THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

I.T.A. No. 3033/Mum/2019 (A.Y. 2015-16)
I.T.A. No. 2873/Mum/2019 (A.Y. 2015-16)

DCIT-2(2)(1), Mumbai Room no. 545, 5th Floor, Ayakar Bhavan Mumbai-400020	Vs.	M/s State Bank of India (Successor to State Bank of Bikaner & Jaipur) Financial Reporting & Taxation, 3rd Floor, Corporate Centre, Madam Cama Road Nariman Point, Mumbai- 400021
(Appellant)		**(Respondent)**

M/s State Bank of India (Successor to State Bank of Bikaner & Jaipur) Financial Reporting & Taxation, 3rd Floor, Corporate Centre, Madam Cama Road Nariman Point, Mumbai- 400021	Vs.	DCIT-2(2)(1), Mumbai Room no. 545, 5th Floor, Ayakar Bhavan Mumbai-400020
(Appellant)		**(Respondent)**

PAN AAAC8577K

Assessee by	Shri Jeet kamadar & Ninad Patade
Department by	Shri Kailash Kanojia
Date of Hearing	24.08.2022
Date of Pronouncement	29.09.2022

O R D E R

Per: Om Prakash Kant (AM)

These cross appeals by the assessee and Revenue are directed against order dated 30/01/2018 passed by the Ld. CIT(Appeals)-5, Mumbai [in short the Ld. CIT(A)] for A.Y.2015-16.

2. The grounds raised by the assessee in its appeal are reproduced as under:

GROUNDS OF APPEAL

Addition as per rule 6EA
1. The CIT(A) erred in confirming charging to tax unrealised interest of Rs. 3.86 crore in respect of borrower accounts classified as Non performing accounts under RB! directions even when collecting principal itself is uncertain and no inccine can be said to accrue therefrom.

Recovery in respect of bad debts written off
2. The CIT(A) erred in confirming the taxing of recovery in respect of bad debts written off which was not allowed as deduction by erroneously relying on the decision of Karnataka High Court in the case of Pragathi Gramin Bank (91 taxmann.com 343) without appreciating that in that case the issue was on taxability of write back of excess provision for bad and doubtful debts and which was also decided in favour of assessee.

Disallowance u/s 14A
3. The CIT(A) erred in confirming the disallowance by invoking clause (iii) to sub-rule (2) to Rule 8D r.w.s 14A to the extent of 0.5% of average investments even when the investments are held as stock-in-trade.

Without prejudice to the above if at all any disallowance has to be made under that section, same cannot be more than the sum relating to prorate expenditure incurred by treasury department as per regular method of accounting followed and suo-moto disallowed by appellant.

Disallowance of interest paid on IPDI bonds
4. The CIT(A) erred in re-characterising funds raised through issue of debt instruments as share capital and

further wrongly extrapolating interest payments as dividend and disallowing interest paid on the debt raised.

3. The grounds raised by the Revenue in its appeal are reproduced as under:

Grounds of Appeal

1."On the facts and the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the assessee's plea that the Interest Income on securities has to be taxed on the due basis only without appreciating that as per the mercantile system of accounting followed by the assesse, interest on securities has to be taxed on accrual basis.".

2."On the facts and circumstances of the case and in Iaw, 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."

3."Whether on the facts and in the circumstances of the case whether the Ld. CIT(A) was correct in law in deleting the disallowance made under Rule 8D(2)(ii) in view of the recent decision of the Hon'ble Supreme Court in the case of Avon Cycle Ltd (Civil appeal No.1423/2015) wherein the disallowance under section rule 8(D)(2)(ii) in case of mixed use of funds was upheld?.

4."On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in relating loss on account of depreciation of securities of HTM category without appreciating that no depreciation is to be provided for under the HTM category."

4. Briefly stated facts of the case are that the assessee, M/s State Bank of Bikaner and Jaipur, now merged with the State Bank of India, is a public sector banking company, engaged in banking, treasury operations and other retail services. The assessee filed return of income for the year under consideration on 27/11/2015, declaring total income at Rs.886,28,73,010/-. The return of income filed by the assessee was selected for scrutiny

and statutory notices under the Income-Tax Act, 1961 (in short the Act) were issued and complied with. After considering the submission and verification of the details, the Ld. A.O. assessed total income at Rs.3747,05,83,560/-. The details of addition/disallowances made by the Ld. A.O. are reproduced as under:

Sr. No	*Particulars*	*Rs.*
I.	*Business Income (as per ROI)*	*8,87,62,92,596*
Add	*Interest accrued but not due*	*17,43,28,84,330*
	Broken period interest	*9,33,17,00,000*
	Interest income from Non-performing assets and non-performing investments	*3,86,10,180*
	Recovery in written off accounts	*92,38,01,731*
	Disallowance u/s 14A	*41,75,73,740*
	Securities in HTM category	*28,31,40,572*
	Interest on IPDI Bonds	*18,00,00,000*
	Gross Total Income	
Less	*Deduction u/s chapter VI-A*	*1,34,19,587*
	Taxable Income	*37,47,05,83,560*

4.1 On further appeal, the Ld. CIT(A) allowed partly in favour ofthe assessee. Aggrieved, both of the assessee and the Revenue

are before the Tribunal by way of raising grounds as reproduced above. The Ld. Counsel of the assessee filed a chart of the issues involved in grounds raised in the appeal of the assessee as well as of the Revenue and submitted that most of the issues are covered by the order of the Tribunal in the case of the assessee in earlier years.

4.2 The ground No. 1 of the appeal of the assessee relates to addition of Rs. 3,86,10,180/- in respect of unrealized interest on borrower accounts classified as non-performing accounts under RBI directions. The Ld. Counsel of the assessee submitted that this is one of the recurring issue in the case of the assessee and it has been decided in favour of the assessee by the Tribunal for A.Y.2008-09 vide order dated 03/02/2020 in ITA No. 3644 and 4563/Mum/2016. The Ld. Departmental Representative on the other hand relied on the order of the lower authorities.

5. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The Ld. A.O. held that since the assessee is maintaining its books of accounts on accrual basis, the income in respect of bad and doubtful debt was required to be taxed on accrual basis except for the exceptions provided under rule 6EA of Income-Tax rules, 1962 read with Section 43D of the Act. The Ld. A.O. rejected the claim of the assessee that exceptions should be provided as per RBI guidelines and accordingly he added the amount of Rs.3,86,10,180/-being the interest on NPA/NPI not recognized by the assessee as income in view of RBI guidelines ignoring the provision of section 43D read with rule 6 EA of rules. The Ld. CIT(A) following the decision of his predecessor in the case of the assessee for A.Y.2014-15 confirmed the addition.

5.1 We find that identical issue has been adjudicated by the Tribunal(supra) in the case of the assessee for A.Y. 2008-09, observing as under:

> *We have gone through the case law in American Express Bank Ltd. vs. Addl. CIT [2012] 25 taxmann.com 572 (Mumbai), wherein the Mumbai Tribunal was considering a case where the loans on which interest/principal remained unpaid for 90 days were classified as no-accrual loans. The unpaid interest in respect of such loans was reversed to an account called Reserve for Doubtful Interest (RFDI) account. All subsequent interest accruals of such loans were credited to RFDI account and not to the profit and loss account. The assessee offered to tax the net amount credited to the RFDI account i.e. the interest accruals in the RFDI account net of recoveries. However, it was argued that such tax treatment leads to offering interest on non-accrual loans to tax on accrual basis, even if the same is not credited to the profit and loss account. The Mumbai Tribunal held that where the AO has not contested that the policy adopted by the assessee is not in accordance with RBI guidelines, the incidence of taxation of interest on bad and doubtful debts will be either when the same is credited to the profit and loss account for the year or in the year in which it is actually received. Mere crediting of the interest to a reserve cannot be said to be an incidence by which the said interest could be charged to tax. The aforesaid decision has been affirmed by the Bombay High Court in the case of DIT vs. American Express Bank Ltd [2015] 235 Taxman 85 (Bombay). In the present case the assessee argued that there is no credit entry in the books of the account in respect of the interest on such NPAs and, accordingly, the addition made cannot be sustained. Hence according to assessee the issue stood covered by the first proposition in terms of the Bombay High Court in assessee's favour and hence, no further submissions were made on other two propositions.*
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> *We noted that this issue is squarely covered by the decision of Hon'ble Bombay High Court in the case of American Express Bank Ltd (supra), wherein it is held that there is no credit entry in the books of the account in respect of the interest on such NPAs, no addition can be made. Further, even the Mumbai Tribunal in the case*

of American Express Bank Ltd. (supra) has considered this issue and held that where the AO has not contested that the policy adopted by the assessee is not in accordance with RBI guidelines, the incidence of taxation of interest on bad and doubtful debts will be either when the same is credited to the profit and loss account for the year or in the year in which it is actually received. Mere crediting of the interest to a reserve cannot be said to be an incidence by which the said interest could be charged to tax. Hence, we delete the addition of interest income and allow this issue of assessee's appeal.

5.2 Since the issue-in-dispute before us of taxability of interest on Non-peforming assets/Account is exactly identical to what has been decided by the Tribunal (supra). Therefore, respectfully following the finding of the Tribunal, being a binding precedent, the finding of the Ld. CIT(A) on the issue-in-dispute is set aside and the Ld. A.O. is directed to delete the addition-in-dispute. The ground No. 1 of the appeal of the assessee is accordingly allowed.

6. The Ground No. 2 of the appeal relates to addition of Rs. 92,38,01,731/-in respect of recovery of bad debts written off in earlier years. The assessee claimed that amount of Rs. 92, 38, 01, 731/- was not claimed as deduction u/s 36(1)(vii) of the Act and therefore the subsequent recovery is not taxable u/s 41(1) of the Act. The Ld. A.O. rejected the contention of the assessee holding that expenditure allowed once cannot be written off for the second time and he added the said recovery of bad debt as income of the assessee. The Ld. CIT(A) following finding of his predecessor in the case of the assessee i.e. State Bank of India for A.Y.1998-99, confirmed the addition made by the Ld. A.O.

7. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. Before us the Ld. Counsel of the assessee referred to the order of the Tribunal in

the case of the state Bank of India for A.Y. 2008-09 in ITA No. 3644 and 4564/2016. The Tribunal in the said case has in principle accepted the contention of the assessee that if no claim has been made for bad debt written off u/s 36(1)(vii) of the Act in respect of the amount in dispute, then no addition could have been made u/s 41(1) of the Act, however matter has been restored to the file of the Ld. A.O. for verification of the claim of the assessee. The relevant finding of the Tribunal (supra) is reproduced as under:

> *We noted from the above arguments of both the sides and case law cited by the parties, that the issue is squarely covered by a decision of the Bangalore Bench of the Tribunal in the case of State Bank of Mysore Vs. DCIT [2009] 33 SOT 7 (Bangalore), now merged with assessee. We noted that the Tribunal in the case of State Bank of Mysore (supra) narrated the facts and the facts in the present case are exactly the same as in the case of State Bank of Mysore. In the case of State Bank of Mysore (supra), the assessee had claimed deduction under section 36(1)(viia) of the Act and not under section 36(1)(vii) of the Act. Accordingly, the Bangalore Tribunal has held that section 41(4) of the Act cannot be invoked. Sections 41(1), 41(2), 41(3) and 41(4) of the Act operate in different spheres. Each of the sub-sections to section 41 of the Act deals with different and distinct circumstances. Each of the sub-sections deals with different and distinct topics and one cannot read recoupment under one sub-section into another. We have considered the decision relied on in this regard of Supreme Court in the case of Nectar Beverages (P.) Ltd. vs. DCIT [2009] 314 ITR 314 (SC) wherein the Supreme Court has dealt with the specific section 41(2) of the Act for taxing balancing charge versus taxing the same under section 41(1) of the Act and has concluded that section 41(1) of the Act shall not be applicable.*
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> *As the aspects of bad and doubtful debts is dealt with specifically under section 41(4) of the Act, as laid down by the Supreme court in Nectar Beverages (supra), section 41(1) of the Act is not applicable in case of the assessee. Further, the primary condition to be satisfied for taxing an amount as deemed income under section 41(1) of the Act is that a deduction/ allowance should*

> *have been claimed by the assessee in respect of a loss, expenditure or trading liability. A deduction under section 36(1)(viia) of the Act is not for a loss, expenditure or trading liability, but for a provision for bad and doubtful debts. We noted that the learned CIT Departmental Representative had raised a contention that the CIT(A) and AO have not perused the details and, hence, the matter may be restored back which was opposed. In relation to the above contention, without prejudice to the assessee's objection in the event the matter is proposed to be remanded back to the AO, a direction may be given to the AO to delete the addition, if the recovery of the amount is in respect of a write off claimed and allowed as a deduction under section 36(1)(viia) of the Act and not under section 36(1)(vii) of the Act in the earlier years.*
>
> *In view of the above discussion, we are of the view that principally the assessee is entitled for claim of deduction under section 36(1)(viia) of the Act, which has rightly been claimed. The assessee has not made claim under section 36(1)(vii) of the Act in this regard. Hence, we allow the claim of assessee but the matter is restored back to the file the AO for verification purposes. This issue of assessee's appeal is allowed for statistical purposes*
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> *Respectfully following the finding of the Tribunal (supra) the issue in dispute in the year under consideration in the case of the assessee is also restored to the file of the Ld. A.O. for verification is directed by the Tribunal (supra). The ground No. 2 of the appeal of the assessee is accordingly allowed for statistical purposes.*

7.1. The issue-in-dispute involved before us in above ground being identical to what has been adjudicated by the Trubunal (supra), respectfully following the same. The ground No.2 of the appeal of the assessee is allowed and order Ld. CIT(A) is set aside on the issue-in-dispute.

