IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH MUMBAI

BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER

ITA No.2675/Mum/2019
(**Assessment Year :2014-15)**
&
ITA No.2676/Mum/2019
(**Assessment Year :2015-16**)

M/s Induslnd Bank Ltd 8th Floor, Tower I, One Indiabulls Centre, 841, Senapati Bapat Marg, Prabhadevi, Mumbai-400013	Vs.	ACIT, Circle – 2(3)(2), 5th Floor, Aayakar Bhawan, Maharishi Karve Road, Mumbai-400020
PAN/GIR No.AAACI1314G		
(Appellant)	..	**(Respondent**)

ITA No.2725/Mum/2019
(**Assessment Year :2014-15**)
&
ITA No.2726/Mum/2019
(**Assessment Year :2015-16)**

Asst. Commissioner of Income Tax, Circle – 2(3)(2), Aayakar Bhavan. Room No. 552, 5th Floor M K Road, Mumbai-400020 Mumbai-400020	Vs.	M/s Induslnd Bank Ltd. 8th Floor, Tower-1 One Indiabulls Centre, 841, S B Marg, Elphinstone Road Mumbai-400013.
PAN/GIR No.AAACI1314G		
(Appellant)	..	**(Respondent**)

CO No.26/Mum/2021
(Arising out of ITA No.2725/Mum/2019)
(**Assessment Year :2014-15**)
&
CO No.27/Mum/2021
(Arising out of ITA No.2726/Mum/2019)
(**Assessment Year :2015-16)**

Induslnd Bank Limited Tower 1, 8th Floor, 841 Senapati Bapat Marg, Elphinstone Road (W), Mumbai-400013	Vs.	Assistant Commissioner of Income-Tax Circle 2(3)(2) Room no.552, Aayakar Bhawan, M.K. Road, Mumbai-400020
PAN/GIR No.AAACI1314G		
(Appellant)	..	**(Respondent**)

Assessee by	Shri. H.P. Mahajani a/w Viran Shah,
Revenue by	Shri. Jayant Jhaveri
Date of Hearing	**13/10/2022**
Date of Pronouncement	**26/10/2022**

आदेश / O R D E R

***PER BENCH*:**

These appeals in ITA No. 2675/Mum/2019, 2676/Mum/2019, 2725/Mum/2019, 2726/Mum/2019 and Cross Objections No.26/Mum/2021 & 27/Mum/2021 for A.Y.2014-15, 2015-16 arise out of the order by the ld. Commissioner of Income Tax (Appeals)-6, Mumbai in appeal No. CIT(A)-6/IT-109/2017-18, CIT(A)-6/IT-111/2017-18 dated 25/02/2019, 27/02/2019 (ld. CIT(A) in short) against the order of assessment passed u/s.143(3)of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 29/12/2017 by the ld. Asst. Commissioner of Income Tax, Circle-2(3)(2), Mumbai (hereinafter referred to as ld. AO).

Identical issues are involved in all these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.

ITA NO. 2725/Mum/2019 – Revenue Appeal – Asst Year 2014-15

2. The Ground No.1 raised by the revenue is challenging the deletion of addition made on account of interest income on accrual basis instead of due basis.

2.1. We have heard the rival submissions and perused the materials available on record. This issue is no longer res integra in view of the decision of Hon'ble Jurisdictional High Court in assessee's own case for the A.Y. 2000-01 in Income Tax Appeal No. 1621 of 2011 dated 12/02/2013 wherein the question raised before the Hon'ble High Court is as under:-

> *"Whether on the facts and in the circumstance of the case and in law the Tribunal was right in excluding from the total income of the Assessee Company the amount of interest of Rs 29,36,03,288/- which had accrued, but not fallen due or received ?"*

2.2. The Hon'ble High Court disposed of the said question by observing as under:-

> *"2. The Counsel for the parties state that the question raised in this Appeal is covered against the Revenue and in favour of the Respondent-Assessee by the decision of this Court in the matter of The Director of Income Tax (International Taxation) v/s Bank of Bahrain & Kuwait, BSC in Income Tax Appeal No. 1738 of 2011 rendered on 5th February, 2013.*
> *3. In view of the above, we see no reason to entertain the proposed question of law.*
> *4. Accordingly, appeal is dismissed with no order as to costs."*

2.3. Similar views were expressed by the Hon'ble Jurisdictional High Court in assessee's own case for the A.Ys. 2002-03 and 2004-05 vide its orders dated 16/04/2014 and 04/03/2013 respectively.

2.4. Respectfully following the said decisions, the Ground No. 1 raised by the revenue is dismissed.

3. The Ground Nos. 2 & 2.1. raised by the revenue are challenging the deletion of disallowance made on account of ESOP expenditure.

3.1. We have heard the rival submissions and perused the materials available on record. This issue is no longer res integra in view of the decision of this Tribunal in assessee's own case for the A.Ys. 2011-12 & 2012-13 in ITA Nos. 4486 & 4464/Mum/2017 and ITA Nos. 3875 & 3876/Mum/2017 dated 28/02/2019 wherein it was observed as under:-

"9. The issue raised in ground No.2 of Revenue's appeal is against the deletion of disallowance of amortization of Employee Stock Plan (ESOP) expenses of Rs.6,45,53,097/- as made by the AO without appreciating the fact that it is a capital expenditure incurred for the purpose of business being employee compensation cost.

10. At the outset, the Ld. A.R. submitted that the issue in the present ground has been decided by the AO while giving effect to ITAT's direction in assessee's own case in A.Y. 2009-10 and consequently the Revenue has also accepted ESOP expenses were allowable expenses.

11. The Ld. D.R. appeared to be fairly agreed to the contentions of the assessee.

12. After hearing both the parties and perusing the material on record, we find that in this case the issue has been decided by the ITAT co-ordinate bench in favour of the assessee which has been followed by the Ld. CIT(A) while allowing the relief to the assessee in the current year. The operative part of Ld. CIT(A)'s order is reproduced as below:

> *"7.4.3 I have considered the above submissions of the appellant as well as the facts of the case. The Hon'ble Mumbai Tribunal in the appellant's own case for A.Y.2009- 10 had held as under:*
> *"9. Disallowance of expenditure on ESOP is the subject matter of Ground No.4 for the year under appeal. During the assessment proceedings the AO held that the assesses had not incurred the expenditure for issuing ESOPs, that it was an unascertainable item of expenditure, that it depended upon the option to be exercised by the employees at a future date. In the appellate proceedings the FAA upheld the order of the AO.*

9.1 Before us, the AR argued that share under ESOP were issued to the employee at below market price to retain them in co., that it was a form of compensation for services rendered, that SEBI had directed the listed companies to account for the compensation cost as expenditure, that ESOP amortization cost was charged to the P&LA/c. under the matching cost and revenue principles as well as fundamental accounting concept of prudence, that both the above concepts were followed as per mandatory Accounting Standard-:,that there was no benefit of enduring nature, that

it was clearly a revenue expenditure being employee compensation cost, that it was an ascertained liability that was created during the year and quantified during the date of grant, that in the hands of employees ESOP benefits was taxed as perquisite. DR supported the order of FAA.

9.2 We have heard the rival submissions. We are of the opinion that the issue needs further verification about the terms and conditions of ESOP issue by the assessee .Therefore, in the interest of justice the matter is restored back to the file of AO for fresh adjudication, who would afford a reasonable opportunity of hearing to the assessee, Gr.No.4 is decided in favour of the assesses, in part."

The facts of this ground are same decided by the coordinate bench in assessee's own case supra, We, therefore, do find any infirmity in the order of the ld CIT(A) on this issue and the ground no. 2 of the revenue appeal is dismissed."

3.2. Respectfully following the aforesaid decision, the Ground Nos. 2 & 2.1. raised by the revenue are dismissed.

4. The Ground No. 3 raised by the revenue is challenging the deletion of disallowance made u/s 14A of the Act.

4.1. We have heard the rival submissions and perused the materials available on record. We find that the assessee earned exempt income by way of dividend of Rs 9.34 crores and did not disallow any expenditure u/s 14A of the Act as expenses incurred for the purpose of earning such exempt income. The ld. AO applied the computation mechanism provided in Rule 8D(2) of the Income Tax Rules and worked out the disallowance u/s 14A of the Act as under:-

Under Rule 8D(2)(ii)	- Rs 9.63 crores	
Under Rule 8D(2)(iii)	- Rs 0.72 crores	
	----------	Rs 10.35 crores

4.2. The ld. CIT(A) by placing reliance on the order passed by his predecessor for the A.Y. 2013-14 dated 06/11/2017 and by placing reliance on the decision of Hon'ble Jurisdictional High Court in the case of HDFC Bank Ltd reported in 366 ITR 505 (Bom) and Reliance Utilities &

Power Ltd reported in 313 ITR 340 (Bom) deleted the disallowance of interest made under Rule 8D(2)(ii) of the Rules. The ld. CIT(A) however upheld the disallowance made under Rule 8D(2)(iii) of the Rules. With regard to yet another submission made by the assessee that the disallowance u/s 14A of the Act per se could not be made in the instant case as the investments were admittedly held as stock in trade, the ld. CIT(A) by placing reliance on the decision of Hon'ble Supreme Court in the case of Maxopp Investments reported in 402 ITR 640(SC) decided the same against the assessee.

4.3. We find that the Hon'ble Supreme Court in the case of Maxopp Investments reported in 402 ITR 640(SC) had categorically held that normally investments held as stock in trade would also be liable for disallowance u/s 14A of the Act. However, with respect to investments held as stock in trade by the banks, the same decision held by placing reliance on the CBDT Circular No. 18/2015 dated 02/11/2015 had held as under:-

> ***"19.*** *In its analysis, the High Court accepted the contention of the counsel for the assessee that the assessee is engaged in the purchase and sale of shares as a trader with the object of earning profit and not with a view to earn interest or dividend. The assessee does not have an investment portfolio. The securities constitute the assessee's stock-in-trade. The Department, in fact, rightly accepted, as a matter of fact, that the dividend and interest earned was from the securities that constituted the assessee's stock-in-trade. The same is, in any event, established. The assessee carried on the business of sale and purchase of securities. It was supported by Circular No.18, dated November 02, 2015, issued by the CBDT, which reads as under:—*
>
> *'Subject: Interest from Non-SLR securities of Banks – Reg.*
>
> *It has been brought to the notice of the Board that in the case of Banks, field officers are taking a view that, "expenses relatable to investment in non-SLR securities need to be disallowed u/s 57(i) of the Act as interest on non-SLR securities is income from other sources."*
>
> *2. Clause (id) of sub-section (1) of Section 56 of the Act provides that income by way of interest on securities shall be chargeable to income-tax under the head "Income from Other Sources", if, the income is not*

chargeable to income-tax under the head "Profits and Gains of Business and Profession".

3. The matter has been examined in light of the judicial decisions on this issue. In the case of CIT Vs Nawanshahar Central Cooperative Bank Ltd. [2007] 160TAXMAN 48(SC), the Apex Court held that the investments made by a banking concern are part of the business of banking. Therefore, the income arising from such investments is attributable to the business of banking falling under the head "Profits and Gains of Business and Profession".

3.2 Even though the abovementioned decision was in the context of co-operative societies/Banks claiming deduction under section 80P(2)(a)(i) of the Act, the principle is equally applicable to all banks/commercial banks, to which Banking Regulation Act, 1949 applies.

4. In the light of the Supreme Court's decision in the matter, the issue is well settled. Accordingly, the Board has decided that no appeals may henceforth be filed on this ground by the officers of the Department and appeals already filed, if any, on this ground before Courts/Tribunals may be withdrawn/not pressed upon. This may be brought to the notice of all concerned.'

(emphasis supplied)

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

38. *From this, Punjab and Haryana High Court pointed out that this circular carves out a distinction between 'stock-in-trade' and 'investment' and provides that if the motive behind purchase and sale of shares is to earn profit, then the same would be treated as trading profit and if the object is to derive income by way of dividend then the profit would be said to have accrued from investment. To this extent, the High Court may be correct. At the same time, we do not agree with the test of dominant intention applied by the Punjab and Haryana High*

> *Court, which we have already discarded. In that event, the question is as to on what basis those cases are to be decided where the shares of other companies are purchased by the assessees as 'stock-in-trade' and not as 'investment'. We proceed to discuss this aspect hereinafter."*

4.4. Respectfully following the aforesaid decision, we hold that the ld. CIT(A) grossly erred in misinterpreting the said decision of Hon'ble Supreme Court. Accordingly, we direct the ld. AO to completely delete the disallowance made u/s 14A of the Act in respect of both second and third limbs of Rule 8D(2) of the Rules. Accordingly, the Ground No. 3 raised by the revenue is dismissed.

5. The Ground No. 4 raised by the revenue is challenging the deletion of disallowance on account of broken period interest.

5.1. We have heard the rival submissions and perused the materials available on record. This issue is no longer res integra in view of the decision of Hon'ble Jurisdictional High Court in assessee's own case in Income Tax Appeal No. 387 of 2017 dated 22/04/2019 wherein the question raised before the Hon'ble High Court is as under:-

> *"Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in holding that the broken period interest is allowable as a deduction in spite of the Supreme Court decision in case of CIT Vs. Vijaya Bank (187 ITR 541) and the Rajasthan High Court decision in the case of Bank of Rajasthan (316 ITR 391)?"*

5.2. The Hon'ble High Court disposed of the above question by observing as under:-

> *"4. It appears that the assessee had purchased securities on which certain interest was paid. The Revenue argued that the entire cost of security would include such interest component and the same would, therefore, be in the nature of capital expenditure. The assessee, however, argued that there was separate interest component payment of which was an allowable deduction. The Tribunal having accepted the assessee's contention, the Revenue is in the appeal before us. This issue is no longer res integra. The Division Bench of this Court in case of CIT Vs. HDFC Bank Ltd (366 ITR 505) had ruled in favour of the assessee.*

> *We are informed that the appeal against such judgement of the High Court was also dismissed by the Supreme Court. In the result, the Income Tax Appeal is dismissed."*

5.3. Respectfully following the aforesaid decision, the Ground No. 4 raised by the revenue is dismissed.

6. The Ground No. 5 raised by the revenue is challenging the deletion of allowance of deduction u/s 36(1)(viia) of the Act restricted by the ld. AO by reducing the amount of advances to the rural branches, population of which was more than 10000 as per census report 2011.

6.1. We have heard the rival submissions and perused the materials available on record. We find that deduction u/s 36(1)(viia) of the Act is available to the assessee bank in respect of advances given in rural branches of the bank. For this purpose, the expression "rural branch" is defined in Explanation to Section 36(1)(viia) of the Act as *"a branch of a scheduled bank or a non-scheduled bank situated in a place which has a population of not more than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year."* According to assessee, as on 01/04/2013, census was published only for 2001 and not for 2011 ; that as on 01/04/2013, only provisional data of census of 2011 was available that too only on aggregate basis. The data and status of the villages and rural areas were not provided in the Provisional Census data 2011. Hence it was impossible for the assessee to adopt the Census data of 2011 which was not available as on first day of previous year i.e. 01/04/2013. However, the said data was available before the completion of assessment proceedings and hence the ld. AO adopted the same and reworked the claim of deduction u/s 36(1)(viia) of the Act based on the revised Census data of 2011. The assessee submitted that Reserve Bank

of India (RBI) also provides for similar criteria for recognizing any branch as a rural branch based on the Census report. In this regard, RBI had issued a Circular vide DBR No. BAPD.BC.12/22.01.001/2016-17 for reclassification of branches as rural and otherwise. The said reclassification was provided on 01/09/2016 based on the final census released. According to assessee, RBI had directed all banks to adhere to the final census data of 2011 only after 01/09/2016 and not earlier. It was submitted that RBI directions are mandatorily applicable to the assessee bank and would be binding on them and accordingly when RBI mandates usage of the final census data of 2011 only after 01/09/2016, then it would not be possible for the assessee bank to deviate from the said directions of RBI. The same arguments were reiterated by the ld. AR before us.

6.2. Per Contra, the ld. DR vehemently submitted that before the completion of assessment proceedings, the final census data of 2011 was indeed available with the ld. AO and hence there is nothing wrong on the part of the ld.AO to apply the same. He argued that the RBI directions are not binding on the Income Tax Authorities as far as determination of total income of an assessee is concerned. Reliance in this regard was placed on the decision of *Hon'ble Supreme Court in the case of Southern Technologies Ltd vs JCIT reported in 320 ITR 577 (SC) wherein it was held that RBI prudential norms for asset classification deal only with presentation of NPA provisions in the balance sheet and they have nothing to do with computation or taxability of provisions for NPA under Income Tax Act*. The ld. DR vehemently argued that the RBI guidelines only prescribe the date of implementation of census published figures with village population figures from 01/09/2016, which is not binding on the revenue.

6.3. We find from the aforesaid definition of 'rural branch' in Explanation to Section 36(1)(viia) of the Act, the relevant catch words are as under:-

a) Relevant figures
b) Published
c) On or before 01/04/2013

In the instant case, the relevant figures of village wise population details were not published on or before 01/04/2013 in the public domain. Hence the assessee bank was justified in not implementing the same while filing its return for the purpose of working out the allowability of deduction u/s 36(1)(viia) of the Act. The RBI guidelines issued for identifying Census Centres were placed on record by the ld. AR vide pages 239 to 247 of the Paper Book. The relevant operative portion of the said guidelines is reproduced below:-

> *"Special Cases for Computing of Correct Population for Classifying a Centro in to Appropriate Population Group from Census Database*
>
> *A. Centre spanning across two or more districts/ sub-districts Guideline: Actual district/ sub-district of the part centre, where bank branch is located, should be reported in respective fields of the proforma. However, population group classification will be based on combined population of all parts of the centre. Till classification based on Census 2001 (ie, before September 1, 2016), one spanned over multiple districts used to be treated as different centres depending o part of the centre falling in particular district. But one centre spread over centre on multiple group sub-districts used to be treated as one centre only. With effect from September 2016 (i.e. effective date of implementation of Census 2011), for population classification purpose, one centre spread across two or more districts/ sub-districts will uniformly be treated as one centre only. As such, population group classification of such centres would be based on combined population of the centre, arrived at by adding each part population of the centre across district/ sub-district as available from Census 2011 data.*
>
> *Example (Centres across two or more districts)*
> *i) Hyderabad: Center Hyderabad is spanned over three districts, viz., Rangareddi, Hyderabad, and Medak in the state of the Telangana with part populations of 3136259, 3718651, and 138082 respectively. As such, all parts of Hyderabad (in all the three districts) will be classified as metropolitan with population of the centre as 6993262 (3136259+3718651+138082-6993262).*

However, position of branches are required to be reported in the respective actual districts based on their location. Before September 1, 2016, part of Hyderabad falling under Medak district used to be classified as semi-urban.
Example (Centres across two tehsils): ii) Chirmiri: This centre in district Koriyaspans over tehsils Baikunthpur and Khadganva with respective part populations sizes of 16016 and 69307. The classification of centre Chirmiri will be semi-urban based on the combined population 85323 (16016+69307= 85323). The branches in part of Chirmiri will be shown in their respective Tehsils (Baikunthpur and Khadganva) depending on their actual position. Before, September 1, 2016, the Tehsils for all branches in centre Chirmiri used to be reported as Khadganva tehsil as population of Khadganvais more than that of Baikunthpur.

B. Outgrowths (OG) in Census Data
Guideline: Outgrowth is a part of a bigger centre to be considered as bigger centre only, not a separate center.

Examples:
1) Jamalpore (OG) and Chovisi (OG) are the part of bigger centre Navsari in district Navsari in Gujarat. Therefore, the centre of the branches located at these OGs is Navsari. ii) Khanpur (OG) and Lamin (OG) are the part of bigger centre Pathankot in district Pathankot in Punjab.

C. Cantonment Boards
Cantonment Boards (CBs) near to/ surrounded by big cities (List-1) will considered as a part of that big city. Therefore, branches falling under such CBs and big cities will be classified based on the combined population of the big city and the corresponding CB.The cantonments/ CBs those are treated as separate centres are given in List-2.

D. Delhi as a single centre

As per administrative map of Census 2011, there were two Municipal Corporations viz. Delhi Municipal Corporation (DMC)' (subsequently. trifurcated) & New Delhi Municipal Corporation (NDMC) and one cantonment board viz., Delhi Cantonment Board, are considered as separate centres in Delhi. However, for reporting of data to the RBI, all these centres will continued to be classified as single Centre as hitherto.. Accordingly, the centres North Delhi Municipal Corporation, South Delhi Municipal Corporation, East Delhi Municipal Corporation, New Delhi Municipal Corporation and Delhi Cantonment Board will be treated as part of one bigger centre viz., "Delhi and its classification based on combined population will be "Metropolitan".

Banks should report correct centre name and population group classification of centres while seeking authorisation for opening of branches/offices in the respective centre from the Department of Banking Regulation (DBR) Department of Cooperative Banks' Regulation (DCBR).

Post Census 2011, Delhi Municipal Corporation has been trifurcated into North Delhi Municipal Corporation, South Delhi Municipal Corporation and East Delhi Municipal Corporation For information on banked centres, "Branch Locator link available on http://dbie.rbi.org.in may be referred to. The link is also accessible from RBI's main website (www.rbi.org.in) under the link (Statistics >> Database on Indian Economy). In case banks need further clarification or information on methodology for identification of correct centres, they may refer the case to DSIM, CO at the following address.

The Director,
Reserve Bank of India,
Bank Branch Statistics Division,
Department of Statistics and Information Management, Central Office, C-9, 6th Floor, Bandra-Kurla Complex,
Bandra (East) Mumbai-400051.
Telephone: 022-26578100/8300 (Extn. 7360/ 7361/7362/7613) Fax: 022-2657 0847
Email:"

6.4. We find that the ld. CIT(A) had duly appreciated the contentions of the assessee and granted relief to the assessee by observing as under:-

"13.3 I have carefully considered the facts of the case, discussion of the AO in the assessment order, oral contentions and written submission of the appellant and material available on record. In this issue, the AO has recomputed the allowance claimed u/s.36(1)(viia) by adopting the Census Data of 2011. The AO in the assessment order has mentioned that provisional census reports were released on 31.03.2011 and were widely disseminated and therefore the assessee should have used this data to categorize their branches to be urban or rural for claiming allowance u/s.36(1)(viia) of the Act. The appellant, on the other side, has stated that the data of census conducted in 2011 was not available on the first date of previous year relevant to assessment year under consideration as the same was not published. It is seen that the AO in the assessment order has nowhere mentioned as to from where he has taken the population as per the Census 2011 and how he has concluded that this data either provisional or final was available or published in the public domain as on the first day of the previous year relevant to the assessment year under consideration. The assessee has in their submission dated 11.01.2019 submitted copy of the provisional data obtained from the office of Registrar General & Census Commissioner of India at New Delhi who had provided hard copies of the provisional census data of 2011. It was seen that such data contained state-wise population census under various categories like sex, child, adult etc. The relevant provisional data do not provide population of rural areas which could have been useful for the purposes of section 36(1)(viia) of the Act. Accordingly, in the facts and

circumstances, it is arrived at that though the AO has mentioned that the provisional census reports were released on 31.03.2011 and were widely disseminated but the same was the source for the AO to recompute the allowance u/s.36(1)(viia), is fit emanating from the assessment order and the same has been factually disputed by the appellant as well. It is further seen that the Reserve Bank of India had issued a Circular bearing No.DBR. No.BAPD. BC. 12/22.01.001/2016-17 dated 01.09.2016 which has been made effective from 01.09.2016 for the said purposes. If the relevant data were available to the RBI, say in 2011, then, there would not have been any reason as to why would they publish the relevant Circular after almost a lapse of five years. In the facts and circumstances of the case and discussion hereinabove, the action of the AO based on a data, source of which is not proven to be available as on the first day of the previous year relevant to the assessment year under consideration is not found to be sustainable. Accordingly, this ground of appeal is allowed."

6.5. We find that the ld. CIT(A) had taken cognizance of the RBI circular while granting relief to the assessee. Now what is relevant is as to whether RBI guidelines would be binding on the revenue in view of the decision of Hon'ble Supreme Court in the case of Southern Technologies Ltd referred supra. We find from perusal of the aforesaid decision of Hon'ble Apex Court, it only talks about provision made for Non-Performing Assets (NPAs) by a Non-Banking Finance Company (NBFC) in accordance with prudential norms for income recognition and asset classification prescribed by the RBI. It also addressed the fact that NPA provisions were allowable at a certain percentage of advances as deduction in the Act in respect of banks and that the said provision cannot be extended to NBFCs. In that context, it was held that RBI guidelines are not binding on the revenue. In our considered opinion, the said decision is factually distinguishable with that of the facts before us. In the instant case before us, it is an admitted fact that even as per the definition of rural branch as given in Explanation to Section 36(1)(viia) of the Act, the relevant figures of village wise population details were not published on or before 01/04/2013. Hence even as per the Act, the assessee could not have

computed the provision as per the Census data of 2011. Hence assessee was justified in making provision based on Census data of 2001 where village wise population details were indeed available in public domain. Accordingly, we do not find any infirmity in the order of the ld. CIT(A) granting relief to the assessee in this regard. Accordingly, the Ground No. 5 raised by the revenue is dismissed.

7. In the result, the appeal of the revenue for the A.Y. 2014-15 in ITA No. 2725/Mum/2019 is dismissed.

Cross Objections of the Assessee – CO No. 26/Mum/2021 - A.Y. 2014-15

8. At the outset, we find that there is a delay of 345 days in filing of these cross objections by the assessee. From the affidavit filed by the assessee dated 19/03/2021 from the Managing Director of the assessee bank, we find that the said delay had been contributed due to Covid-19 Pandamic and in view of the relaxation issued by the Hon'ble Supreme Court, the delay in filing of these cross objections is hereby condoned and cross objections of the assessee is hereby admitted for adjudication.

9. The ground No.1 raised in these cross objections becomes infructuous, in view of the dismissal of the ground No.4 of the Revenue for A.Y.2014-15. Hence, the ground No.1 raised by the assessee in its cross objection is dismissed.

10. The ground No.2 & 3 raised by the assessee in its cross objections becomes infructuous in view of the dismissal of ground no.3 raised by the

Revenue. Accordingly, the grounds No.2 & 3 raised by the assessee in its cross objections are dismissed.

11. The ground No.4 raised by the assessee in its cross objections was stated to be not pressed by the ld. AR at the time of hearing. The same is reckoned as a statement made from the Bar and hence, dismissed as not pressed.

12. The ground No.5 raised by the assessee in its cross objections was taken for the first time before the ld. AO. For the sake of convenience, the ground No.5 raised by the assessee is reproduced hereunder:-

> *"On the facts and in the circumstances of the case and in law, the tax on dividend declared should not exceed the rate specified in the double taxation agreement as against the dividend distribution tax conducted as per Section 1940 of the Act."*

12.1. Effectively, this ground should have been raised by way of an additional ground by the assessee, being a legal issue and in view of the fact that this was not raised before the lower authorities. The same is hereby admitted and taken up for adjudication. However, no finding could have been given by the lower authorities in this regard as it is raised for the first time before us. Hence in the peculiar facts and circumstances of this case, we deem it fit to set aside this ground to the file of the ld. AO for denovo adjudication in accordance with law. Accordingly, the Ground No. 5 raised by the assessee in its cross objections is allowed for statistical purposes.

13. In the result, cross objections of the assessee is partly allowed for statistical purposes.

ITA No.2675/Mum/2019 (Assessee Appeal) – 2014-15

14. The ground No.1 raised by the assessee is with regard to disallowance made u/s.14A of the Act. In view of our decision for ground No.3 of Revenue's appeal for A.Y.2014-15 wherein we have held that disallowance u/s.14A of the Act could not be made in respect of investments held as 'stock in trade' by the assessee bank in view of the CBDT Circular No.18/2015 dated 02/11/2015 and in view of the decision of the Hon'ble Supreme Court in the case of Maxopp Investments reported in 402 ITR 640, the ground No.1 raised by the assessee is hereby allowed.

15. The ground No.2 raised by the assessee is with regard to disallowance of software expenses was stated to be not pressed by the ld. AR at the time of hearing due to smallness of the amount. The same is reckoned as a statement made from the Bar and hence, dismissed as not pressed.

16. The ground No.3 is raised by the assessee is challenging the confirmation by the ld. CIT(A) in respect of the addition made by the ld. AO in the sum of Rs.6,66,04,219/- towards recognition of interest income on non-performing assets which in the opinion of the assessee is not in accordance with RBI guidelines.

16.1. We have heard rival submissions and perused the materials available on record. It is a fact that this interest income on non-performing assets had been brought to tax by the ld. AO on accrual basis ignoring the RBI prudential norms for income recognition wherein, it has been stipulated that income from non-performing assets could be

recognized only on receipt basis and not on mercantile basis. The ld. AO had applied the provisions of Section 43D of the Act and sought to bring to tax the interest income of non-performing assets on accrual basis. This issue is no longer res-integra in view of the decision of Hon'ble Supreme Court in the case of CIV vs. Vasisth Chay Vyapar Ltd., reported in 410 ITR 244 wherein the decision of the Hon'ble Delhi High Court in the same case was duly confirmed by the Hon'ble Supreme Court. The decision of Hon'ble Delhi High Court in CIT vs. Vasisth Chay Vyapar Ltd., is reported in 196 Taxman 169 wherein the Hon'ble Delhi High Court held that the interest income onNon-Performing Assets (NPAs) could be brought to tax only on receipt basis in line with the RBI prudential norms by holding as under:-

> ***"15.*** *We have considered the respective submissions in their proper perspective. Before we embark on the discussion on these arguments, it would be useful to extract the relevant provisions of the RBI Act and NBFCs Prudential Norms (Reserve Bank) Directions, 1998. Section 45Q of the RBI Act, which starts with non obstante clause, reads as under :—*
>
> > *"45Q. Chapter IIIB to override other laws.—The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*
>
> ***16.*** *It is not in dispute that on the application of the aforesaid provisions of the RBI and the directions, the ICD advanced to M/s Shaw Wallace by the assessee herein had become NPA. It is also not in dispute that the assessee company being NBFC is bound by the aforesaid provisions. Therefore, under the aforesaid provisions, it was mandatory on the part of the assessee not to recognize the interest on the ICD as income having regard to the recognized accounting principles. The accounting principles which the assessee is indubitably bound to follow are AS-9. Relevant portion of the said accounting stand reads as under :—*
>
> *"9. Effect of Uncertainties on Revenue Recognition.—*
>
> *9.1 Recognition of revenue requires that revenue is measurable and that at the time of sale or the rendering of the service it would not be unreasonable to expect ultimate collection.*
>
> *9.2 Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim, e.g., for escalation of price, export*

incentives, interest etc., revenue recognition is postponed to the extent of uncertainty involved. In such cases, it may be appropriate to recognize revenue only when it is reasonably certain that the ultimate collection will be made. Where there is no uncertainty as to ultimate collection, revenue is recognized at the time of sale or rendering of service even though payments are made by instalments.

9.3 When the uncertainty relating to collectability arises subsequent to the time of sale or the rendering of the service, it is more appropriate to make a separate provision to reflect the uncertainty rather than to adjust the amount of revenue originally recorded.

9.4 An essential criterion for the recognition of revenue is that the consideration receivable for the sale of goods, the rendering of services or from the use of others of enterprise resources is reasonably determinable. When such consideration is not determinable within reasonable limits, the recognition of revenue is postponed.

9.5 When recognition of revenue is postponed due to the effect of uncertainties, it is considered as revenue of the period in which it is properly recognized."

17. *In this scenario, we have to examine the strength in the submission of learned counsel for the Revenue that whether it can still be held that income in the form of interest though not received had still accrued to the assessee under the provisions of Income-tax Act and was, therefore, exigible to tax. Our answer is in the negative and we give the following reasons in support :—*

(1) *First of all we would discuss the matter in the light of the provisions of Income-tax Act and to examine as to whether in the given circumstances, interest income has accrued to the assessee. It is stated at the cost of repetition that admitted position is that the assessee had not received any interest on the said ICD placed with Shaw Wallace since the assessment year 1996-97 as it had become NPAs in accordance with the prudential norms which was entered in the books of account as well. The assessee has further successfully demonstrated that even in the succeeding assessment years, no interest was received and the position remained the same until the assessment year 2006-07. Reason was adverse financial circumstances and the financial crunch faced by Shaw Wallace. So much so, it was facing winding up petitions which were filed by many creditors. These circumstances, led to an uncertainty insofar as recovery of interest was concerned, as a result of the aforesaid precarious financial position of Shaw Wallace. What to talk of interest, even the principal amount itself had become doubtful to recover. In this scenario it was legitimate move to infer that interest income thereupon has not "accrued". We are in agreement with the submission of Mr. Vohra on this count, supported by various decisions of different High Courts including this court which has already been referred to above.*

(2) *In the instant case, the assessee company being NBFC is governed by*

> *the provisions of RBI Act. In such a case, interest income cannot be said to have accrued to the assessee having regard to the provisions of section 45Q of the RBI and Prudential Norms issued by the RBI in exercise of its statutory powers. As per these norms, the ICD had become NPA and on such NPA where the interest was not received and possibility of recovery was almost nil, it could not be treated to have been accrued in favour of the assessee.*

18. *As noted above, Mr. Sabharwal, argued that the case of the assessee was to be dealt with for the purpose of taxability as per the provisions of the Act and not the RBI Act which was the accounting method that the assessee was supposed to follow. We have already held that even under the Income-tax Act, interest income had not accrued. Moreover, this submission of Mr. Sabharwal is based entirely on the judgment of the Supreme Court in the case of Southern Technologies Ltd.'s (supra). No doubt, in first blush, reading of the judgment gives an indication that the Court has held that RBI Act does not override the provisions of the Income-tax Act. However, when we examine the issue involved therein minutely and deeply in the context in which that had arisen and certain observations of the Apex Court contained in that very judgment, we find that the proposition advanced by Mr. Sabharwal may not be entirely correct. In the case before the Supreme Court, the assessee a NBFC debited Rs. 81,68,516 as provision against NPA in the profit and loss account, which was claimed as deduction in terms of section 36(1)(vii) of the Act. The Assessing Officer did not allow the deduction claimed as aforesaid on the ground that the provision of NPA was not in the nature of expenditure or loss but more in the nature of a reserve, and thus not deductible under section 36(1)(vii) of the Act. The Assessing Officer, however, did not bring to tax Rs. 20,34,605 as income (being income accrued under the mercantile system of accounting). The dispute before the Apex Court centered around deductibility of provision for NPA. After analyzing the provisions of the RBI Act, their Lordships of the Apex Court observed that insofar as the permissible deductions or exclusions under the Act are concerned, the same are admissible only if such deductions/exclusions satisfy the relevant conditions stipulated therefor under the Act. To that extent, it was observed that the Prudential Norms do not override the provisions of the Act. However, the Apex Court made a distinction with regard to "Income Recognition" and held that income had to be recognized in terms of the Prudential Norms, even though the same deviated from mercantile system of accounting and/or section 45 of the Income-tax Act. It can be said, therefore, that the Apex Court approved the 'real income' theory which is engrained in the Prudential Norms for recognition of revenue by NBFC. The following passage from the judgment of the Apex Court would bring out the distinction noticed by the Apex Court between permissible deductions/exclusions, on the one hand, and income recognition on the other :—*

"31. Before concluding on this point, we need to emphasise that the 1998 Directions has nothing to do with the accounting treatment or taxability of "income" under the Income-tax Act. The two, viz., Income-tax Act and the 1998 Directions operate in different fields. As stated above, under the mercantile system of accounting, interest/hire charges income accrues with time. In such cases, interest is charged and debited to the account of the borrower as "income" is recognized under accrual system. However, it is not so recognized under the

1998 Directions and, therefore, in the matter of its Presentation under the said Directions, there would be an add back but not under the Income-tax Act necessarily. It is important to note that collectability is different from accrual. Hence, in each case, the assessee has to prove, as has happened in this case with regard to the sum of Rs. 20,34,605, that interest is not recognized or taken into account due to uncertainty in collection of the income. It is for the Assessing Officer to accept the claim of the assessee under the IT Act or not to accept it in which case there will be add back even under real income theory as explained hereinbelow.

> *38. The point to be noted is that the Income-tax Act is a tax on "real income", i.e., the profits arrived at on commercial principles subject to the provisions of the Income-tax Act. Therefore, if by Explanation to section 36(1)(vii) a provision for doubtful debt is kept out of the ambit of the bad debt which is written off then, one has to take into account the said Explanation in computation of total income under the Income-tax Act failing which one cannot ascertain the real profits. This is where the concept of "add back" comes in. In our view, a provision for NPA debited to Profit and Loss Account under the 1998 Directions is only a notional expense and, therefore, there would be add back to that extent in the computation of total income under the IT Act.*
>
> *39. One of the contentions raised on behalf of NBFC before us was that in this case there is no scope for "add back" of the Provision against NPA to the taxable income of the assessee. We find no merit in this contention. Under the IT Act, the charge is on Profits and Gains, not on gross receipts (which, however, has Profits embedded in it). Therefore, subject to the requirements of the Income-tax Act, profits to be assessed under the Income-tax Act have got to be Real Profits which have to be computed on ordinary principles of commercial accounting. In other words, profits have got to be computed after deducting Losses/Expenses incurred for business, even though such losses/expenses may not be admissible under sections 30 to 43D of the Income-tax Act, unless such Losses/Expenses are expressly or by necessary implication disallowed by the Act. Therefore, even applying the theory of Real Income, a debit which is expressly disallowed by Explanation to section 36(1)(vii), if claimed, has got to be added back to the total income of the assessee because the said Act seeks to tax the "real income" which is income computed according to ordinary commercial principles but subject to the provisions of the Income-tax Act. Under section 36(1)(vii) read with the Explanation, a "write off" is a condition for allowance. If "real profit" is to be computed one needs to take into account the concept of "write off" in contradistinction to the "provision for doubtful debt".*
>
> *40. Applicability of section 145.—At the outset, we may state that in essence RBI Directions 1998 are Prudential/Provisioning Norms issued by RBI under Chapter IIIB of the RBI Act, 1934. These Norms deal essentially with Income Recognition. They force the NBFCs to disclose the amount of NPA in their financial accounts. They force the NBFCs to reflect "true and correct" profits. By virtue of section 45Q, an overriding effect is given to the*

Directions 1998 vis-a-vis "income recognition" principles in the Companies Act, 1956. These Directions constitute a code by itself. However, these Directions 1998 and the Income-tax Act operate in different areas. These Directions 1998 have nothing to do with computation of taxable income. These Directions cannot overrule the "permissible deductions" or "their exclusion" under the Income-tax Act. The inconsistency between these Directions and Companies Act is only in the matter of Income Recognition and presentation of Financial Statements. The Accounting Policies adopted by an NBFC cannot determine the taxable income. It is well settled that the Accounting Policies followed by a company can be changed unless the Assessing Officer comes to the conclusion that such change would result in understatement of profits. However, here is the case where the Assessing Officer has to follow the RBI Directions 1998 in view of section 45Q of the RBI Act. Hence, as far as Income Recognition is concerned, section 145 of the Income-tax Act has no role to play in the present dispute." (Emphasis supplied)

19. *We have also noticed the other line of cases wherein the Supreme Court itself has held that when there is a provision in other enactment which contains a non obstante clause, that would override the provisions of Income-tax Act. Custodian appointed under the Special Court Act, 1992's case (supra) is one such case apart from other cases of different High Courts. When the judgment of the Supreme Court in Southern Technologies Ltd.'s case (supra) is read in manner we have read, it becomes easy to reconcile the ratio of Southern Technologies Ltd. (supra) with Custodian appointed under the Special Court Act, 1992 (supra).*

20. *Thus viewed from any angle, the decision of the Tribunal appears to be correct in law. The question of law is thus decided against the revenue and in favour of the assessee. As a result, all these appeals are dismissed.*

16.2. Respectfully following the same, the ground No.3 raised by the assessee is allowed.

17. The ground No.4 raised by the assessee is challenging the confirmation of disallowance on bad debts of Rs.8,33,73,611/- made by the ld. AO pertaining to credit card business claimed by the assessee on the ground that credit card business was not banking business of the assessee.

17.1. We have heard rival submissions and perused the materials available on record. It is not in dispute that assessee bank had engaged

its own credit card business by issuing credit cards to its customers and the customers had used the said card while making purchases and had defaulted in the payments to the bank by not paying the dues on the due date. Since this loss was incurred by the assessee bank in the ordinary course of its business, the same was claimed as a regular business loss by the assessee bank. But the ld. AO observed that assessee bank is licensed to carryout business of banking only and that credit card business is not banking business. The ld. AO also placed reliance on the observations of the ld. Pr. Commissioner of Income Tax in case of ICICI Bank for the A.Y.2013-14 wherein it was decided that bad debts would not be allowed to that assessee since the same arose from the credit card business of ICICI Bank.

17.2. The ld. CIT(A) confirmed the disallowance on the ground that bad debts claimed by the assessee is not routed through or debited to the provisions for bad and doubtful debts account. Instead the said bad debts has been directly claimed u/s.36(1)(vii) of the Act. Accordingly, he confirmed the disallowance of bad debts claimed by the assessee.

17.3. We find that assessee had been deriving huge income of Rs.152.32 crores from its total credit card business of Rs.2030 Crores. Out of the said business, Rs.8.34 Crores had turned bad which assessee had claimed as bad debts u/s.36(1)(vii) of the Act. It is not in dispute that assessee had indeed offered income from credit card business as income under the head 'profits and gains of business or profession' and which has been taxed as such by the ld. AO. Hence, the income derived from credit card business has been accepted as business income by the ld. AO. The satisfaction of requirement of offering of income in terms of Section 36(2) of the Act has been done by the assessee in the instant case. Hence, if

any of the debts in respect of income already offered to tax by the assessee bank had become bad, and the same is written off as bad debt by the assessee in its books of accounts, the assessee would certainly be entitled for deduction u/s.36(i)(vii) of the Act. It need not be routed through provision for bad and doubtful debts account. Moreover, we find that RBI has issued a master circular dated 01/07/2013 which provides for credit card / debit card and rupee denominated co-branded prepaid card portions of the banks. The said circular clearly establishes the fact that credit card business is part and parcel of banking business. This fact that was placed on record by the assessee before the lower authorities had been ignored by them. Further as part of the banking license granted by the RBI, the assessee is entitled to carry on the banking business either departmentally or through a company set up for this purpose. We find that credit card could be issued by the assessee bank only to its customers. Hence, the observation made by the ld. PCIT in the case of ICICI Bank for the A.Y.2013-14 that a person need not be a customer of the bank to obtain credit card is fundamentally incorrect. Credit card business according to the RBI master circular is a permissible banking business activity provided under Banking Regulation Act and hence, it could be safely construed that credit card business is part and parcel of the banking business carried on by the assessee bank. We find that VISA and Master Card only act as service provider. The monies are lent by the assessee bank. The entire risk of bad debts thereon is borne by the assessee bank and not the service providers.

17.4. We hold that the claim of bad debts to be routed through provision for bad and doubtful debts account would be relevant if the provision is created u/s.36(1)(viia) of the Act. The assessee duly drew our attention from the computation of income that total amount of bad debts of

Rs.179,25,17,964/- is reduced by the amount of brought forward provision for bad and doubtful debts claimed u/s.36(1)(viia) of the Act in the preceding previous year of Rs.159,78,14,026/- and only the balance amount of Rs.19,47,03,938/- was claimed as deduction as bad debts u/s.36(1)(vii) of the Act. In this regard, we have verified the computation of income annexed in page 38 & 39 of the paper book. We have also gone through the workings for bad debts written off enclosed in page 43 of the paper book. Hence, it is observed that the bad debts arising from credit card business is part and parcel of total bad debts reflected by the assessee. Hence, we have no hesitation to hold that bad debts arising from credit card business would be part and parcel of loss arising in the course of banking business and hence liable as deduction u/s.36(1)(vii) of the Act. Accordingly, the ground No.4 raised by the assessee is allowed.

18. The ground No.5 raised by the assessee is only an alternative claim made by the assessee on without prejudice basis, that in case if the said bad debt arising from credit card business is not allowable u/s.36(1)(vii) of the Act, the said loss would become allowable u/s.28 or u/s 37 of the Act. In our considered opinion, the adjudication of this alternative ground would be infructuous as we have already granted relief to the assessee for ground No.4 hereinabove.

19. In the result, appeal of the assessee is partly allowed for A.Y.2014-15.

20. Both the parties before us mutually submitted that assessee's appeal, Revenue appeal and Cross Objections of the assessee preferred for A.Y.2015-16 are exactly identical to that raised in A.Y.2014-15. Hence, the decision rendered by us for all the three appeals in A.Y.2014-15 shall

apply mutatis mutandis for A.Y.2015-16 also except with variance in figures.

21. TO SUM UP:-

ITA NO./CO No.	AY	APPEAL BY	RESULT
ITA No. 2675/Mum/2019	**2014-15**	**Assessee**	**Partly allowed**
ITA No. 2725/Mum/2019	**2014-15**	**Revenue**	**Dismissed**
CO No.26/Mum/2021	**2014-15**	**Assessee**	**Partly allowed for statistical purposes**
ITA No.2676/Mum/2019	**2015-16**	**Assessee**	**Partly allowed**
ITA No.2726/Mum/2019	**2015-16**	**Revenue**	**Dismissed**
CO No.27/Mum/2021	**2015-16**	**Assessee**	**Partly allowed for statistical purposes**

Order pronounced on 26/10/2022 by way of proper mentioning in the notice board.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 26/10/2022
KARUNA, *sr.ps*
Copy of the Order forwarded to :
1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai