

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

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3685/M/2013  
Assessment Year: 2005-06**

M/s. State Bank of India, Financial Reporting & Taxation Dept., 3 <sup>rd</sup> Floor, Corporate Centre, Madam Cama Road, Nariman Point, Mumbai – 400 021 <b>PAN: AAACS8577K</b>	Vs.	DCIT, Circle -2(2), Mumbai
(Appellant)		(Respondent)

**ITA No.4951/M/2013  
Assessment Year: 2005-06**

Office of the DCIT-2(2), R.No.545, Aayakar Bhavan, M.K. Road, Mumbai- 400 020	Vs.	M/s. State Bank of India, Central Office, Accounts & Compliance Dept., 14 <sup>th</sup> Floor, Madam Cama Rd., Nariman Point, Mumbai – 400 021 <b>PAN: AAACS8577K</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Ketan Ved, A.R.  
Revenue by : Shri Anand Mohan, D.R.

Date of Hearing : 22.02.2022  
Date of Pronouncement : 22.03.2022

**ORDER****Per Kuldip Singh, Judicial Member:**

For the sake of brevity aforesaid cross appeals bearing common question of law and facts are being disposed of by way of composite order.

2. Appellant State Bank of India, Mumbai (hereinafter referred to as the assessee) and appellant DCIT, Circle 2(2), Mumbai (hereinafter referred to as the Revenue) by filing aforesaid cross appeals sought to set aside the impugned order 04.03.2013 passed by Commissioner of Income Tax (Appeals) [hereinafter referred to as the Ld. CIT(A)], on the grounds inter alia that:

**ITA No.3685/M/2013 (Assessee)**

*“1. The learned CIT(A) erred in upholding the action of the Assessing Officer in taxing the deferred payment guarantee commission of Rs. 58,44,167 on receipt basis, without appreciating that such commission relates to subsequent years.*

*2. The learned CIT(A) erred in confirming the disallowance of Rs. 122,38,98,858 in respect of depreciation on matured securities which had fallen due for redemption during year ended 31 March 2005 but redemption proceeds were not received.*

**3.1 The learned CIT(A) erred in confirming the action of the Assessing Officer in making the disallowance under section 14A to the extent of Rs. 46,35,85,591 as under:  
0.5% of average investments (including subsidiaries) -  
Rs.42,23,51,770**

**Interest expenditure on foreign currency loans -  
Rs.4,12,33,821**

**3.2 The learned CIT(A) erred in holding that the appellants's contention that there should be no disallowance is clearly out of synchronization with the provisions of section 14 A.**

**3.3 The learned CIT(A) erred in holding that the disallowance under section 14A based on the exempt income is incorrect and on that basis rejecting the claim of the appellant that 1% of the exempt interest and dividend income is to be disallowed.**

**3.4 The learned CIT(A) erred in holding that the interest expenses of foreign offices are to be disallowed under section 14A.**

**3.5 Without prejudice to the above, the learned CIT(A) erred in considering the investment in subsidiaries while computing the amount of 0.5% of average investment.**

**4.1 The learned CIT(A) erred in upholding the action of the Assessing Officer in disallowing the appellant's claim in respect of depreciation of Rs. 50,71,44,257 on leased assets.**

**4.2 The learned CIT(A) erred in holding that the genuineness of the lease agreement was not proved and it was a sham agreement to give colour of finance lease.**

**4.3 The learned CIT(A) erred in holding that the lease transactions is not even a case of finance lease but a mere case of advancing of loan and the lessee was the actual or real owner.**

**5.1 The learned CIT(A) erred in not allowing deduction of Rs.1050,55,44,005 under section 36(l)(vii) being the**

*amount of bad debts written-off (other than in respect of rural advances).*

*5.2 The learned CIT(A) erred in relying on explanation 2 to section 36(l)(vii) as proposed by the Finance Bill 2013 which is applicable from assessment years 2014-15 onwards.*

*6 The learned CIT(A) erred in upholding the action of the Assessing Officer in reducing depreciation / taxing appreciation in the value of securities held as Available for Sale (AFS) and Held for Trading (HFT) category of Rs. 1740,43,00,607.*

*7.1 The learned CIT(A) erred in not directing the Assessing Officer to not tax the recovery of bad debts written off in terms of section 41(4), as the appellant had not claimed a deduction for such advances under section 36(l)(vii).*

*7.2 The learned CIT(A) erred in holding that the ground of appeal is not maintainable as no claim was made in the original / revised return or during the course of assessment proceedings.*

*8.1 The learned CIT(A) erred in not directing the Assessing Officer to not tax the income earned by the foreign branches of the appellant, based in countries with whom India has entered into a tax treaty.*

*8.2 The learned CIT(A) erred in holding that the ground of appeal is not maintainable as no claim was made in the original / revised return or during the course of assessment proceedings.*

*9 Each one of the above grounds of appeal is without prejudice to the other.*

*10 The appellant reserves the right to amend, alter or add to the grounds of appeal.”*

**Additional grounds by assessee:**

**“Computation of total income in accordance with the provisions of the Income-tax Act, 1961:**

**1. Re: Deduction in respect of 'Education Cess on income-tax' and 'secondary and higher education cess on income-tax\* (collectively referred to as 'education cess on income-tax') payable for the year under consideration, while computing the total income of the Appellant:**

*1:1 The Assessing Officer has erred in not allowing a deduction for the 'education cess on income-tax' payable for the year under consideration.*

*1:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, 'education cess on income-tax' for the year under consideration, ought to be allowed as a deduction while assessing its income for the year under consideration.*

*1:3 The Appellant submits that the Assessing Officer be directed to re-compute its total income and tax thereon after allowing deduction for 'education cess on income-tax'.*

**2 Re.: General:**

*2 :1 The Appellant craves leave to add, alter, amend, substitute and/or modify in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal.”*

**ITA No.4951/M/2013 (Revenue)**

*“1. The order of the CIT(A) is opposed to law and facts of the case.*

*2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowances of Rs.71.76 lakhs incurred by the assessee on reservation of seats in the schools for the children of the bank officers without appreciating that the amount was not incurred wholly and exclusively for the purpose of its business.*

3. (a) *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that no disallowance under section 14A read with Rule 8D 2(ii) is called for, thereby granting relief to the assessee, overlooking the fact that the AO had correctly made the disallowance, as the assessee could not establish the nexus between its own funds and investments made in tax-free income.*

(b) *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the disallowance under section 14A of the IT Act to Rs.46.35 crore without giving any specific reason and overlooking the detailed calculation made by the AO as per an Annexure 1 and 2 of the order.*

4. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the broken period interest holding that it is revenue in nature and in the process failing to appreciate that it is in the nature of cost of securities and therefore, capital in nature.*

5. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the taxing of interest on securities on due basis, ignoring the fact that the assessee bank has been following Mercantile System of accounting and therefore, interest on securities is to be accounted for on accrual basis, while arriving at the Book Profit.*

6. (a) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the assessee's appeal by holding the securities as stock in trade and loss on revaluation as revenue expenditure.*

(b) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the assessee's appeal without appreciating the fact that on similar issue appeal has been filed for the AY 1995-96 before the Hon'ble Bombay High Court vide ITXAL No. 625/2010."*

***7. For these and other grounds that may be urged at the time of hearing, the decision of the CIT(A) may be set aside and that of the AO restored.”***

3. Briefly stated facts necessary for adjudication of the controversy at hand are : the assessee is a public sector bank having income from banking operations, treasury operations and other retail services. On the basis of search and seizure operations conducted at the premises of one of the branches at Tiruchengode in Tamil Nadu on 02.07.2005 some documents pertaining to deposits were seized and proceedings under section 153A of the Income Tax Act (for short ‘the Act’) were initiated and in reply thereto assessee opted vide letter dated 17.05.2007 to treat the return of income already filed as response to the notice issued under section 153A of the Act. Declining the contentions raised by the assessee bank, the Assessing Officer (AO) made addition of Rs.58,44,167/-, Rs.25,21,96,394/-, Rs.12,23,898/-, Rs.46,35,85,591/-, Rs.50,71,44,257/-, Rs.10,50,55,44,005/- & Rs.17,40,43,00,607/- on account of deffered payment guarantee commission, disallowance of depreciation on matured securities, disallowance of expenses under section 14A read with rule 8D, disallowance of depreciation on leased assets, right of bad debts, in respect of non rural expenses, reducing depreciation/taxing

depreciation in the value of securities held as available for sale and held for trading respectively and thereby framed the assessment at the total income of Rs.60,30,95,04,270/-.

4. Assessee carried the matter before the Ld. CIT(A) by way of filing the appeal who has partly allowed the same. Feeling aggrieved from the impugned order both the assessee as well as Revenue have come up before the Tribunal by way of filing cross appeals.

5. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

**Ground No.1 of ITA No.3685/M/2013 (Assessee's appeal)**

6. The AO made addition of Rs.58,44,167/- on account of deffered payment guarantee commission on the ground that since the assessee has received the entire deffered payment guarantee commission in advance the same is to be taxed during the year under assessment and as such out of total amount of deffered payment guarantee commission of Rs.25,80,40,561/-, assessee has

credited only Rs.25,21,96,394/- in the Profit & Loss account, the balance amount of Rs.58,44,167/- is added to the income of the assessee.

7. The Ld. CIT(A) upheld the additions made by the AO. However, the Ld. A.R. for the assessee challenging the impugned addition argued that this issue has already been decided in favour of the assessee by the co-ordinate Bench of the Tribunal in A.Y. 1999-2000 to 2003-04 and AO has already given effect to the order of the Tribunal. This factual position has not been controverted by the Ld. D.R. for the Revenue.

8. We have perused the order passed by the co-ordinate Bench of the Tribunal passed in ITA No.3779/M/2012 & ors. order dated 30.09.2021, which is on identical issue, passed by following the decision rendered by the Tribunal in assessee's own case for A.Y. 2000-01, 1984-85, 1996-97 & 1999-2000, the operative part of which is as under:

***“2.1. We have heard rival submissions and perused the materials available on record. Both the parties mutually agreed that this issue is already covered by the order of this Tribunal in assessee's own case for A.Yrs. 2001-02 and 2002-03 vide order dated 12/07/2021. The relevant operative portion of the said order is reproduced hereunder:-***

***“7. We have heard both the parties and perused the material on record including the case laws relied upon by the parties, The learned Sr. Counsel for the assessee submitted that the Assessing Officer has given effect to the order passed by the Tribunal and has allowed the deduction for the deferred payment guarantee commission of the assessment year 1984-85 to 1989-90 and 1996-97. However, both the learned Counsels for the parties conceded that that identical issue raised in this ground by the assessee is now settled in favour of the assessee and against the Revenue by the decisions of the Tribunal rendered in assessee's own case in as 2000-01, 1984-85, 1996-97, and 1999-2000. Consistent with the view taken therein, we set aside the impugned order passed by the learned CIT(A) by allowing the ground raised by the assessee. The learned Sr. Counsel for the assessee also brought to our notice that the Assessing Officer has given effect to the order of the Tribunal and has allowed the deduction for deferred payment guarantee commission for the assessment year 1984-85 to 1989-90 and 1996-97. Consequently, the ground raised by the assessee is decided in favour of the assessee and against the Revenue. Ground no.2, is allowed.”***

9. So following the consistent view taken by the co-ordinate Bench of the Tribunal in the issue in controversy right from A.Y. 1984-85, we are of the considered view that the entire deferred payment guarantee commission though received in advance by the assessee bank cannot be taxed during the year of receipt but has to be spread to the relevant years to which it belongs. We fail to understand when the issue is no longer res-integra having been decided by the Tribunal numerous times in

favour of the assessee and order decided by the Tribunal has also been given effect to, then why the issue has been raised time and again only for the purpose of generating unnecessary litigation. So ground No.1 of assessee's appeal is allowed.

**Ground No.2 of ITA No.3685/M/2013 (Assessee's appeal)**

10. The AO made a disallowance of Rs.1,22,38,98,858/- on account of disallowance of depreciation on matured security on the ground that since the provision made by the assessee is not "ascertained liability" and it also cannot be taken that there is actual change in the market value of security. The Ld. CIT(A) upheld the disallowance made by the AO.

11. At the very outset, the Ld. A.R. of the assessee contended that this issue has already been decided in favour of the assessee by the co-ordinate Bench of the Tribunal right from A.Y. 1996-97. We have perused the order passed by the co-ordinate Bench of the Tribunal for A.Y. 2004-05 available at page 744 to 773 (supra) which is on the identical facts and decided in favour of the assessee by returning the following findings:

***"3.1. We have heard rival submissions and perused the materials available on record. Both the parties mutually agreed that this issue is already covered against the assessee by the order of this Tribunal in assessee's own***

*case for A.Y.2000-01 vide order dated 06/03/2020 wherein it was held as under:-*

*“7. Under this issue the assessee has challenged the disallowance of depreciation on matured investments in sum of Rs.15,13,81,119/-. At the very outset, the Ld. Representative of the assessee has argued that this issue has been covered against the assessee in the assessee’s own case bearing ITA. No. 4736/M/2010 & 4598/M/2010 dated 31.01.2018 for the A.Y. 1999-2000. The relevant finding has been given in para no. 8 to 10 which is hereby reproduced as under.:-*

*“8. We have considered the contention of the parties and have gone through the orders of authorities below. We have noted that similar ground of appeal has been dismissed by the Tribunal in assessee’s own case, with the following order: 38. Additional Ground No. 2 is regarding depreciation on matured securities. The assessee has claimed a sum of Rs.2,23,86,418/- towards depreciation of investments. The AO disallowed the claim of the assessee and the CIT(A) has confirmed the action of the AO. We have heard the Ld. AR as well as Ld. DR and considered the relevant material on record. The CIT(A) has decided the issue in para 9 as under: "9. The ninth effective ground of appeal is against the disallowance of Rs.2,23,86,418/- being the provision for diminution in the value of securities which had matured and become due for redemption during the year but were not redeemed. It was contended before the A.O. that in some cases, the companies or the State Governments who had issued the relevant securities were not able to pay the amount due on redemption. The appellant treats these securities as non-performing assets and a provision is made at a certain percentage for diminution in their value as in the case of other non-performing assets. There may be*

*some delay on the part of the companies or the State Governments in paying the redemption amount. But, whenever the payment would be made it cannot be expected to be less than the face value. On the date of maturity, the whole of the amount of redemption money becomes due under the mercantile system of accounting followed by the appellant unless a portion of this amount is written off as bad debt. It is a real income and hence has to be taxed as such under the mercantile system followed by the appellant. Reliance in this regard is placed on State Bank of Travancore vs. CIT 158 ITR 102, 155 (SC) which was followed in Western India Oil Distributing Co. Ltd. Vs. CIT 206 ITR 359 (Bom). It was held in this decision that the concept of real income should not be so read as to defeat the provisions of the Act. Extension of the concept of real income to a field so as to negate accrual after the amount had become receivable is contrary to the postulates of the Act, the Supreme Court held (p. 146 of 158 ITR). Moreover, as held in the case of Navin R. Karnani Karnani vs. CIT 185 ITR 408 (Bom), it was not possible to waive any amount of income which had accrued under the mercantile system of accounting on the ground of diminished hope of recovery. Furthermore, any liability de futuro is not an ascertained liability in praesenti and cannot be allowed as deduction under the Income-tax Act as held in the case of Indian Molasses Co. Pvt. Ltd. vs. CIT 37 ITR 66 (SC) and Standard Mills Co. Ltd. Vs. CIT Vs. CIT 229 ITR 366(Bom) 366(Bom). Hence, no such ad hoc deduction could be allowed against the amount receivable on redemption of securities which had matured and become due for payment before the close of the accounting year. This ground therefore fails.*

*"39. The findings of the CIT(A) is based the on the various decisions of the Hon'ble Supreme*

*Court as well Jurisdiction High Court. No contrary decisions has been brought before us accordingly we do not find any error or illegality in the impugned order of CIT(A) qua this issue. The same is upheld. 9. Again in appeal for AY 1997-98 & 1998-99, the Tribunal by following the decision of AY 1996-97 dismissed the identical ground of appeal by passing the following order: 11. Next additional ground pertains to disallowance of depreciation on matured investments Rs.18,35,53,508/-. The AR fairly conceded that the issue is covered against the assessee by the decision of the Tribunal in its own case for assessment year 1996-97 (para 38 & 39) in ITA No.5470/M/2002 which reads as under :-*

*“38. Additional Ground No. 4 is regarding depreciation on matured securities. The assessee has claimed a sum of Rs.2,23,86,418/- towards depreciation of investments. The AO disallowed the claim of the assessee and the CIT(A) has confirmed the action of the AO. We have heard the Ld. AR as well as Ld. DR and ITA No. 4736 & 4598/M/2010- State Bank of India 10 considered the relevant material on record. The CIT(A) has decided the issue in para 9 as under:*

*“9. The ninth effective ground of appeal is against the disallowance of Rs.2,23,86,418/- being the provision for diminution in the value of securities which had matured and become due for redemption during the year but were not redeemed. It was contended before the A.O. that in some cases, the companies or the State Governments who had issued the relevant securities were not able to pay the amount due on redemption. The appellant treats these securities as nonperforming assets and a provision is made at a certain percentage for diminution in their value as in the case of other non-performing assets. There may be some delay on the part of the companies or the*

*State Governments in paying the redemption amount. But, whenever the payment would be made it cannot be expected to be less than the face value. On the date of maturity, the whole of the amount of redemption money becomes due under the mercantile system of accounting followed by the appellant unless a portion of this amount is written off as bad debt. It is a real income and hence has to be taxed as such under the mercantile system followed by the appellant. Reliance in this regard is placed on State Bank of Travancore vs. CIT 158 ITR 102, 155 (SC) which was Travancore vs. CIT 158 ITR 102, 155 (SC) followed in Western India Oil Distributing Co. Ltd. Vs. CIT 206 ITR 359 (Bom). ITR 359 (Bom). It was held in this decision that the concept of real income should not be so read as to defeat the provisions of the Act. Extension of the concept of real income to a field so as to negate accrual after the amount had become receivable is contrary to the postulates of the Act, the Supreme Court held (p. 146 of 158 ITR). Moreover, as held in the case of Navin R. avin R. Karnani vs. CIT 185 ITR 408 (Bom) Karnani vs. CIT 185 ITR 408 (Bom) ani vs. CIT 185 ITR 408 (Bom), it was not possible to waive any amount of income which had accrued under the mercantile system of accounting on the ground of diminished hope of recovery. Furthermore, any liability de futuro is not an ascertained liability in praesenti and cannot be allowed as deduction under the Income-tax Act as held in the case of Indian Molasses Co. Pvt. Molasses Co. Pvt.Ltd. vs. CIT 37 ITR 66 (SC) Ltd. vs. CIT 37 ITR 66 (SC) and Standard Mills Ltd. vs. CIT 37 ITR 66 (SC) Standard Mills Co. Ltd. Vs.CIT 229 ITR 366(Bom Co. Ltd. Vs.CIT 229 ITR 366(Bom) CIT 229 ITR 366(Bom). Hence, no such ad hoc deduction could be allowed against the amount receivable on redemption of securities which had matured and become*

*due for payment before the close of the accounting year. This ground therefore fails.”*

*“39.The findings of the CIT(A) is based the on the various decisions of the Hon'ble Supreme Court as well Jurisdiction High Court. No contrary decisions has been brought before us accordingly we do not find any error or illegality in the impugned order of CIT(A) qua this issue. The same is upheld.” Respectfully following the above additional ground No.4 is decided against the assessee.*

*10. Thus, respectfully following the decision of Tribunal in assessee's own case for AY 1996-97, 1997-98 & 1998-99 in ITAs No. 5470/Mum/2002 and ITA No. 3823-3824/Mum/2002, this ground of appeal is dismissed.”*

*8. On appraisal of the above mentioned finding, we find that this issue has already decided against the assessee by Hon'ble ITAT in the assessee's own case for the A.Y. 1996-97, 1997-98 & 1998-99 bearing ITA.No.5470/M/2002, 3823 & 3824/M/2002. Nothing came into noticed that the finding has been changed or varied at this stage. Therefore, by reliance upon the decision of the Hon'ble ITAT in the assessee's own case for the A.Y. 1999-2000 (supra). We decide this issue in favour of the revenue against the assessee.”*

12. So following the consistent orders passed by the Tribunal in favour of the assessee, which have been confirmed by the Hon'ble Jurisdictional High Court vide order dated 23.08.2016 passed in ITA No.271 of 2014 available at page 452 to 457 of the paper book, we are of the considered view that the Ld. CIT(A) has rightly

decided this issue against the assessee, hence ground No.2 is decided against the assessee.

**Ground No.3 of Assessee's appeal (ITA No.3685/M/2013) A.Y.**

**2005-06**

**&**

**Ground No.3 of Revenue's appeal (ITA No.4951/M/2013) A.Y.**

**2005-06**

13. The AO made disallowance of Rs.46,35,85,591/- claimed by the assessee for earning exempt income under section 10(15)(iv)(c&f), section 10(15)(iv)(h), 10(23G) by invoking the provisions contained under section 14A of the Act read with rule 8D of the Rules.

14. However, on the other hand, the Ld. CIT(A) by giving part relief to the assessee restricted the disallowance of Rs.46,35,85,591/- which has been challenged both by the assessee as well as the revenue.

15. We have perused para 6.4 to 6.10 of the impugned order passed by the Ld. CIT(A), which shows that while deciding this issue Ld. CIT(A) has followed earlier years' order qua A.Y. 2003-04 & 2004-05 and proceeded to restrict the disallowance under section 14A read with rule 8D(2) to Rs.46,35,85,591/-.

16. The Ld. A.R. for the assessee contended that for A.Y. 2005-06, rule 8D has no applicability and that it has already been decided by the Hon'ble Apex Court in South India Bank vs. CIT in civil appeal No.2963 of 2012 wherein it has been held that "in cases where interest free own funds exceed investment, proportionate disallowance of interest is not warranted under section 14A of the Act for investments made in tax free bonds/securities which yield tax free dividends and interest to the assessee. The co-ordinate Bench of the Tribunal in case of State Bank of Bikaner & Jaipur (now merged with State Bank of India) vs. ACIT in ITA Nos.2262, 2263, 2191 & 2192/M/2019 also taken the same view. In these circumstances, section 14A is attracted only when actual expenses are incurred by the assessee.

17. Identical issues have already been decided by the co-ordinate Bench of the Tribunal in assessee's own case by returning the following findings:

***"5.4. We find that computation mechanism provided in Rule 8D which was introduced from 24/03/2008 could be made applicable only from A.Y.2008-09 and hence, the same cannot be applied for earlier years prior to A.Y.2008-09. The ld. AR fairly submitted that in order to maintain consistent stand, this Tribunal in earlier years in assessee's own case had disallowed 1% of exempt income u/s.14A of the Act as expenses attributable for earning the exempt income. The ld. DR fairly agreed that the said disallowance to be made. Accordingly, we direct the ld. AO to disallow***

***only 1% of exempt income u/s.14A of the Act which would be in line with disallowance made in earlier years. Accordingly, the ground Nos. 4.1 to 4.4 raised by the assessee are partly allowed.”***

18. Following the settled principle of law laid down by the Hon'ble Apex Court and co-ordinate Bench of the Tribunal in the identical facts and circumstances of the case, we are of the considered view that in the instant case disallowance to the extent of 1% of the exempt income under section 14A is to be made. So we accordingly direct the AO to disallow 1% of the exempt income under section 14A of the Act. So ground No.3 of assessee is allowed in favour of the assessee and ground No.3 of the Revenue is decided against the Revenue.

**Grounds No.4.1, 4.2 & 4.3 of ITA No.3685/M/2013 (Assessee's appeal)**

19. The AO made disallowance of Rs.50,71,44,257/- claimed by the assessee on account of depreciation on leased assets, which has been upheld by the Ld. CIT(A).

20. We have perused the order passed by the co-ordinate Bench of the Tribunal which is on identical issue having been decided against the assessee by returning the following findings:

***“7.1. We have heard rival submissions and perused the materials available on record. Both the parties mutually***

***agreed that this issue is already covered by the order of this Tribunal in assessee's own case for A.Yrs. 2001-02 and 2002-03 vide order dated 12/07/2021. The relevant operative portion of the said order is reproduced hereunder:-***

***20. Ground no. 6, relates to depreciation of ₹ 165,18,13,363, on account of leased assets.***

***21. Having considered the submissions of the parties and having perused the material on record including the case laws relied upon, we find that the issue for our adjudication has been decided by the Co-ordinate Bench of this Tribunal in assessee's own case against the assessee in assessment year 2008- 09, 2000-01, 1996-97, 1997-98, 1998-99 and 1999-2000. The learned Sr. Counsel for the assessee submitted that the assessee has filed appeal against the order passed by the Tribunal, which has been admitted by the Hon'ble Jurisdictional High Court and pending for hearing and yet no orders have been passed on merit. Keeping this in view and consistent with view taken by the Coordinate Bench of this Tribunal in assessee's own case, we uphold the order of the learned Commissioner (Appeals) on this issue by dismissing the ground raised by the assessee. Ground no.6, is dismissed."***

21. Following the order passed by the co-ordinate Bench of the Tribunal for A.Y. 2003-04 & 2004-05, we are of the considered view that since the issue has already been decided against the assessee grounds No.4.1, 4.2 & 4.3 of the assessee's appeal are decided against the assessee.

**Grounds No.5.1 & 5.2 of ITA No.3685/M/2013 (Assessee's appeal)**

22. The AO made a disallowance of deduction claimed by the assessee under section 36(1)(vii) qua "write off" of non rural advances to the tune of Rs.10,50,55,44,005/- which the Ld. CIT(A) has upheld.

23. The Ld. A.R. for the assessee challenging the impugned disallowance brought to the notice of the Bench that this issue has also been decided in favour of the assessee in the order passed for A.Y. 2003-04 and 2004-05 (supra), which fact has not been controverted by the Ld. D.R. for the Revenue.

24. We have perused the order passed by the co-ordinate Bench of the Tribunal in assessee's own case, wherein identical issue has been decided in favour of the assessee by returning the following findings:

***"9.1. We have heard rival submissions and perused the materials available on record. We find that both the parties mutually agreed that this issue has already been adjudicated by this Tribunal in assessee's own case for A.Y.2008-09 in ITA No.3644 and 4563/Mum/2016 dated 03/02/2020 for A.Y.2008-09 wherein it was held as under:-***

***"54. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in disallowing deduction claimed by assessee under section 36(1)(vii) of the Act being the amount of Bad Debts written off (other than in respect of***

*rural advances). For this assessee raised the following ground No. 6: -*

*“6. Deduction under section 36(1)(vii) of ₹1026,23,30,375/-. 6.1 The learned CIT(A) erred in not allowing deduction of ₹1026,23,30,375 under section 36(1)(vii) being the amount of bad debts written-off (other than in respect of rural advances)*

*6.2 The learned CIT(A) erred in relying on explanation 2 to section 36(1) as inserted by the Finance Act, 2013 which is applicable from assessment years 2014-15 onwards.”*

*55. Brief facts are that the assessee has claimed write-off of bad debts in connection with non-rural advances under section 36(1)(vii) of the Act amounting to Rs. 1026,23,30,375/-by way of note 18 to the revised return of income. The AO did not allow the claim of the assessee on the basis that deduction under section 36(1)(vii) of the Act is available towards rural and non-rural advances and in view of the proviso to section 36(1)(vii) of the Act, the deduction under section 36(1)(vii) of the Act is limited to excess of the amount written off over the credit balance of provision for bad and doubtful debts under section 36(1)(vii) of the Act. The CIT(A) confirmed the disallowance following the order of the CIT(A) for the assessment year 2007- 08, wherein the CIT(A) had held that Explanation 2 to section 36(1)(vii) of the Act inserted w.e.f 01.04.2014 which states that the proviso to section 36(1)(vii) of the Act and section 36(2)(v) of the Act relates to all types of advances i.e. rural and non-rural advances, is clarificatory in nature. Accordingly, the CIT(A) held that the assessee cannot be allowed double deduction i.e. one on provision basis and then again on actual write-off basis. The CIT(A) observed as under: -*

*“14.3 I have considered the appellant's submissions. This is a recurring issue and this issue was considered by CIT(A) in appellant's*

*own case for A.Y. 2007-08 which are reproduced as under:*

*"3.11.1 This is also a recurring issue and has been decided by the CFI(A) in AY 2002-03 to 2006-07 against the assessee. The decision dated 30.03.2013 of CIT(A) for AY 2006-07 in appeal no IT-241/09- 10 is placed on record. As discussed therein, the Finance Act, 2013 has inserted explanation-2 to Sec 36(1) which reads as under the removal of doubts it is hereby clarified that for the purposes of the proviso to clause (vii) of this sub section of clause (v) of sub-section 2 the account referred to therein shall be only one account in r/o provision of bad and doubtful debts under clause (viii) and such account shall relate to all types of advances including advances made by rural branches". This explanation, though inserted w.e.f. 01.04.2014, is "clarificatory" in nature. It states that proviso to clause (vii) and clause(v) of sub-section2 shall relate to all types of advances including advances made by rural branches. The proviso to clause (vii) of Sec.36(1) therefore shall limit the application to both rural advances and non-rural advances. Therefore, there cannot be double deduction i.e. one on provision basis and then again on actual writeoff basis separately and independently. The disallowance is accordingly confirmed. This ground of appeal is dismissed."*

*14.4 In view of the above decision of CIT(A), claim of the appellant is disallowed. This ground of appeal is disallowed."*

*56. We noted that for the year under consideration the assessee has not claimed any deduction for bad debts written-off. However, it should be allowed deduction in respect of write-offs of non-rural branch advances amounting to Rs. 1026 crore. Before us Revenue has emphasised that deduction*

*under section 36(1)(viia) of the Act is available to both rural and non-rural debts and accordingly, the restriction as per the proviso to section 36(1)(vii) of the Act is also applicable. The learned Counsel argued that as per the provisions of section 36(1)(viia) of the Act, a bank is eligible to avail deduction in respect of provision made for bad and doubtful debts, of an amount not exceeding 7.5% of total income and of an amount not exceeding 10% of the aggregate average advances made by the rural branches of the bank. Accordingly, the assessee is eligible to claim deduction of an amount lower of the provision made for bad and doubtful debts or the amount calculated as per the prescribed methodology. As per the proviso to section 36(1)(vii) of the Act, deduction under section 36(1)(vii) of the Act is limited to excess of the amount written off over the credit balance in the provision for bad and doubtful debts accounts made under section 36(1)(viia) of the Act. Further, as per section 36(2)(v) of the Act, where a debt made by the assessee to which section 36(1)(viia) of the Act applies, no deduction shall be allowed unless the assessee has debited the amount of such debt to the provision for bad and doubtful debts account made under section 36(1)(viia) of the Act. On a conjoint reading of the aforesaid provisions, it can be inferred that sections 36(1)(viia) and 36(2)(v) of the Act and the first proviso to section 36(1)(vii) of the Act, apply only to rural advances.*

*57. We noted that, as reliance placed by assessee, this issue is decided in favour of the assessee by the Supreme Court judgment in the case of The Catholic Syrian Bank Ltd. vs. CIT [2012] 343 ITR 270 (SC). The Supreme Court was concerned with a case where the assessee had claimed a deduction under section 36(1)(vii) of the Act pertaining to urban advances. The deduction was not allowed to the assessee on the basis that deduction under section 36(1)(vii) of the Act can be allowed only to the extent it is in excess of the provisions created and allowed as a deduction under clause (viia). The Supreme Court*

*held that if the bad debts actually written off in the accounts of the assessee-bank represents only debts arising out of urban advances, allowance thereof is not affected, controlled or limited in any way by the proviso to section 36(1)(vii) of the Act. The relevant extract of the judgement of the Supreme Court is reproduced below:*

*“41. To conclude, we hold that the provisions of Sections 36(1)(vii) and 36(1)(viii) of the Act are distinct and independent items of deduction and operate in their respective fields. The bad debts written off in debts, other than those for which the provision is made under clause (viii), will be covered under the main part of Section 36(1)(vii), while the proviso will operate in cases under clause (viii) to limit deduction to the extent of difference between the debt or part thereof written off in the previous year and credit balance in the provision for bad and doubtful debts account made under clause (viii). The proviso to Section 36(1)(vii) will relate to cases covered under Section 36(1)(viii) and has to be read with Section 36(2)(v) of the Act. Thus, the proviso would not permit benefit of double deduction, operating with reference to rural loans while under Section 36(1)(vii), the assessee would be entitled to general deduction upon an account having become bad debt and being written off as irrecoverable in the accounts of the assessee for the previous year. This, obviously, would be subject to satisfaction of the requirements contemplated under Section 36(2).”*

*58. Reliance in this regard is also placed on the following decisions, wherein the aforesaid issue has been decided in favour of the assessee:*

*• CIT vs. City Union Bank Ltd. [2007] 291 ITR 144 (Madras)*

- *DCIT vs. Karnataka Bank Ltd. [2012] 349 ITR 705 (SC)*
- *Punjab & Sind Bank vs. ACIT [2008] 23 SOT 103 (Delhi)*

*59. Further, it was contended that Explanation 2 to section 36(1)(vii) of the Act inserted w.e.f. 01.04.2014 which states that proviso to section 36(1)(vii) of the Act and section 36(2)(v) of the Act relates to all types of advances i.e. rural and non-rural advances, is Clarificatory in nature. In this regard, reliance is placed on the decision of the Supreme Court in case CIT vs. Vatika Township (P.) Ltd. [2014] 367 ITR 466 (SC), wherein it was held that one established rule for interpretation of legislation is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. In the present case, the legislature stipulated a fixed date i.e. 01.04.2014 while inserting Explanation 2 to section 36(1)(vii) of the Act. In view of the above, we are of the view that assessee is entitled to deduction under section 36(1)(vii) of the Act being the amount of bad debts written off (other than in respect of rural advances). This issue of assessee appeal is allowed.”*

*9.2. Respectfully following the same, the ground No.8 raised by the assessee is allowed.”*

25. By following the various decisions rendered by Hon'ble Supreme Court in cases of The Catholic Syrian Bank Ltd. vs. CIT [2012] 343 ITR 270 (SC), CIT vs. Vatika Township (P.) Ltd. [2014] 367 ITR 466 (SC), DCIT vs. Karnataka Bank Ltd. [2012] 349 ITR 705 (SC), Hon'ble High Court of Delhi in case of Punjab & Sind Bank vs. ACIT [2008] 23 SOT 103 (Delhi) and Hon'ble High Court of Madras in case of CIT vs. City Union Bank Ltd.

[2007] 291 ITR 144 (Madras), we are of the considered view that the assessee is entitled to deduction under section 36(1)(vii) of the Act on account of bad debts (other than in respect of rural advances). So grounds No.5.1 & 5.2 are decided in favour of the assessee.

**Ground No.6 of ITA No.3685/M/2013 (Assessee's appeal)**

26. The AO made an addition of Rs.17,40,43,00,607/- by reducing depreciation/taxing appreciation in the value of securities held as available for sale (AFS) having been held for trading category (HFT), which has been upheld by the Ld. CIT(A).

27. The Ld. A.R. for the assessee, at the very outset, brought to the notice of the Bench that this issue has also been decided in favour of the assessee by the co-ordinate Bench of the Tribunal for another A.Y. also i.e. for A.Y. 2004-05 vide order dated 30.09.2012 in ITA No.3780/M/2012, for A.Y. 2008-09 vide order dated 03.02.2020 in ITA No.3644/M/2016 and has also placed reliance on decision rendered by the Hon'ble High Court of Madras in case of CIT vs. Chari & Ram (1949) 17 ITR 1 (Madras) and on the decision rendered by the Hon'ble Apex Court in case of United Commercial Bank vs. CIT (1999) 240 ITR 355 (SC). This factual position has not been controverted by the Ld. D.R. for the Revenue.

28. We have perused the order passed by the co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2008-09 qua identical issue which has been decided in favour of the assessee by following assessee's own case for A.Y. 2008-09 by returning the following findings:

***“33.1. We have heard rival submissions and perused the materials available on record. We find that this issue has already been adjudicated by this Tribunal in assessee's own case for A.Y.2008-09 in ITA No.3644 & 4563/Mum/2016 vide order dated 03/02/2020 wherein it was observed as under:-***

***60. “The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in disallowing deduction claimed by assessee on account of reducing depreciation/ taxing appreciation in the value of securities held as Available For Sale(AFS) and Held For Trading(HFT) category. For this assessee has raised the following ground No. 7: -***

***“7. Depreciation on securities***

***The learned CIT(A) erred in upholding the action of the Assessing Officer in reducing deprecation/ taxing appreciation in the value of securities held as Available for Sale (AFS) ad Held for Trading (HFT) category.”***

***61. Brief facts are that as per assessee from FY year 2004-05 the Bank has been valuing investments in 'Available for Sale' (AFS) and 'Held For Trading' (HFT) in books after netting off classification-wise depreciation and appreciation, computed scrip-wise and providing for net depreciation in each classification while ignoring net appreciation, as required by RBI guidelines. However, for tax***

*purposes, investments in AFS and HFT categories are being valued scrip wise and depreciation, if any, was provided scrip wise while ignoring appreciation. Valuation of investments in AFS and HFT categories has consistently been done scrip-wise for tax purposes in earlier years. Therefore, for tax purposes valuation is done on the basis of lower of cost or market value computed scrip-wise and providing for depreciation in each classification while ignoring any appreciation. The assessee has claimed the deduction by way of notes to the computation of total income. The AO, however, has rejected the claim of the assessee. The CIT(A) also confirmed the action of the AO by observing as under: -*

*15.3 I have considered the appellant's submissions. This is a recurring issue and this issue was considered by CIT(A) in appellant's own case for A.Y. 2007-08 which are reproduced as under:*

.....

*15.4 In view of the above decision of CIT(A), claim of the appellant is disallowed. This ground of appeal is disallowed.*

*62. Before us it was argued that from the financial year 2004-05, the assessee has been valuing investments in 'Available for Sale' (AFS) and 'Held for Trading' (HFT) in books after netting off classification-wise depreciation and appreciation, computed scrip-wise and providing for net depreciation in each classification while ignoring net appreciation, as required by RBI guidelines. However, for tax purposes, investments in AFS and HFT categories are being consistently valued scrip wise and depreciation, if any, was provided scrip wise while ignoring appreciation. Valuation of investments in AFS and HFT categories has consistently been done scrip-wise for tax purposes in earlier years. The same has also been accepted by the AO upto assessment year 2004-05 i.e. prior to the*

*change in the treatment given in books of account. Therefore, for tax purposes valuation is done on the basis of lower of cost or market value computed scrip-wise and providing for depreciation in each of the scrip, while ignoring any appreciation. The assessee has claimed a deduction on this account vide note 24 to the revised return of income.*

*63. We noted that revenue rejected the claim of the assessee following the decision of the Mumbai Tribunal in the case of Deutsche Bank AG. The CIT(A) upheld the disallowance made by the AO following the earlier years order of CIT(A) for assessment year 2007-08. The Revenue before the Tribunal has emphasised on the applicability of Mumbai Tribunal's decision in the case of Deutsche Bank AG and that the valuation is as per RBI guidelines. It was contended by the assessee that it is a well settled principle of law that unrealised gains on stock are not to be brought to the tax net. Reliance in this regard is placed on the decision of the Supreme Court in the case of Chainrup Sampatram vs. CIT [1953] 24 ITR 481 (SC), wherein it is held that profit cannot "arise out of the valuation of the closing stock". The relevant extract of the judgement of the Supreme Court is reproduced below:*

*“While we agree with the conclusion that no part of the profits of the firm in the accounting year can be said to have accrued or arisen at Bikaner, the reasoning by which the learned Judges arrived at that conclusion seems to us, with all respect, to proceed on a misconception. It is wrong to assume that the valuation of the closing stock at market rate has, for its object, the bringing into charge any appreciation in the value of such stock. The true purpose of crediting the value of unsold stock is to balance the cost of those goods entered on the other side of the account at the time of their purchase, so that the cancelling out of the entries relating to the same stock from both sides of the account would leave only the*

*transactions on which there have been actual sales in the course of the year showing the profit or loss actually realised on the year's trading.*

*..... While anticipated loss is thus taken into account, anticipated profit in the shape of appreciated value of the closing stock is not brought into the account, as no prudent trader would care to show increased profit before its actual realisation. This is the theory underlying the rule that the closing stock is to be valued at cost or market price whichever is lower, and it is now generally accepted as an established rule of commercial practice and accountancy. As profits for income-tax purposes are to be computed in conformity with the ordinary principles of commercial accounting, unless of course, such principles have been superseded or modified by legislative enactments unrealised profits in the shape of appreciated value of goods remaining unsold at the end of an accounting year and carried over to the following year's account in a business that is continuing are not brought into the charge as a matter of practice, though, as already stated, loss due to a fall in price below cost is allowed even if such loss has not been actually realised. .... Again, it is a misconception to think that any profit "arises out of the valuation of the closing stock" and the sites of its arising or accrual is where the valuation is made. As already stated, valuation of unsold stock at the close of an accounting period is a necessary part of the process of determining the trading results of that period, and can in no sense be regarded as the "source" of such profits."*

**64.** *The Supreme Court in the case of A.L.A. Firm vs. CIT (1991) (189 ITR 285) (SC) has observed that closing stock cannot be valued at a market value higher than the cost as that will result in taxation of*

*the notional profits which the assessee has not realised. The relevant extract of the judgement of the Supreme Court is reproduced below:*

*“The valuation of the closing stock at market value invariably will create a problem. For if the market value is higher than cost, the accounts will reflect notional profits not actually realised. On the other hand, if the market value is less, the assessee will get the benefit of a notional loss he has not incurred. Nevertheless, as mentioned earlier, the ordinary principles of commercial accounting permit valuation 'at cost or market price, whichever is the lower'. [para 27]*

*The proper practice is to value the closing stock at cost. That will eliminate entries relating to the same stock from both sides of the account. To this rule custom recognises only one exemption and that is to value the stock at market value if that is lower. But on no principle can one justify the valuation of the closing stock at a market value higher than cost as that will result in the taxation of notional profits the assessee has not realised. [para 28]”*

*65. In Sanjeev Wollen Mills vs. CIT [2005] 279 ITR 434 (SC), the Supreme Court was concerned with a case where the assessee had valued its finished goods at market value. For assessment year 1992-93, the opening stock was valued at Rs. 90 per kg (market price as on 1.4.1991 was Rs. 98 per kg) and the closing stock at Rs. 130 per kg. For assessment year 1993-94, the opening stock was valued at Rs. 130 per kg and there was no closing stock. The assessee returned a loss of Rs. 54,420 for the second year. The AO held that the profits were artificially inflated in assessment year 1992-93 to claim higher deduction under section 80HHC of the Act. The Supreme Court held that the profit earned by valuing finished goods is notional imaginary profit which could not be*

*taxed. In view of the above, it is argued that appreciation in value of investments cannot be taken into account. The netting off of appreciation against the depreciation within a classification is therefore contrary to the principle laid down by the Supreme Court in the aforementioned judgements.*

*66. In context of netting off depreciation against appreciation, the Madras High Court in the case of CIT vs. Chari & Ram [1949] 17 ITR 1 (Madras) has held that there would be no assurance that there would be a market for the entire stock of articles of which the market value is higher and therefore, it would be hazardous to assume that the entire stock could be sold at the prevailing market rate and necessarily bring in a profit. The High Court also held that there is no provision of law or principle according to which the assessee could be compelled to adopt either the average cost for all the items or the market rate for all the items. Further, the Supreme Court in the case of United Commercial Bank vs. CIT [1999] 240 ITR 355 (SC) has held that there is no such question of following two different methods for valuing its stock-in-trade (investments) because bank was required to prepare balance sheet in the prescribed form and it had no option to change it and for the purpose of income-tax, what is taxed is the real income which is to be deduced on the basis of the accounting system regularly maintained by the assessee. In view of the above, it was claimed that the assessee be allowed a deduction in respect of depreciation on each securities, scrip wise, while ignoring the appreciation.*

*67. Further, the assessee claimed that it has consistently been following the method of valuation of lower of cost or market price in respect of securities. Accordingly, the method of valuation followed by the assessee is required to be accepted. Reliance in this regard is placed on the following decisions:*

- *CIT vs. Bank of Baroda [2003] 262 ITR 334 (Bombay)*
- *CIT vs. Corpn. Bank Ltd. [1988] 174 ITR 616 (Karnataka)*

*Further, the issue was not disputed upto financial year 2003-04 and hence, the AO is not justified in taking a different view.*

*68. The assessee also relied on the judgement of the Bombay High Court in the case of Union Bank of India dated 08.02.2016 in ITA 1977 of 2013. The assessee in this case for the purpose of its books was netting off the depreciation in its securities against appreciation in other securities while for tax purpose, the assessee has been claiming gross depreciation that is without netting of the appreciation in other securities held as a part of investment. The Bombay High Court has dismissed the appeal of the Revenue and has decided the issue in favour of the assessee. It is argued that the facts of the present case are exactly same as in the aforesaid case of Union Bank of India. This issue stands covered by the judgement of the jurisdictional High Court. The facts of the assessee's case and the facts in the decision of the Bombay High Court in the case of Harinagar Sugar Mills Ltd. vs. CIT [1994] 207 ITR 901 (Bombay), relied by the AO are different. In the aforesaid decision, the assessee had changed the method of valuing stock in the year under consideration, whereas in the assessee's case, there is no change in the method of valuation. Also, in that case, sugar was valued differently by bifurcating the stock into 'levy sugar' and 'free sugar'. The Court's conclusion is based on the fact that there was no justification for bifurcation of sugar between free and levy sugar. The Mumbai Tribunal in the case of DCIT vs. Majestic Holdings And Finvest (P.) Ltd. [2010] 2 ITR(T) 407 (Mumbai) has noted that the reliance of the Departmental Representative on the judgement of the Bombay High Court in the case of Harinagar Sugar Mills Ltd. is misconceived inasmuch as in that case there was nothing to show the bifurcation of the*

*closing stock of sugar into levy sugar and free sugar and hence, the assessee was obligated to value the entire stock at one value. In the assessee's case as well, each scrip is different and therefore requires independent valuation. The CIT DR placed reliance on the decision of the Mumbai Tribunal in the case of JCIT vs. Dena Bank [2012] 20 taxmann.com 278 (Mumbai). In the aforementioned case, the security was purchased in year 1 at Rs. 100 and the market price at the end of the year was Rs. 90. Accordingly, the stock was valued at market price of Rs. 90 being lower than the cost. In year 2, the market price went upto Rs. 95. Accordingly, the stock was valued at market price of Rs. 95 being lower than the cost. However, suppose in year 3, the market value rises to Rs. 120, in such a situation, the stock would be valued at cost i.e Rs. 100, being lower than the market price. The Mumbai Tribunal held that excess of appreciation over the cost price would not be considered for valuing the closing stock. In the present case, we are not concerned with a scenario where in the later year the depreciation provided in earlier years is reduced. Further, the decision of the Mumbai Tribunal in the case of Deutsche Bank A.G vs. DCIT [2003] 86 ITD 431 (Mumbai), relied by the AO is in connection with valuation of foreign exchange forward contracts. In this case the assessee did not account for in the financial statement the anticipated/contingent profits from the contracts to the extent not settled as on the last day of the accounting year whereas any loss on such contracts was provided for by a charge in the profit and loss account on the best estimates. The Department brought to tax the profit on such forward exchange contracts and stated that one method for valuation of the entire stock of securities should be followed. This resulted in a situation of taxing appreciation of stock, which goes against the general and settled principle of non-taxation of notional income, as laid by the Supreme Court in the case of Sanjeev Wollen Mills vs. CIT [2005] 279 ITR 434 (SC) and others discussed supra. Hence, we are of the view that this disallowance of depreciation/ reducing of*

*depreciation on appreciation in the value of securities held as available for sale and held for trading category are allowable. We direct the AO accordingly.”*

*33.2. Respectfully following the same, the ground No.7 raised by the assessee is allowed.”*

29. Since this issue has already been decided in favour of the assessee by the Tribunal in A.Y. 2004-05 & A.Y. 2008-09, which has been accepted by the Revenue, we are of the considered view that the AO as well as the Ld. CIT(A) have erred in making disallowance of depreciation/reducing of depreciation on appreciation in the value of securities held as available for sale by treating the same for trading category. So ground No.6 is determined in favour of the assessee.

**Grounds No.7.1 & 7.2 of ITA No.3685/M/2013**  
**(Assessee’s appeal)**

30. The AO by invoking the provisions contained under section 41(iv) of the Act taxed the recovery of bad debts written off on the ground that the assessee has not claimed a deduction for such advances under section 36(1)(vii) of the Act, which findings have been upheld by the Ld. CIT(A).

31. The Ld. A.R. for the assessee argued that this issue has also been decided by remitting the same back to the AO in assessee’s

own case for A.Y. 2004-05 (supra) and A.Y. 2008-09 (supra) and this factual position has not been controverted by the Ld. D.R. for the Revenue.

32. We have perused the order passed by the co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2003-04 & 2004-05 which is on identical issue and have been decided by remitting the case back to the AO to decide afresh after providing opportunity of being heard to the assessee by returning the following findings:

***“16.1. We have heard rival submissions and perused the materials available on record. All the facts necessary for adjudication of the additional ground is already on record and hence the same are hereby admitted. We find that this issue already was the subject matter of adjudication by this Tribunal in assessee's own case for A.Yrs 2001-02 and 2002-03 vide order dated 12/07/2021 wherein this issue was restored to the file of the ld. AO by observing as under:-***

***“42. Having heard both the parties, we find that identical issue has been consistently decided by the Tribunal in assessee's own case for the assessment year 1996-97, 1997-98, 1998-99, 1999-2000, 2000-01 and 2008-09, wherein the Tribunal following the order 3rd January 2014, passed in assessee's own case for the assessment year 1996-97 in M.A. no.371/Mum./2014 restored the issue to the file of the Assessing Officer and directed him to decide the controversy afresh by Giving an opportunity of being heard to the assessee in accordance with law by following similar guidelines as given by the Tribunal in the aforesaid misc. application. Consistent with the view as aforesaid, we set aside the order passed by the learned Commissioner (Appeals) and restore the issue to the file of the Assessing Officer with similar direction. We order accordingly. Additional ground***

*no.2r raised by the assessee is allowed for statistical purpose.”*

*16.2. Respectfully following the same, the additional ground No.2 is restored to the file of the ld. AO and allowed for statistical purposes.”*

33. Consequently, grounds No.7.1 & 7.2 are decided in favour of the assessee for statistical purposes.

**Grounds No.8.1 & 8.2 of ITA No.3685/M/2013**  
**(Assessee's appeal)**

34. The AO taxed the income earned by the assessee bank from its foreign branches, which is upheld by the Ld. CIT(A). The Ld. A.R. for the assessee challenging the impugned action of Ld. AO/Ld. CIT(A) contended that this issue has also been decided in favour of the assessee in A.Y. 2003-04 & 2004-05 (supra) in assessee's own case by remitting the case back to the AO to decide afresh in view of the findings returned by the Tribunal in assessee's own case for A.Y. 2001-02 & 2002-03. This fact has not been controverted by the Ld. D.R.

35. We have perused the order passed by the co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2003-04 & 2004-05 which is on identical issue, which has been remitted back to the AO to decide afresh after providing opportunity of being heard to the assessee by returning following findings:

***“13. The ground No.12 raised by the assessee is challenging the action of the lower authorities in taxing the income earned from foreign branches in India.***

***13.1. We have heard rival submissions and perused the materials available on record. We find that both the parties mutually agreed before us that this issue has already been adjudicated by this Tribunal in assessee’s own case for A.Yrs. 2001-02 and 2002-03 vide order dated 12/07/2021. The relevant operative portion of the said order is reproduced hereunder:-***

***“43. Additional ground no.3, raised by the assessee relates to treatment of income earned from foreign branches i.e., whether or not the income earned is liable to be taxed in India.***

***44. Considered the rival submissions and perused the material on record in the light of the decisions relied upon by the learned Counsel for the assesses. Before us, both the parties agree that identical issue has been consistently decided by the Tribunal In assessee's own case for the assessment year 1996-97, 1997-98, 1998-99, 1999-2000, 2000-01 and 2008-09, wherein the Tribunal following the order 3'd January 2014, passed in assessee's own case for the assessment year 1996-97 in M.A. no.371/Mum./2014, restored the issue to the file of the Assessing Officer and directed him to decide the controversy afresh by giving an opportunity of being heard to the assessee in accordance with law by following similar guidelines as given by the Tribunal in the aforesaid misc. application. Consistent with the view as aforesaid, we set aside the order passed by the learned Commissioner (Appeals) and restore the issue to the file of the Assessing Officer with similar direction. We order accordingly. Additional ground no.3, raised by the assessee is allowed for statistical purpose.”***

***13.2. Respectfully following the same, the ground No.12 raised by the assessee is restored to the file of the ld. AO***

*with similar directions contained hereinabove and accordingly allowed for statistical purposes.”*

36. We have perused the order passed by the co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2003-04 & 2004-05 which is on identical issue. By following the same, we restore this issue back to the AO to decide afresh in view of the directions given by the Tribunal in assessee's own case for A.Y. 1996-97 to 2000-01 and 2008-09. So Grounds No.8.1 & 8.2 are decided in favour of the assessee for statistical purposes.

**Ground No.9 & 10 of ITA No.3685/M/2013 (Assessee's appeal):**

37. Grounds No.9 & 10 are general, hence need no findings.

38. Assessee by moving an application sought to raise the additional grounds of appeal, which have been opposed by the Ld. D.R. Application for raising additional grounds which are extracted in the preceding paras along with main grounds of appeal raised by the assessee, which are legal in nature, and can be raised at any stage of proceedings are allowed, to be decided as under:

**Additional Grounds No.1, 1.1, 1.2 & 1.3 of Assessee's appeal:**

39. The Ld. A.R. for the assessee challenging the action of the AO in not allowing the deduction for the education cess on income

tax paid for the year under consideration by relying upon the decision rendered by Hon'ble Bombay High Court in case of Sesa Goa Ltd. vs. JCIT (ITA No.17 of 2013).

40. Hon'ble High Court of Bombay in case of Sesa Goa Ltd. vs. JCIT (supra) decided the identical issue and held that "Education cess" is deductible by computing business income by returning the following findings:

*"27. The CBDT Circular, is binding upon the authorities under the IT Act like Assessing Officer and the Appellate Authority. The CBDT Circular is quite consistent with the principles of interpretation of taxing statute. This, according to us, is an additional reason as to why the expression "cess" ought not to be read or included in the expression "any rate or tax levied" as appearing in section 40(a)(ii) of the IT Act.*

*28. In the Income-tax Act, 1922, section 10(4) had banned allowance of any sum paid on account of 'any cess, rate or tax levied on the profits or gains of any business or profession'. In the corresponding Section 40(a)(ii) of the IT Act, 1961 the expression "cess" is quite conspicuous by its absence. In fact, legislative history bears out that this expression was in fact to be found in the Income-tax Bill, 1961 which was introduced in the Parliament. However, the Select Committee recommended the omission of expression "cess" and consequently, this expression finds no place in the final text of the provision in Section 40(a)(ii) of the IT Act, 1961. The effect of such omission is that the provision in Section 40(a)(ii) does not include, "cess" and consequently, "cess" whenever paid in relation to business, is allowable as deductible expenditure."*

41. Following the decision rendered by the Hon'ble Bombay High Court, we are of the considered view that education cess on income tax paid by the assessee is an allowable deduction, hence AO is directed to allow the same. So additional grounds No.1, 1.1, 1.2 & 1.3 are decided in favour of the assessee.

**Ground No.1 of Revenue's appeal (ITA No.4951/M/2013)**  
**A.Y. 2005-06**

42. Ground No.1 is general, hence need no findings.

**Ground No.2 of Revenue's appeal (ITA No.4951/M/2013)**  
**A.Y. 2005-06**

43. Assessee bank has paid an amount of Rs.71,76,146/- to various schools towards reservation of seats for the children of the bank officers by including the same in staff welfare expenses. Declining the contentions raised by the assessee the AO treated the aforesaid payment as donation being not acceptable as expenditure incurred wholly and exclusively for the purpose of business and thereby disallowed the same.

44. However, on the other hand, the Ld. CIT(A) by following the order passed by his predecessor in the earlier year in assessee's own case, which had followed Mahindra & Mahindra Ltd. vs. CIT 261

ITR 501 decided the issue in favour of the assessee, which is under challenge before the Tribunal.

45. The Ld. A.R. for the assessee contended that this issue has already been decided in favour of the assessee by the Tribunal for A.Y. 1992-93 to A.Y. 1995-96 and relied upon the order passed by the Ld. CIT(A). However, the Ld. D.R. for the Revenue relied upon the order passed by the AO.

46. We have perused the order passed by the co-ordinate Bench of the Tribunal, which is on identical issue. The operative part thereof is extracted for ready perusal as under:

***“20.1. We have heard rival submissions and perused the materials available on record. Both the parties mutually agreed that this issue is already covered by the order of this Tribunal in assessee’s own case for A.Yrs. 2001-02 and 2002-03 vide order dated 12/07/2021. The relevant operative portion of the said order is reproduced hereunder:-***

***“47. During the course of hearing, both the parties agree before us that identical issue has been consistently decided in favour of the assessee and against the Revenue by the Tribunal in assessee's own case for the assessment year 1992-93, 1995-96 1996-97, 1999-2000, 2000-01 and 2008-09. The Tribunal in assessee's own case in 'State Bank of India v/s DCIT, ITA no.3644 & 4563/Mum./2016, order dated 3rd February 2020, for the A.Y. 2008-09, has decided this issue in favour of the assessee and against the Revenue. Consistent with the view taken by the Tribunal in assessee's own case as cited supra, we uphold the order of the learned CIT(A) on this***

*issue and decline to interfere in the order as such. While concluding, we place on record that the appeal filed by the Revenue in assessee's own case before the Hon'ble Jurisdictional High Court for the assessment year 1996-97, the said appeal was also dismissed vide its order dated 1st August 2016. Thus, ground no.1, raised by the Revenue is dismissed.”*

*20.2. Respectfully following the same, the ground No.2 raised by the Revenue is dismissed.*

47. When this issue is no longer res-integra having been consistently decided in favour of the assessee by the co-ordinate Bench of the Tribunal right from A.Y. 1992-93 to A.Y. 2008-09, no distinct facts have been brought on record, moreover appeal filed by the Revenue against the order passed by the Tribunal allowing this issue in favour of the assessee for A.Y. 1996-97 has also been dismissed. So finding no illegality or perversity in the impugned findings returned by the Ld. CIT(A), ground No.2 raised by the Revenue is dismissed.

**Ground No.4 of Revenue's appeal (ITA No.4951/M/2013)**  
**A.Y. 2005-06**

48. Assessee has debited an amount of Rs.11,08,09,98,612/- as broken period interest paid on purchase of securities by treating the same as revenue expenditure. Declining the contentions raised by the assessee, the AO disallowed the claim of the assessee under the

head "Broken period interest" to the tune of Rs.1,08,35,95,093/- and consequently made addition thereof.

49. However, the Ld. CIT(A) decided this issue in favour of the assessee by returning following findings:

**"8.2 The ld CIT(A) in A.Y. 2003-04 held as under:**

*In this context, I find that this is a recurrent issue featuring in the Appellant's assessment in appeal for several years. Looking into the decisions, of the Hon. ITAT and my predecessors, I find that the issue of disallowability of BPI paid stands decided in Appellant's favour by my predecessors for the AYs 1997-98 to 2004-05. As I see, the decisions are based on the decision of the Hon. Bombay High court in the case American Express International Banking Corpn. and the Hon. Supreme Court in the case Citi Bank (supra). The Hon. ITAT also has decided the issue in Appellant's favour for the AYs 1991-92 to 1995-96."*

*8.3 The appellant's contention has been that all the securities are stock in trade and none of the securities are held as investments and profit on their purchase/sale is being offered consistently as Business income and not Capital Gain.*

*8.4 The Hon'ble ITAT in the appellant's own case for A.Y. 1991-92 to 1994-95, para 8 held "we find that a similar issue arose before the Hon'ble Bombay High Court in the case of American Express International Bank (supra) wherein the Bombay High Court after considering the decision of Hon'ble Supreme Court in the case of Vijaya Bank held as under:*

*"The judgment in the case of Vijaya Bank had no application to the facts of the case. That having assessed the income u/s 28, the department ought to have taxed interest for broken period interest*

***received and the department ought to have allowed the deduction for broken period interest paid.***

***The facts being identical and there being no change in law, hence, respectfully following the same, we decide this ground.in favour of the assessee."***

***8.5 Since the issue of allowability of broken period interest paid has been decided by the Hon'ble ITAT and my predecessor CIT(A) in A.Y. 2003-04/2004-05 in the appellant's own case in favour of the assessee - the broken period interest paid of Rs. 108,35,95,093/- is allowable deduction. The same is therefore allowed."***

50. The Ld. D.R. for the Revenue challenged the finding returned by the Ld. CIT(A) by relying upon the order passed by the AO. However, we are of the considered view that this issue has already been decided by the Tribunal in favour of the assessee in A.Y. 1991-92 to A.Y. 1994-95 and A.Y. 2003-04 to A.Y. 2004-05 by relying upon the decision rendered by the Hon'ble Bombay High Court in case of American Express International Banking Corporation vs. CIT reported in 258 ITR 601 (Bom) by considering the decision rendered by the Hon'ble Supreme Court in case of Vijaya Bank Ltd. vs. Addl. CIT reported in 187 ITR 541 SC. No distinguishing facts have been brought on record by the Ld. D.R., hence we find no scope to interfere into the findings returned by the Ld. CIT(A). Hence, ground No.4 is also determined against the Revenue.

**Ground No.5 of Revenue's appeal (ITA No.4951/M/2013)****A.Y. 2005-06**

51. Revenue has come up before the Tribunal by challenging the allowance of taxing of interest on securities on due basis on the ground that the assessee bank has been following mercantile system of accounting and as such interest on securities is to be accounted for on accrual basis while arriving at the book profit. The Ld. CIT(A) decided this issue by returning the following findings:

***“8.7 Interest on securities is to be charged on due basis on specified date in the security. This view has been upheld in various case laws :***

***(i) Mumbai Tribunal in the case of Union Bank of India (ITA No. 8817/B/92), wherein it was held that:***

***a. If income has not been found to have accrued to the assessee in the sense that the assessee did not obtain a right to receive the same, it cannot be brought to tax merely because the assessee is found to be following the mercantile system of accounting.***

***b. Section 145 cannot override section 5; just because the assessee-bank, which was following the mercantile system of accounting, made entries in the books of account taking credit for the interest on the government securities on a day-to-day basis, it cannot be held that the interest had accrued during the relevant previous year.***

***c. Interest on Government securities accrues only on specified dates. If that is so, the assessment of the interest on Government securities in the present case merely on the basis of the entries made by the assessee in the books of account cannot be upheld as the interest does not represent interest accrued.***

***(ii) Bank of Bahrain & Kuwait (ITA No. 4404 & 1883/Mum/2004) (Mumbai Special Bench)***

- (iii) *CIT v. Federal Bank Ltd. (301 ITR 188) (Ker)*
- (iv) *Housing Development and Finance Corporation (98 ITD 319) (Mum);*
- (v) *State Bank of Bikaner & Jaipur (74 ITD 203) (Jaipur);*
- (vi) *Punjab & Sind Bank (239 ITR 343) (Del);*
- (vii) *Canara Bank (195 ITR 66) (Kar).*
- (viii) *The CIT(A) has also upheld in earlier years, that interest on securities is to be taxed on due basis.*

**8.8 Accordingly, the appellant's income stands enhanced by amount of Rs. 421.65.56,397/- following the charging of interest on due basis on specified dates in the security.**

***8.9 A perusal of the aforesaid facts shows that the amount of Rs.196,56,36,376/- is already included in the amount of Rs.4469,44,53,005/- i.e. interest chargeable to tax on due basis on specified dates in the security. The total addition therefore works out to Rs.225,09,20,021/- (Rs. 421,65,56,397/- Less Rs.196,56,36,376/-).***

***8.10 This ground of appeal is accordingly disposed off."***

52. The Ld. A.R. for the assessee brought the fact on record that this issue has also been decided in favour of the assessee in earlier years from A.Y. 1991-92 to 2004-05 which has been upheld by the Hon'ble Bombay High Court. This fact has not been controverted by the Ld. D.R. for the Revenue.

53 We have perused the order passed by the co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2001-02 in ITA No.4656/M/2011 which is on identical issues, the operative part of which is as under:

***“48. Ground no.2, raised by the Revenue is, the learned CIT(A) erred in allowing the taxing of interest on securities on due basis.***

***49. During the course of hearing, on a perusal of the record available before -us, we find that identical issue has been consistently decided in favour of the assessee and against the Revenue by the Tribunal in assessee's own case for the assessment year 1991-92, 1995-96, 1996-97, 1999-2000, 2000-01 and 2008-09. The Tribunal in assessee's own case in State Bank of India v/s DCIT, ITA no.3644 & 4563/Mum/2016, order dated 3<sup>rd</sup> February 2020, for the A.Y. 2008-09, has decided this issue in favour of the assessee and against the Revenue. Consistent with the view taken by the Tribunal in assessee's own case as cited supra, we uphold the order of the learned CIT(A) on this issue by dismissing the ground raised by the Revenue. The learned Counsel for the assessee also submitted before us that that the appeal filed by the Revenue in assessee's own case before the Hon'ble Jurisdictional High Court for the assessment year 1996-97, the said appeal was also dismissed vide its order dated 1<sup>st</sup> August 2016. Ground no. 2, raised by the Revenue is dismissed.”***

54. Since the issue has already been set at rest by the co-ordinate Bench of the Tribunal which has been confirmed by the Hon'ble Bombay High Court for A.Y. 1996-97, we find no scope to interfere into the findings returned by the Ld. CIT(A). Hence, ground No.5 is also determined against the Revenue.

**Ground No.6(a) & 6(b) of Revenue's appeal (ITA No.4951/M/2013)**  
**A.Y. 2005-06**

55. Revenue has challenged the allowance of assessee's appeal by Ld. CIT(A) by holding the security as stock in trade and loss on revaluation as revenue expenditure.

56. The Ld. A.R. for the assessee contended that this issue has already been decided in favour of the assessee by the co-ordinate Bench of the Tribunal from A.Y. 1996-97 to A.Y. 2004-05 and order passed by the Tribunal in A.Y. 1996-97 and A.Y. 1997-98 has been confirmed by the Hon'ble Bombay High Court in favour of the assessee.

57. We have perused the order passed by the co-ordinate Bench of the Tribunal dated 30.09.2021 for A.Y. 2003-04 which is on identical issue and has been decided in favour of the assessee by returning the following findings:

*“20.1. We have heard rival submissions and perused the materials available on record. Both the parties mutually agreed that this issue is already covered by the order of this Tribunal in assessee's own case for A.Yrs. 2001-02 and 2002-03 vide order dated 12/07/2021. The relevant operative portion of the said order is reproduced hereunder:-*

*“47. During the course of hearing, both the parties agree before us that identical issue has been*

***consistently decided in favour of the assessee and against the Revenue by the Tribunal in assessee's own case for the assessment year 1992-93, 1995-96 1996-97, 1999-2000, 2000-01 and 2008-09. The Tribunal in assessee's own case in 'State Bank of India v/s DCIT, ITA no.3644 & 4563/Mum./2016, order dated 3rd February 2020, for the A.Y. 2008-09, has decided this issue in favour of the assessee and against the Revenue. Consistent with the view taken by the Tribunal in assessee's own case as cited supra, we uphold the order of the learned CIT(A) on this issue and decline to interfere in the order as such. While concluding, we place on record that the appeal filed by the Revenue in assessee's own case before the Hon'ble Jurisdictional High Court for the assessment year 1996-97, the said appeal was also dismissed vide its order dated 1st August 2016. Thus, ground no.1, raised by the Revenue is dismissed."***

***20.2. Respectfully following the same, the ground No.2 raised by the Revenue is dismissed."***

58. Since this issue has already been decided in favour of the assessee since A.Y. 1996-97, which order has been confirmed by the Hon'ble Bombay High Court, we find no scope to interfere into the findings returned by the Ld. CIT(A) by holding the securities as stock in trade and loss on revaluation as revenue expenditure. Hence, grounds No.6(a) 6(b) are determined against the Revenue.

59. Ground No.7 is general in nature, hence, need no findings.

60. In view of our findings in the preceding paras, appeal filed by the assessee is partly allowed for statistical purposes and the appeal filed by the Revenue is dismissed.

**Order pronounced in the open court on 22.03.2022.**

**Sd/-  
(M. BALAGANESH)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 22.03.2022.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.