8. The ground No. 3 of the appeal of the assessee relates to disallowance of Rs.3,08,02,935/- u/s14A of the Act read with Rule 8D(2)(iii) of Income-Tax rules, 1962 (insured the rules). The

ground No.3 of the appeal of Revenue also relates to disallowance of Rs.38,67,70,805/- u/s 14A of the Act read with rule 8D(2)(ii) of rules.

8.1 The facts qua the issue in dispute are that during the year under consideration the assessee earned dividend income of Rs.2,12,54,282/- from investment in shares and mutual fund. It was submitted that funds received by way of deposits from customers along with borrowings for specific purposes have been utilized for advancing money to borrowers in trading and investment in securities as part of the banking business, out of which some of the items are exempt and therefore earning of exempt income is in regular course of the business of the bank and incidental to the overall business Activity of the bank, which is indivisible and inseparable from the overall business of the bank. It was submitted that the total investment portfolio of the bank is Rs.22,465.41 crores, which earned total income of Rs.1824.34 crores. Out of total investments, only investment to the extent of Rs.135 crore has earned exempt income of rupees 2.12 crores. Further it was submitted that such investment of Rs. 135 crores i.e. shares and mutual funds too results in taxable income as one the profit on sale of such investment are subject to tax under the income from business and profession. It was submitted that accordingly as per rule 8D these investment cannot be considered as the investment whose total income shall not form part of the total income. It was submitted that in circumstances no disallowance can be made u/s 14A of the Act. It was also submitted that rule 8D(2)(ii) & (iii) are not applicable where shares are held as a stock in trade.

9. The Ld. A.O. rejected the contention of the assessee. The Ld. A.O. noted that assessee in the revised return of income filed has suo moto made disallowance of 0.5% of average investment generating exempt income and thus assessee itself has accepted the provisions of section 14A of the Act read with rule 8D of the rules. The Ld. AO further rejected contentions of the assessee and held as under:

(a) The income from foreign currency though exempted u/s10(15)(iv) of the Act on gross basis, same does not form part of the total income and therefore corresponding expenditure is liable to be disallowed.

(b) The Ld. A.O. held that claim of the assessee of interest expense allowable as business expenditure u/s 36(1)(iii) to the act being shares held as stock in trade and investment made in shares of the subsidiaries, as strategic investment, are contradictory to each other. The strategic investments are liable to disallowance as only benefit assessee derive is dividend income.

(c) The disallowance u/s 14A needs to be made in respect of the investment of assessee in tax-free bonds in spite of the claim that interest income received from tax-free bond is incidental to the compliance of SLR norms of Reserve Bank of India and corresponding expenses are to be disallowed.

9.1 The Ld. A.O. recorded dissatisfaction on the correctness of the claim of the assessee invoking rule 8D of the rules and computed the disallowance in para 10.2(g) as under:

Expenditure Disallowable U/s 14A relating to		
Rule 8D (ii)		38,67,70,805
Rule 8D (iii)		3,08,02,935
Total Disallowance u/s 14A rws Rule 8D		41.75,73,740

9.2 Thus the disallowance comprised of disallowance out of interest expenses in terms of rule 8D(2)(ii) at Rs.8,67,70,805/- and under rule 8D(2)(iii) at Rs.3,08,02,935/-, being 0.5% of average value of investment.

10 Before the Ld. CIT(A) the assessee mainly contended that (a) exemption u/s 10 is allowable on gross basis (b) the provision of section 14A applies only when expenditure is actually incurred(c) the disallowance u/s 14A of the Act cannot exceed the exempted income(d) if the securities are held as a stock no disallowance can be made(e) investment and loans are only for business purpose to comply with SLR requirements (f) only such security should be considered which have yielded exempted income and (g) the assessee had sufficient own/interest refunds to cover the investment under consideration and in such a situation it has to be presumed that investment have been made out of own/interest free funds.

10.1 The Ld. CIT(A) following the decision of the Tribunal **Amritsar Bench in the case of Lally motors India Private Limited (supra),** wherein the Tribunal considered the decision of the Hon'ble Supreme Court in the case of Maxopp investment

Ltd (supra), rejected the contention of the assessee that disallows u/s 14A cannot exceed exempted income and for computation of disallowance u/s 14A real with rule 8D only the investment which have yielded exempted income during the year should be considered.

10.2 The Ld. CIT(A) also rejected the alternative contention of the assessee that investments which were strategic in nature, should not be considered for making disallowance u/s 14A of the Act following the decision of the Hon'ble Supreme Court in the case of Maxopp investment Ltd. (supra) that dominant purpose of investment is of no consequence for applicability of provisions of section 14A read with rule 8D of rules.

10.3 The Ld. CIT(A) also rejected the contention of the assessee that bank holds the securities as a stock in trade and hence there should not be disallowances u/s 14A of the Act, following the finding of the Hon'ble Supreme Court in the case of Maxopp of Investment Ltd. (supra), wherein it is held that expenditure in respect of the securities should be apportioned between taxable and non-taxable income from such securities.

10.4 As far as contention of utilization of interest-bearing funds for making investment, the Ld. CIT(A) following the decision of the Hon'ble High Mumbai court in the case of HDFC Bank Ltd wherein it is held that once the own /interest free funds are sufficient to make the investment in tax-free securities, it is presumed that it has been paid out of the interest freefunds, deleted the disallowance made out of the interest expenses under rule 8D(2)(ii) of rules amounting to Rs.38,67,70,805/-.

10.5 But as far as disallowance under rule 8D(2)(iii) of the rules of Rs.3,08,02,935/- being 0.5% of the average value of the investment is concerned, it was confirmed following the third member bench ITAT Mumbai in the case of DH Securities Private Limited (supra).

11. Before us, regarding the disallowance of Rs. 38,67,70,805/- u/s 14A of the Act read with rule 8D(2)(ii), is concerned, the Ld. Departmental Representative submitted that assessee failed to correlate that investment in shares and securities which could yield exempted income were made out of the own/interest free funds and not out of the borrowed funds and therefore provisions of rule 8D(2)(ii) are squarely applicable in the case of the assessee. Whereas the Ld. Counsel of the assessee relied on the order of the Ld. CIT(A). We find that Ld. CIT(A) after considering the submission of the assessee and decision of the Hon'ble Bombay High Court in the case of HDFC Ltd (supra) held as under:

> *The Ld. AO has not brought anything on record to prove that interest bearing funds have been utilized for making investments. As discussed above, the Hon'ble Bombay High Court in the case of HDFC Bank Ltd has held that once the issue is settled by it in the case of HDFC Bank Ltd, there is now no need for the assessee to establish with evidence that amounts which have been invested in the tax free securities have come out of interest free funds available with it. This is because once the assessee is possessed of interest free funds sufficient to make the investment in tax free securities; it is presumed that it has been paid for out of the interest free funds.*
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> *In view of the above referred binding precedence of Hon'ble Supreme Court and that of Hon'ble Jurisdictional*

> *Bombay High Court, the Ld. AO is directed to verify the records and claim of appellant that it had sufficient interest free funds to cover the investments made, income from which is exempt and if the same is found to be true, then the disallowance made out of interest expenses under Rule 8D (2) (ii) shall be deleted.*

11.1 The Ld. Counsel also relied on the decision of Hon'ble Appex Court in the case of South India Bank v/s CIT in Civil Appeal No.2963 of 2012.

11.2 As we find that the Ld. CIT(A) has followed a binding precedent of the Hon'ble juridictional High Court, we do not find any error in the order of the Ld. CIT(A) on the issue in dispute and accordingly, we uphold the same. The ground No. 3 of the appeal of the Revenue is accordingly dismissed.

11.3 As regard to the ground no. 3 of the appeal of the assessee, before us in respect of the disallowance confirmed by the Ld. CIT(A) of Rs. 3,08,02,935/- the Ld. counsel mainly submitted that securities were held by the assessee is a stock in trade and therefore following the decision of the Hon'ble Supreme Court in the case of Maxopp investment Ltd (supra), no disallowance is called for. The Ld. DR on the other hand, submitted that Ld. counsel of the assessee has not appreciated the finding of the Hon'ble Supreme Court in the Maxopp investment Ltd, wherein the Hon'ble Supreme Court has held apportionment of expenses relatable to taxable and non-taxable income from securities which have been claim to be stock in trade.

11.4 The second argument forwarded by the Ld. Counsel of the assessee is that the disallowance u/s 14A of the Act cannot

exceed exempted income. In support of the contention the Ld. counsel of the assessee relied on various decisions including decision of the Hon'ble Supreme Court in the case of PCIT V/s Caraf builders and construction Private Limited reported in (2019) 112 taxmann.com 322 (supreme Court) and Tribunal third member bench decision in the case of S Vinod Kumar diamonds Robert Ltd versus DCIT reported in (2020) 118 taxmann.com 317 and Nimbus Communications Ltd versus ACIT reported in (2017) 85 taxmann.com 237. On the other hand, the Ld. DR submitted that in view of the amendment introduced by the Parliament in the Finance Act 2021 disallowance has to made as per rules even if same exceeds quantum of exempted income.

12. We have heard rival submission of the parties on the issue of disallowance of Rs.3,08,02,935/- u/s 14A of the Act read with rule 8D(2)(iii) of rules. In view of the decision of the Hon'ble Supreme Court in the case of Maxoop investment Ltd. (supra) the expenses incurred towards shares and securities held as stock in trade are also to be considered for disallowance u/s 14A of the Act real with rule 8D of rules, but those expenses has to be apportioned between the taxable income earned from sale or trading of those securities and non-taxable income earned by way of dividend. The relevant finding of the Hon'ble Supreme Court is reproduced as under:

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

37) This Circular has already been reproduced in Para 19 above. This Circular takes note of the judgment of this Court in Nawanshahar case wherein it is held that investments made by a banking Concern are part of the business or banking. Therefore, the income arises from such investments is attributable to business of banking falling under the head profits and gains of business and profession. On that basis, the Circular contains the decision of the Board that no appeal would be filed on this ground by the officers of the Department and if the appeals are already filed, they should be withdrawn. A reading of this circular would make it clear that the issue was as to whether income by way of interest on securities shall be chargeable to income tax under the head income from other sources or it is to fall under the head profits and gains of business and profession. The Board, going by the decision of this Court in Nawanshahar case, clarified that it has to be treated as income falling under the head profits and gains of business and profession. The Board also went to the extent of saying that this would not be limited only to co-operative societies/Blanks claiming deduction under Section 80P(2)(a)(i) of the Act but would also be applicable to all banks/commercial banks, to which Banking Regulation Act, 1949 applies.

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

39) In those cases, where shares are held as stock-in-trade, the main purpose is to trade in those shares and earn profits therefrom. However, we are not concerned with those profits which would naturally be treated as income under the head profits and

gains from business and profession. What happens is that, in the process, when the shares are held as stock-in-trade, certain dividend is also earned, though incidentally, which is also an income. However, by virtue of Section 10 (34) of the Act, this dividend income not to be included in the total income and is exempt from tax. This triggers the applicability of Section 14A of the Act which is based on the theory of apportionment of expenditure between taxable and non-taxable income as held in Walfort Share and Stock Brokers P Ltd. case. Therefore, to that extent, depending upon the facts of each case, the expenditure incurred in acquiring those shares will have to be apportioned.

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

> *shares are held as stock-in-trade, this may not be necessarily a situation. The main purpose is to liquidate those shares whenever the share price goes up in order to earn profits. In the result, the appeals filed by the Revenue challenging the judgment of the Punjab and Haryana High Court in State Bank of Patiala also fail, though law in this respect has been clarified hereinabove.*

12.1 Since the lower authorities have not carried out any - exercise of apportioning such expenses incurred for earning taxable and non-taxable income from securities, which were held as stock in trade, therefore this issue need to be restored back to the file of the Ld. A.O. for verification and computation of the disallowance accordingly.

12.2 As far as the contention of the Ld. counsel that disallowance u/s 14A should not exceed exempted income, we find that Hon'ble Delhi High Court in the case of DCIT v/s m/s ERA infrastructure (I) Ltd. In ITA/204/2022 held that the amendment introduced to section by way finance Act, 2022 14A of the Act for disallowance even if the same exceeds exempted income, is prospective in nature and cannot be applied retrospectively. The relevant finding of the Hon'ble Delhi High Court is reproduced as under:

> *8. Consequently, this Court is of the view that the amendment of Section 14A, which is "for removal of doubts" cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood.*
>
> *9. Though the judgment of this Court has been challenged and is pending adjudication before the Supreme Court, yet there is no stay of the said judgment till date. Consequently, in view of the judgments passed by the Supreme Court in Kunhayammed and Others vs. State of Kerala and Another, (2000) 6 SCC 359 and Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust*

> *Association CSI Cinod Secretariat, Madras (1992) 3 SCC 1. the present appeal is dismissed being covered by the judgment passed by the learned predecessor Division Bench in PCIT vs. IL&FS Energy Development Company Ltd (supra) and Cheminvest Limited vs. Commissioner of Income Tax-VI, (2015) 378 ITR 33.*
>
> *10. Accordingly, the appeal and application are dismissed. However, it is clarified that the order passed in the present appeal shall abide by the final decision of the Supreme Court in the SLP filed in the case of PCIT vs. IL & FS Energy Development Company Ltd (supra).*

12.3 Accordingly, the issue of disallowance u/s 14A read with rule 8D(2)(iii) of the rules, is restored to the file of the Ld. A.O. for fresh computation in view of the finding of the Hon'ble Supreme Court in the case of Maxopp investment Ltd (supra) and decision of the Hon'ble Delhi High Court in the case of Era Infrastructure P. (Ltd.) (supra). The ground No.3 of the appeal of the assessee is accordingly allowed for statistical purposes.

13 The ground No. 4 of the appeal of the assessee relates to disallowance of Rs. 18,00,00,000/- for interest paid on Innovative Perpetual Debt Instruments (IPDI Bonds). The IPD bonds issued by the assessee qualify as Tier I capital of bank and book value of such bonds was reported by the assessee Rs. 160,00,00000/- at the end of the relevant previous year corresponding to the A.Y. under consideration. Before the Ld. A.O., the assessee claimed deduction on account of the interest paid/payable on those bonds u/s 36 (1)(iii) of the Act. According to the assessee these bonds are in the nature of the debentures carrying a fixed interest rate and the interest is paid out of the distributable profit of the previous year or current year. It was further claimed that interest paid to bondholders unlike dividend

income is not exempt as per the provisions of the Act and the bondholders would have accordingly offered the same to the income in their respective returns and therefore disallowance of said interest would result in double taxation of the same income. The Ld. A.O. however rejected the contention of the assessee and held that the perpetual bonds are the bonds with no maturity date. The investor don't get the right to redeem the bonds at any point of the time and only the issuing bank can buy back the bonds from the investor, therefore even if subsequently borrower buyback these bonds, it will not alter the nature and character of these bonds. The Ld. A.O. summarized that perpetual bonds are quasi equity and they have equity-features like perpetual nature, high loss absorption capacity and discretionary payout with existence of full coupon discretion. The Ld. A.O. relied on the decision of Hon'ble Punjab and Haryana High Court in the case of **Pepsu Road transport Corporation versus CIT reported in 130 ITR 18 (P& H)** wherein it is held that an element of refund or repayment is a must in case of concept of borrowing and if there is no obligation to refund the capital provided, the interest on such capital is not deductible u/s 36(1)(iii) of the Act. Accordingly, the Ld. A.O. held that in case of perpetual bonds, where the lender does not have authority to claim refund of the amount given, said amount cannot be held as borrowing and interest on such bonds was held disallowable u/s 36(1)(iii) of the Act.

14 On further appeal, the Ld. CIT(A) also upheld disallowance of the interest paid/payable in respect of perpetual bond holding them analogous to preference shares. The relevant finding of the Ld.CIT(A) is reproduced as under:

I have considered the submissions made by the appellant and have perused the materials available on record. The appellant has requested to delete the impugned disallowance of Rs. 18,00,00,000/-, being the claim of interest paid on Innovative Perpetual Debt Instrument (IPDI). The appellant has made elaborate submissions as detailed above and the same have been considered carefully. The appellant has submitted that the IPDI under considerations were issued in the year 2009-10 and since then the interest was paid by the bank consistently by debiting to the Profit and Loss account and the department has regularly allowed it as an expenditure in the past years. The appellant has further submitted that in none of these year department has made any disallowance on account of interest paid on IPDI Bonds. The said contentions of the appellant have been considered carefully. It is settled law that rule of res-judicata does not apply to the Income Tax proceedings and an erroneous or mistaken view cannot fetter the authorities into repeating them by application of rule such as estoppel, for the reason that being an equitable principle, it has to be yield to the mandate of law. Similar law has been laid down by the Hon'ble Delhi High Court in the case of Krishak Bharati Cooperative Ltd reported in 23 taxmann.com 265, wherein the Hon'ble Court held as under.

It is now necessary to take up the submission that the Tribunal erred in departing from the "consistency" rule. This is based on the fact that for the period of about 15 years, the income tax authorities had accepted the assessee's submissions and permitted annual amortization of the initial lease consideration, as advance rent. The assessee here relied on the "consistency" rule enunciated in Radhasaami Satsang (supra). The Supreme Court observed, in that case that:

"...where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

On these reasonings in the absence of any material change justifying the Revenue to take a different view of the matter-and if there was not change it was in support of the assesses-we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income-Tax in the

> *earlier proceedings, a different and contradictory stand should have been taken."*
> *This Court notices that there cannot be a wide application of the rule of consistency. In Radhasomi Satsang's case (supra) itself, the Supreme Court acknowledged that there is no res judicata, as regards assessment orders, and assessments for one year may not bind the officer for the next year. This is consistent with the view of the Supreme Court that "there is no such thing as res judicata in income-tax matters" Raja Bahadur Visheshwara Singh v. CIT AIR 1961 SC 1062. Similarly, erroneous or mistaken views cannot fetter the authorities into repeating them, by application of a rule such as estoppel, for the reason that being an equitable principle, it has to yield to the mandate of law. A deeper reflection would show that blind adherence to the rule of consistency would lead to anomalous results, for the reason that it would engender the unequal application of laws, and direct the tax authorities to adopt varied interpretations, to suit individual assesses, subjective to their convenience, - a result at once debilitating and destructive of the rule of law. A previous Division Bench of this Court, in Rohitasava Chand v. CIT [2008] 306 ITR 242/ 171 Taxman 147 had held that the rule of consistency cannot be of inflexible application."*

15 Before us, the Ld. Counsel of the assessee submitted that disallowance needs to be deleted on two grounds. Firstly, it was submitted that the IPD bonds under consideration were issued in the year 2009 and since then interest paid on such bond was claimed deduction and allowed by the Revenue, therefore no disallowance is to be made on account of principle of consistency. Secondly, it was submitted that in view of the decision of the coordinate bench of the Tribunal in the case of Tata Power Co Ltd versus PCIT (in ITA Nos. 2710 and 2711/MUM/2018, wherein it has been principally accepted that IPD bonds are in the nature of the borrowing/debt and not equity, the addition need to be deleted. The Ld. DR on the other hand relied on the order of the lower authorities.

16 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. As far as argument of rule of consistency is concerned, the Ld. CIT(A) has rejected the contention of the assessee following the decision of the Hon'ble Delhi High Court in the case of Krishak Bharati cooperative Ltd (supra). The said finding being based on the precedent, we concur with the finding of the Ld. CIT(A).

16.1 The assessee has distinguished the decision of Hon'ble Punjab Haryana High Court in the case of Pepsu Road transport Corporation (supra) on the ground that in said case capital was provided by the Union of India under a statutory obligation which had no provision of repayment. Further in the event of the liquidation of Pepsu Road transport Corporation after meeting the liabilities if any, the assets were to be divided among Central Government and the State Government and such other parties, if any as may have subscribed to the capital in proportion to the contribution made by each of them to the total capital. However in the instant case there was no statutory obligation on the investors to subscribe to IPDs and further the claim of the investor of the IPD bonds is superior to that of equity investor and subordinate to other creditors. Further, it was submitted that interest paid on IPD cannot be equated with the dividend as dividend is not mandatory to be paid each year and it has to be paid if there is profit during the any financial year and on approval of the proposal of the Board of Directors by the shareholders in the annual general meeting. Whereas in the case of the IPD, it is mandatory to pay interest irrespective of the availability of the profit and no approval of the Board of Directors or shareholders was required. In view of the above discussion, we concur with the contention of the assessee that

ratio in the case of Pepsu Road transport Corporation Ltd (supra) cannot be applied or the instant case.

16.2 However as far as finding of the Coordinate bench of Tribunal in the case of Tata Power Co Ltd (supra) is concerned, the Tribunal has in principle held that perpetual bond are not in the nature of equity and therefore quashed the revision proceedings passed by the Ld. PCIT, The relevant finding of the Tribunal (supra) is reproduced as under:

> *Heard both the sides and perused the material on record. Assessment in the case of the assessee was completed by the Assessing Officer u/s 143(3) r.w.s 144C(13) of the I.T. Act, 1961 on 30.06.2017. The ld. Pr.CIT has held vide order u/s 263(3) of the Act, dated 28.03.2018 that assessment order passed u/s 143(3) r.w.s 144C(13) as erroneous insofar as it was prejudicial to the interest of revenue holding that the Assessing Officer was not correct in allowing the interest on perpetual debt instruments without examining and verifying the allowability of such expenditure. With the assistance of ld. representatives we have gone through the copies of documents and detailed submission made before the A.O during the course of assessment proceedings as per page no. 1 to 160 of the paper book filed by the assessee. It is noticed that assessing officer has specifically asked the assessee vide notice dated 24.11.2016 to provide the detail of income tax reversal on distribution of unsecured perpetual securities. In this regard assessee has given detailed submission vide letter dated 16.12.2016 stating that it has issued 11.4% unsecured perpetual securities (bonds) for the purpose of business use. Interest of such securities is payable @ 11.40% per annum. The assessee has also specifically explained in line with accounting standard, the aforesaid interest is charged to reserve and surplus. The gross amount of interest of aforesaid securities was of Rs.142.03 crores for F.Y. 2010-11. But the same was charged to Rs.113.61 crores after netting off taxes [142.03 - 28.42]. The amount of tax impact of Rs.28.42 crores has been charged to reserve and surplus during the year. Thereafter again on 23.12.2016 the assessee has explained to the assessing officer that during the year the company has incurred Rs.18.63 crores on issue*

of 10.75% debenture of Rs. 1500 crores. This amount being expenditure of capital nature has not been claimed by the assessee in its return of income. The assessee has also supplied to the Assessing Officer detailed offer document issued for unsecured perpetual debentures of Rs.1500 crores during the course of assessment proceedings. In the offer document the terms and conditions of issuing perpetual debentures, basis of allotment, creation of debenture redemption reserves along with object of the issue were clearly mentioned. As per the copy of object of the issue placed at page 67 of the paper book, it is mentioned that utilization of funds to be raised through this private placement will be for general business purpose and at page no. 62 issue size was mentioned of 15000 debentures of face value of Rs. 10 lac each aggregating to Rs.1500 crores. It is demonstrated from the detailed submission and copies of documents placed in the paper book that assessing officer has made detailed inquiry/verification during the course of assessment proceedings that assessee has borrowed funds for business use by issue of debentures. The borrowed fund were payable on call option exercising by company after the 10th year or any at the end of every year thereafter. It was also explained that the lenders were not entitled to share any surplus or bear any loss like shareholders. Debentures trustee were appointed to safeguard interest of the lenders. The assessee company had also stated on the basis of aforesaid discussion that it had borrowed fund for the purpose of its business and the interest on debenture was deductible in computing the income from profit and gains from business and profession. In the light of the above facts and after considering the detailed material furnished by the assessee during the course of assessment proceedings before the assessing officer we observe that the assessee has categorically explained to the assessing officer with relevant supporting material that it has issued unsecured perpetual non-convertible debentures and such lenders were not entitled to share any surplus or bear any loss like shareholders. These debentures were entitled for fixed interest @11.40% along with redemption after the 10th year. These facts and submissions were also brought to the notice of the ld. Pr.CIT during the course of proceedings u/s 263 of the Act, however, the ld. Pr.CIT without controverting these undisputed fact held that assessment order was erroneous so far it was prejudicial to the interest of Revenue. Therefore, we consider that the order passed by the ld. Pr.CIT u/s 263 is unjustified and we quash

> *the same. Therefore, we allow the ground of appeal of the assessee.*

16.3 Respectfully, following the finding of the Tribunal (supra), we set aside the finding of the Ld. CIT(A) on the issue in dispute and direct the Ld. A.O. to delete the disallowance of interest amounting to Rs. 18,00,00,000/-, which was made u/s 36(1)(iii) of the Act. The ground No. 4 of the appeal of the assessee is accordingly allowed.

The grounds no. 1 of the appeal of the Revenue relates to disallowance of interest on securities (difference between accrual and due method) amounting to Rs. 17,43,28,84,330/-.

16.4 The facts qua the issue in dispute are that Govt. Securities offers interest on specified dates, which may be subsequent to the end of the accounting year. For example, if interest is offered on a particular government security twice in calendar year, firstly on 30th June and secondly on 31st December. The contention of the assessee, that in such case the assessee does not get right to claim the interest on the closing date of the financial year i.e. the proportionate interest from first January to 31st March does not become right of the assessee to claim. In any absence of any right to claim the income, such income cannot be said to have accrued to the assessee and the income from interest on securities becomes the income of the bank only when it becomes due. It is the contention of the assessee that it becomes entitled for the interest only for the days which are specified at the time of the issue of the securities and cannot claim that it had become entitled to the interest earlier than those specified dates. Accordingly, the assessee in its books of accounts credited

interest on securities as per the specified due dates. Whereas, according to the Ld. A.O., the income for the purpose of income-tax in particular A.Y. is the income which has accrued to the assessee in relevant previous year. The Ld. A.O. accordingly assessed the interest accrued in respect of the securities after reducing the interest on due basis, which was already declared by the assessee. The Ld. CIT(A) following the finding of his predecessor in the A.Y. 2014-15 deleted the addition subject to verification of interest income offered on the due basis is brought to tax in the present assessment year.

17 Before us the Ld. DR relied on the order of the Ld. A.O. and submitted that interest income accrued as per section 5 of the Income-Tax Act, 1961 (in short the Act) has rightly been taxed by the Ld. A.O. in the year under consideration.

18. The Ld. Counsel of the assessee on the other hand submitted that issue in dispute has been consistently allowed in favour of the assessee by the Tribunal in the case of the State Bank of India for A.Y.2000-01; 2001-02; 2003-04; 2005-06 and 2008-09. He further submitted that Hon'ble Jurisdictional Bombay High Court, on appeal filed by the Income-Tax-Department against the decision of the Tribunal for A.Y.96-97, has also decided the issue in favour of the assessee by the order dated 01/08/2016.

19. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The relevant finding of the Tribunal on the issue in dispute for A.Y.2008-09 in ITA No. 3644 and 4563//2016 is reproduced under:

We have heard rival contentions and gone through the facts and circumstances of the case. We noted that interest on securities is payable six-monthly on the coupon date i.e. on 30th June and 31st December. While closing the books as on 31st March, there is interest on securities of 3 months i.e. from 1st January to 31st March is accounted for. However, the assessee is not eligible to receive such interest on 31st March, as the payment of interest accrues and becomes due only on the coupon date i.e. 30th June. It is the practice of the assessee to account for the interest on securities for the period upto 31st March while arriving at the book profit on the basis that interest accrues from day to day for accounting purposes. However, in the return of income filed for tax purposes, the interest on securities is taxed on accrued and due basis since the right to receive interest on securities arises on the due date only which falls after the accounting year.

The AO has taxed such interest which has neither accrued nor become due as on 31st March 2018 of Rs.3804,07,30,799/-. The CIT(A) deleted the disallowance following Tribunal's order in assessee's own case for AYS 1991-92 to 1996-97 and the CIT(A) order for AY 2007-08. The Revenue before the Tribunal emphasized on the fact that the income has been accrued in the books of account of the assessee and based on the matching concept, the interest income should be taxable.

But assessee contended that the issue is squarely covered n favour of the assessee in its own case for assessment years 1991-92 to 1994-95 by the order of Tribunal dated 19.05.2008, which is filed in Assessee Paper Book- II, which was followed by the Tribunal in the subsequent assessment years. Moreover, the Hon'ble Bombay High Court on appeal by Revenue for assessment year 1996-97 has upheld the decision of Tribunal vide its order dated 01.08.2016.

The facts of the case in the year under consideration are same as the facts of the earlier years. In view of the above, this ground of appeal is covered in favour of the assessee vide the aforementioned orders of the Tribunal and Bombay High Court. The right to receive interest on securities arises on due date only, which falls after the accounting year and, accordingly, it cannot be taxed in the accounting year itself. In DIT vs. Credit Suisse First

Boston (Cyprus) Ltd. [2013] 351 ITR 323 (Bombay) Hon'ble Bombay High Court was concerned with a case wherein the tax officer had taxed interest accrued but not due on securities held as on 31st March. The Bombay High Court held that right to receive the interest vested only on the due date mentioned in the securities and, hence, the same cannot be taxed since interest was not payable on the 31st March as per the terms of the said securities.

The learned CIT DR referred to several decisions such as State Bank of Travancore Vs. CIT [1986] 158 ITR 102 (SC), U.P Chalchitra Nigam Ltd. Vs. CIT [2015] 370 ITR 379 (Allahabad) and Mahindra Telecommunication Investment P. Ltd Vs. ITO [2016] 69 taxmann.com 431 (Mumbai). He argued that the facts are not applicable to the present issue as in the said cases there was no dispute that as per the terms of contract between the parties, income had accrued but the dispute was with respect to its taxability based on the financial difficulty of the debtor parties. However, in the present case, the issue is with respect to whether the interest has become due and payable as per the terms of securities. The present is not a case wherein the right to receive the interest on securities exists and there is improbability of realization of such interest. Even in such a case, the courts have held that no real income has accrued to the assessee. Reliance in this regard is placed on the decision of the Supreme Court in the case of CIT vs. Excel Industries Ltd. [2013] 358 ITR 295 (SC), wherein the benefit of an entitlement to make duty free imports could not be taken until the goods are imported and made available for clearance, also there was no liability on part of the other party to pass on the benefit to the assessee and, hence, it was held that only hypothetical income had accrued to the assessee. The Court has equated the right to receive with a corresponding liability to pay which does not exist in the present case as the obligation of the issuer to pay arises only on the coupon date. The learned CIT DR also relied on the decision of the Bombay High Court in the case of Taparia Tools Ltd. Vs. JCIT [2003] 260 ITR 102 (Bombay). It is to be clarified that the matching concept theory referred by the CIT DR in the decision of the Bombay High Court in the case of Taparia Tools Ltd. (supra) has been reversed by the Supreme Court in the case of Taparia Tools Ltd. Vs. JCIT [2015] 372 ITR 605 (SC).

We noted that this ground of appeal is covered in favour of the assessee vide the aforementioned orders of the

Tribunal and Bombay High Court. The right to receive interest on securities arises on due date only, which falls after the accounting year and, accordingly, it cannot be taxed in the accounting year itself. Hence, in view of the above discussion, we decide this issue in favour of assessee and accordingly, this ground of Revenue's appeal is dismissed.

19.1 Respectfully, following the finding of the Tribunal, we uphold the finding of the Ld. CIT(A) on the issue in dispute. Accordingly, the ground no. 1 of the appeal of the Revenue is dismissed.

20. The ground No. 2 of the appeal of the Revenue relates to deletion of the addition of broken period Interest expenses amounting to Rs.933,17,00,000/-.

21. The brief facts qua the issue in dispute are that interest on Government Securities is paid on due date and therefore, whenever a bank purchases a Government Security from the open market, it pays the market price of the security plus the broken period interest from the last due date of payment of the interest till the date of purchase of said security to the seller, because the seller is entitled to interest from the last due date of interest to the date of the sale. The purchasing bank treats the broken period interest as expenditure and the selling bank treats the broken period interest received as income. During the year the assessee has claimed broken period interest expenditure of Rs.933,17,00,000/- which has been disallowed by the Ld. A.O.. However, the Ld. CIT(A) has deleted the addition following the finding of his predecessor.

22. Before us, both the assessee and the Revenue agreed that issue in dispute is covered by the decision of the Tribunal

in the case of the state Bank of India for earlier years. The relevant finding of the Tribunal (supra) in A.Y.2008-09 is reproduced as under:

> *We noted that BPI refers to interest on Government and other approved securities relatable to the period from last due date (upto which interest was paid) till the date of purchase or sale. Thus, when the assessee purchases a security, it pays a price which is calculated having regard to two components, viz., the market price of security plus BPI to the seller. In this case, the assessee treats the BPI paid as expenditure. Similarly, when the assessee sells a security, such interest is treated as income of the assessee.*
> *The Revenue before us emphasized on the fact that interest income is offered to tax on due basis and, hence, the corresponding expenses cannot be allowed, on the basis of the matching concept.*
>
> *We noted that this ground of appeal is covered in favour of the assessee by the order of the Tribunal in its own case for the AYS 1991-92 to 1994-95 (Order dated 19.05.2008), which was followed by the Tribunal in subsequent AYs. Further, the Bombay High Court on the appeal by Revenue for the assessment year 1996-97 upheld the decision of Tribunal, vide its order dated 01.08.2016. From these facts we noted that this issue is covered in favour of assessee and hence, this ground is decided against Revenue. This issue of Revenue's appeal is dismissed.*

22.1 Respectfully following the finding of the Tribunal (supra), we do not find any infirmity in the order of the Ld. CIT(A) and accordingly uphold the same. The ground No. 2 of the appeal of the Revenue is accordingly dismissed.

23. The ground No. 4 of the appeal of the Revenue relates to deletion of the addition for the loss of Rs.28,31,40,572/- on revaluation of investment/provision for amortization of premium paid on securities held –HTM category.

24. The brief facts qua the issue in dispute are that assessee debited some of Rs.28,31,40,572/- to the profit and loss account on account of amortization in respect of securities held under the “held to maturity (HTM) as per the guidelines of the Reserve Bank of India. The assessee contented that HTM category should be carried at acquisition cost and in case the purchase price is higher than the face value, the premium should be amortizef the remaining period of the maturity of the security. It was submitted that amortization the premium is in the nature of deferred Revenue expenditure and should be allowed to the assessee in view of the decision of the Hon’ble Supreme Court in the case of Madras Industrial Investment Corporation Ltd v/s CIT 225 ITR 802. The assessee further supported its claim in view of the decision of the Mumbai bench of the Tribunal in the case of ACIT v/s Bank of Rajasthan Ltd. (ITA No. 2246 to 2250/Mum/2009). The assessee further submitted that issue in dispute was covered in favour of the assessee by the earlier order of the Ld. CIT (Appeal) for A.Y.2005-06 to 2011-12. However the contention of the assessee was rejected by the Ld. A.O. holding that the RBI guidelines will not decide tax ability of the income.

25. The Ld. CIT(A), however following the finding of his predecessor, allowed the issue in dispute in favour of the assessee. The relevant finding of the Ld. CIT(A) is reproduced as under:

> *I have considered the submissions of the appellant and perused the materials available on record. The appellant has requeste % to delete the impugned disallowance of Rs. 28,31,40,572/-, being loss on revaluation of investments/ amortization of premium paid on securities in HTM categories. The appellant has made detailed submissions as above and the same have been considered carefully. From the records it is observed that*

similar issue had come up for consideration in the case of State Bank of India for AY 2014 15 and therein my Ld. Predecessor vide his above referred order dated 28.02.2018 has held as under.

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 to 2011 12, by DRP in 2012-13 and by ITAT for A.Y. 1996-97 which are reproduced as under:
"After considering the rival submissions and perusing the relevant records, we find it difficult to agree with the stand of the Revenue Authorities that the loss claimed by the assessee on revaluation of the concerned investment cannot be allowed while computing the income of the assessee from banking business. As held by the Hon'ble Kerala High Court in the case of Malabar Co-operative Central Bank Ltd. (supra), the banking institution as a part of business activity will have to have ready resources to meet its liability the extent of which could never be foreseen. It was held that even though the legislature has made it obligatory for the banking institutions to maintain certain percentage of its assets in the form of securities at any given day taking the interest of the public into consideration, this does not detract from the proposition that by so holding the securities, the bank is carrying on its business and securities so held are stock in trade. In the case of Bihar State Co-operative Bank Ltd. (supra), it was held by the Hon'ble Supreme Court that it is a normal mode of carrying on banking business to invest moneys in a manner that they are readily available. It was held that howsoever a security capital is employed, it is a part of normal course of business of a bank and the money which was not lend to the borrower but was invested in the form of deposits in another bank cannot be said to have become ceased to be part of stock in trade of bank. Keeping in view the ratio of these judicial pronouncements, we hold that the investment in question very much represented stock in trade of the baking business of the assessee and the loss on the revaluation thereof is allowable as deduction. Accordingly, the impugned order of the ld. CIT(A) on this issue is set aside and the A.O. is directed to allow the deduction claimed by the assessee on account of loss on revaluation of investment. Ground No. 3 of assessee's appeal is accordingly allowed."
Relevant para of CIT(A) order of AY 2007-08 is also reproduced as under:

> *"This is also a recurring issue and has been decided by the CIT(A) in AYS 2002-03 to 2006-07 in its favour. The decision dated 30.03.2013 of CIT(A) for AY 2006-07 in appeal no IT-241/09-10 is placed on record. Following that order the issue is decided in the favour of assessee. The amount of Rs.1036,79,45,303 being the amortized amount of the total premium in r/o investments held in HTM category is an allowable deduction. This ground of appeal is therefore allowed"*
>
> *The above decision of the CIT(A)/ITAT is considered. It is seen that the above facts are similar in this year also. Therefore, the above decision is followed and the claim of the appellant is allowed. This ground of appeal is allowed."*
>
> *Further, in the appellant's own case for AY 2014-15, my Ld. predecessor vide his above referred order dated 31.01.2018 has held as under.*
>
> *"The facts if this year are similar to the facts of the preceding years. Following the above orders of the CIT(A) and the case laws discussed above, the Assessing Officer is directed to delete the addition made by him on account of disallowance of deduction on account of amortization of premium on purchase of securities under the 'Held To Maturity' category. Thus, ground of appeal no. 4 is allowed."*

26. Before us, both the parties agreed that issue in dispute is covered in favour of the assessee by the order of the Tribunal in the earlier years including the order dated 22/03/2022 for A.Y.2005-06 in ITA No. 3685 and 4951/Mum/2013. The relevant part of the decision of the Tribunal (supra) is reproduced as under:

> *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.*
>
> *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.*

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:

"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:

"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."

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

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.

27. The Ld. Counsel also submitted that issue in dispute has also been decided in favour of the assessee by the Hon'ble

jurisdictional High Court vide order dated 01/08/2016 on the appeal filed by the Income-Tax Department for A.Y.1996-97. We find that Tribunal (supra) has considered the decision of the Hon'ble jurisdictional High Court for assessment and 96-97. Respectfully following the finding of the Tribunal (supra), we do not find any error in the order of the Ld. CIT (A) on the issue in dispute, and accordingly, we uphold the same. The ground No.4 of the appeal of the Revenue is accordingly dismissed.

28. In the result, the appeal of the Revenue is dismissed, whereas the appeal of the assessee is allowed partly for statistical purposes.

Order pronounced in the open court on 29.09.2022.

Sd/-	Sd/-
(KAVITHA RAJAGOPAL)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated : 29/09/2022
ANIKET G. RAJPUT (Stenographer)

<u>Copy of the Order forwarded to</u> :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai