDT itself has recognized the position that a bank would be entitled to both the deduction, one under clause (vii) on the basis of actual write off and another, on the basis of clause (viia) in respect of a mere provision. Further, to prevent double deduction, the proviso to clause (vii) was inserted which says that in respect of bad debt(s) arising out of rural advances, the deduction on account of actual write off would be limited to the excess of the amount written off over the amount of the provision allowed under clause (viia). Thus, the proviso to clause (vii) stood introduced in order to protect the Revenue. It would be meaningless to invoke the said I proviso where there is no threat of double deduction. In case of rural advances, which are covered by the provisions of clause (viia), there would be no such double deduction. The proviso limits its application to the case of a bank to which clause (viia) applies. Clause (viia) applies only to rural advances. This has been explained by the Circulars issued by CBDT. Thus, the proviso indicates that it is limited in its application to bad debt(s) arising out of rural advances of a bank. It follows that if the amount of bad debt(s) actually written off in the accounts of the bank represents only debt(s) arising out of urban advances, the allowance thereof in the assessment is not affected, controlled or limited in any way by the proviso to clause (vii)."

Thus, considered in light of principle laid down as referred to above, when the proviso to [section 36\(1\)\(vii\)](#) applies to bad debts written off relating to rural advances, the same cannot be applied for disallowing deduction claimed on account of write off of bad and doubtful debts relating to non-rural/urban advances. As far as application of explanation to [section 36\(1\)\(vii\)](#) is concerned, we agree with the ld. AR that its operation will be prospective and will not apply to the impugned AY. For this proposition, we rely upon the decision of the ITAT Mumbai in case of Bank of India Vs. Addl. CIT (supra). Even otherwise also, careful reading of explanation to section 36(1)(vii) would indicate that nowhere it suggests that the proviso to [section 36\(1\)\(vii\)](#) would apply in respect of bad debt written off relating to non-rural advances. In the aforesaid view of the matter, we hold that assessee would be eligible to avail deduction of an amount of Rs. 209.94 crore representing actual write off in the books of account of bad debts relating to non-rural/urban advances in terms with [section 36\(1\)\(vii\)](#), as proviso to the said section would not apply to non-rural advances. Accordingly, we delete the addition made by AO and confirmed by ld. CIT(A)."

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6.5 Following the above said decision, we hold that the view expressed by Ld CIT(A) is not legally correct. Accordingly, we set aside the order passed by Ld CIT(A) with regard to his alternative decision, i.e., the view that the proviso to sec. 36(1)(vii) which requires adjustment of bad debts against provision allowed u/s 36(1)(viiia) would apply to non-rural advances also. Accordingly, we direct the AO to delete the disallowance of Rs.1258.47 crores.

7. The next issue contested by the assessee relates to the applicability of sec.115JB of the Act. In the return of income, the assessee did not compute book profit, as according to the assessee the provisions of sec.115JB will not be applicable to it. The AO did not accept the said contentions and held that the provisions of sec.115JB shall apply to the assessee. Accordingly, he computed book profit u/s 115JB of the Act also.

7.1 Before Ld CIT(A) also, the assessee contended that the provisions of sec.115JB will not be applicable to it. It was submitted that the assessee falls under the category of “corresponding new bank” under BR Act. Accordingly it was contended before Ld CIT(A) by the assessee as under:-

- (a) banking company is defined under BR Act as a “**company**” which transacts business of banking.
- (b) “Company” is defined as a company as defined in section 3 of the Companies Act and includes a foreign company within the meaning of sec. 591 of that Act.
- (c) Since the assessee falls under the category of Act of “corresponding new bank”, it was contended that it cannot fall under the definition of “banking Company”.

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(d) Clause (b) of sec.115JB(2) is applicable to a banking company, but the assessee is not a banking company as per the definition given in BR Act.

Accordingly, it was contended that the assessee is not liable u/s 115JB of the Act.

7.2 The Ld CIT(A), however, did not accept the above said contentions. The view expressed by Ld CIT(A) has been summarised below:-

(a) Sec. 115JB(1) is the charging section and it overrides all other provisions of the Act. It provides that the provisions of this section are applicable in case of “every company”. It does not carve out any exception.

(b) Sec. 2(17) defines the word “company”. According to this section company “means” any Indian Company.

(c) Explanatory Note to Finance Act, 2012 has explained that Minimum Alternative Tax (MAT provisions u/s 115JB) shall apply to a banking company.

(d) Assessee is a “company” as per the deeming provisions of sec.11 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, which reads as under:-

“11. Corresponding new bank deemed to be an Indian Company:-

For the purposes of the Income tax Act 1961 (43 of 1961), every corresponding new bank shall be deemed to be an Indian Company and a company in which public are substantially interested.”

(e) The assessee itself is filing its return of income under the status of “company”.

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(f) The shares of assessee bank are listed in the Stock exchange and traded.

(g) The assessee is a banking company under Banking Regulations Act, since the definition of the term “banking company” in BR Act is a functional definition. The assessee is following all the rules and regulations of the BR Act which are applicable to other private banks. The assessee bank is constitutionally defined as “corresponding new bank” in BR Act. However, the BR Act does not say that ‘corresponding new bank’ is not a Banking Company.

(h) It is not the case of the assessee that being a ‘corresponding new bank’ and not registered under Companies Act, 1956, the assessee is not governed by BR Act.

(i) It is highly unfortunate on the part of a reputed public sector bank to resort to such unwarranted, hyper technical, hair splitting of the definitions under various Acts only to avoid the payment of due taxes.

(j) Assuming that the assessee is not a Banking Company, then the provisions of sec.115JB(2)(a) will be applicable to the assessee, as it is an Indian Company as per section 11 of the Banking Companies (Acquisition and Transfer of Undertaking) Act 1980.

(k) Various decisions relied upon by the assessee relate to the period prior to the amendment made by Finance Act 2012.

7.3 Before us, the Ld A.R reiterated that the provisions of sec.115JB will not apply to the assessee, since it is not formed under Companies Act. He placed his reliance on the decision rendered by Kolkata bench of Tribunal in the case of Damodar Valley Corporation (2017(8) TMI 1363). On the contrary, the Ld D.R supported the order passed by Ld CIT(A).

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7.4 We heard the parties on this issue and perused the record. We notice that the Ld CIT(A) has expressed the view that the assessee would fall under clause (a) of sec.115JB(2). However the case of the assessee is that clause (b) of sec.115JB(2) is made applicable to banking companies, since banking company is included in sec. 211 of the Companies Act. However, it is the contention of the assessee that it is not a "banking company", i.e., it is a "corresponding new bank".

7.5 We notice that the provisions of sec.51 of the Act specifically states that only certain provisions of BR Act are applicable to "Corresponding new bank". We noticed earlier that the Ld CIT(A) has proceeded to decide this issue by observing that all provisions of BR Act are applicable to the Company. We notice that the Ld CIT(A) did not consider the effect of provisions of sec.51 of the BR Act upon the assessee. Hence the decision taken by him under the impression that all the provisions of BR Act are applicable to the assessee is faulted one. In our view the Ld CIT(A) should considered the effect of provisions of sec. 51 of BR Act and accordingly he should have appreciated the contentions of the assessee on the definition of "banking company", provisions of sec.211(2) of the Companies Act etc. Since these aspects go to the root of the issue, in our view, this issue needs to be examined at the end of Ld CIT(A) afresh. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to his file for examining it afresh.

8. The next issue urged by the assessee is Whether Provision for funded interest term loan is liable to be added to net profit u/s 115JB of the Act. Since the issue regarding applicability or otherwise of sec.115JB is restored to the file of Ld CIT(A), this issue is also restored to the file of Ld CIT(A) for examining it afresh.

9. We shall now take up the appeal filed by the revenue. The first issue contested by the revenue is the relief granted by Ld CIT(A) in respect of addition made u/s 14A of the Act. The assessee had earned tax free income of Rs.24.05 crores. The AO proposed to apply the provisions of Rule 8D of Income tax Rules. The assessee contended that no interest disallowance is called for as the interest free funds exceeds the value of tax free investments. It was also submitted that the ITAT has held in the assessee's own case in AY 2008-09 that no disallowance u/r 8D(2)(i) and 8D(2)(ii) is called for. The assessee further submitted that the tax free investment forms miniscule part of total investments. Accordingly, it was submitted that the assessee had to incur those expenditure, whether it receives tax free income or not. The assessee also agreed for a disallowance of a sum of Rs.9,24,123/- u/s 14A of the Act before the AO during the course of assessment proceedings. However, the AO did not accept the contentions of the assessee. He held that the assessee has failed to establish the nexus between interest free funds and tax free investments. Accordingly, the AO held that the disallowance as per Rule 8D is called for. The AO, accordingly, computed disallowance u/s 8D(2)(i), 8D(2)(ii) and 8D(2)(iii) of I T Rules aggregating to Rs.59.56 crores.

9.1 Before Ld CIT(A), the assessee contended that the AO has not recorded dissatisfaction on the disallowance made by the assessee. Accordingly it was contended that AO could not have invoked rule 8D of I T Rules. The Ld CIT(A) accepted the contentions of the assessee and observed that the assessee has voluntarily disallowed a sum of Rs.9,24,123/-, which should have been examined by AO and he should have recorded dissatisfaction on it. Accordingly, the Ld CIT(A) deleted the disallowance accepting the above said legal contention.

9.2 We heard the parties and perused the record. It is not clear as to whether the assessee had voluntarily disallowed the sum of Rs.9,24,123/- while filing return of income, since it is stated in the reply dated 28.01.2015 given by the assessee to the AO, which is extracted in paragraph 1.4 of the assessment order, that the assessee is aggregable for a disallowance of Rs.9,24,123/- as mentioned in its submission dated 13.1.2015. In fact, the Ld CIT(A), at one point, records that the assessee contended that no expenditure was incurred to earn tax free income, but without prejudice to the above said contention, it agreed for a disallowance of Rs.9,24,123/- u/s 14A of the Act.

9.3 Thus, it appears that the assessee's case is a case of making no disallowance u/s 14A of the Act. Be that as it may, we are of the view that from the discussion made by the assessing officer in the assessment order, it can be discerned that he was not satisfied with the claim of the assessee. Accordingly he has proceeded to compute the disallowance as per Rule 8D of I T Rules. Accordingly, we are of the view that it cannot be said that the assessing officer has not recorded dissatisfaction. In this view of the matter, we are unable to sustain the decision rendered by Ld CIT(A) on this issue.

9.4 Accordingly, we reverse the order passed by Ld CIT(A) on this issue. Since he has not decided the issue on merits, we restore this issue to his file to decide the same in accordance with law. Before us, the Ld A.R placed his reliance on the decisions rendered by Hon'ble Supreme Court to contend that no disallowance u/s 14A is called for in the case of the assessee. The Ld CIT(A) should consider those decision and should take appropriate decision in accordance with law.

10. The next issue contested by the revenue is the relief granted by Ld CIT(A) in respect of disallowance made u/s 40(a)(ia) of the Act. The AO noticed that the assessee has paid a sum of Rs.70,96,04,943/- as ATM usage charges to M/s National Payment Corporation of India (NPCI) without deduction of tax at source as required u/s 194C or 194J or 194H. He further noticed that the certificate was obtained from an Accountant under first proviso to sec. 201(1) for a sum of Rs.3,01,18,976/-. Accordingly, the AO disallowed the balance amount of Rs.67,94,85,967/- u/s 40(a)(ia) of the Act.

10.1 The Ld CIT(A) noticed that the Hon'ble Supreme Court has considered the nature of payment made to Stock exchange by the brokers as transaction charges for use of facility offered by the Stock exchange in the case of Kotak Securities Ltd (2016)(285 CTR 63). It was held that the services made available was the facility of standard faceless screen rendered and the authenticity of the transactions. It was noticed that these services were made available to all and not fall under the category of exclusive service. Accordingly, it was held that the TDS is not required to be deducted treating as technical service u/s 194J of the Act. The Ld CIT(A) also noticed that the Bangalore bench of Tribunal has held in the case of Corporation Bank (ITA Nos.1264 & 1352 (Bang)/2013) that similar kind of payment made cannot be considered as Commission or Brokerage warranting deduction of tax at source u/s 194H of the Act. The Ld CIT(A) held that the above said decision shall apply to the facts of the present case also. He further held that the AO did not specify the section under which the TDS is liable to be deducted by the assessee. Accordingly he deleted the disallowance.

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10.2 We heard the parties on this issue and perused the record. We notice that the Ld CIT(A) has rendered his decision following the ratio of decision rendered by Hon'ble Supreme Court in the case of Kotak Securities Ltd (supra) and also the decision rendered by co-ordinate bench in the case of Corporation Bank (supra). Hence we do not find any reason to interfere with his order passed on this issue.

11. The last issue contested by the revenue relates to the relief granted in computing book profit u/s 115JB of the Act. Since the issue of applicability of sec.115JB to the assessee is restored to the file of Ld CIT(A) while considering the appeal of the assessee, we restore this issue also to the file of Ld CIT(A).

12. In the result, the appeal filed by the assessee and the appeal of the revenue are treated as partly allowed for statistical purposes.

Order pronounced in the open court on 27th Dec, 2021

Sd/-
(George George K.)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 27th Dec, 2021.
VG/SPS

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.