

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI

BEFORE SHRI ABY T VARKEY (JUDICIAL MEMBER)
AND
SHRI AMARJIT SINGH (ACCOUNTANT MEMBER)

ITA 3267/Mum/2019 - A.Y. 2013-14
ITA 3268/Mum/2019 - A.Y. 2014-15
ITA 3269/Mum/2019 - A.Y. 2015-16

Kotak Mahindra Bank Ltd 27, BKC, Bandra Kurla Complex Bandra East, Mumbai-400 051 PAN : AAACK4409J	vs	Assistant Commissioner of Income-tax, Circle 2(3)(2), Mumbai
APPELLANT		RESPONDENT

ITA 3863/Mum/2019 - A.Y. 2014-15
ITA 3865/Mum/2019 - A.Y. 2015-16

Assistant Commissioner of Income-tax, Circle 2(3)(2), Mumbai 27, BKC, C-27, G Block, Bandra Kurla Complex, Bandra (East), Mumbai-400 051	vs	Kotak Mahindra Bank Ltd 27, BKC, Bandra Kurla Complex Bandra East, Mumbai-400 051 PAN : AAACK4409J
APPELLANT		RESPONDENT

Assessee represented by	Shri Madhur Agrawal, Adv. a/w Mr. Prasad Lanke
Department represented by	Shri Nimesh Yadav –CIT DR

Date of hearing	08/02/2023
Date of pronouncement	16/02/2023

ORDER**PER : Shri Amarjit Singh (Accountant Member):**

These three appeals filed by the assessee and two appeals filed by the Revenue are directed against the independent orders of Ld.CIT(A)-6, Mumbai. Since there are identical facts and issue involved in these appeals, therefore, all these appeals are adjudicated together by taking appeal in ITA No.3267/Mum/2019 as the lead case and its finding will be applicable to other appeals, wherever similar issues are there.

2. The facts in brief are that return of income declaring total income of Rs.1653,31,94,036/- was filed on 28.11.2014. The case was subjected to scrutiny assessment and notice under section 143(2) of the Act was issued on 04th September, 2014. The assessee bank is engaged in the business of banking and financial activities. Further facts of the case are discussed while adjudicating the appeals filed by the assessee and the Revenue as below:

ITA No.3267/Mum/2019-Assessee's Appeal**Ground 2: Provision for Standard Asset qua deduction under section 36(1)(viiia)**

3. During the course of assessment, the Assessing Officer noted that assessee bank has claimed deduction for provisions under section 36(1)(viiia) of the Act in respect of bad and doubtful debts, though is available in respect of 7.5% of the total income and 10% of the rural branches. The assessee bank has created provisions in respect of following categories of assets-

- i) Standard Assets;

- ii) Doubtful Assets; and
- iii) Losses

4. The Assessing Officer stated that though the deduction under section 36(1)(viiia) is available only in respect of provisions for bad and doubtful debts; however, the assessee bank had claimed deduction in respect of provisions for even the standard assets. The Assessing Officer was of the view that no provision is required for standard assets as the standard assets are not included in the categories of standard and doubtful assets. The provision on standard and doubtful assets can only be claimed as provision for bad and doubtful debts. On query, the assessee explained that provisions on standard assets are part of overall provision made by the assessee in respect of bad and doubtful debts. It was also submitted that Reserve Bank of India has required banks to make provisions in respect of bad and doubtful debts in order to strengthen their financial position. It is also explained that provision on standard assets are part of overall provision made by the assessee in respect of bad and doubtful debts. The provision on standard asset is, in substance, not different from the provisions for bad and doubtful debts. The Assessing Officer has not agreed with the contention of the assessee and stated that section 36(1)(vii) and section 36(1)(viiia) deal with allowance of deduction for bad debt, which have been written off in the books of account and in the case of bank "provisions for bad and doubtful debts". All these deductions are clearly linked with the bad and doubtful debts. In view of this, the Assessing Officer has reduced the deduction, allowed no provision for bad and doubtful debts insofar as the provisions pertained to standard assets.

5. Aggrieved, assessee filed appeal before the Ld.CIT(A). The Ld.CIT(A) has dismissed the ground of the assessee reiterating the facts mentioned by the Assessing Officer.

6. During the course of appellate proceedings before us, at the outset, the Ld.Counsel contended that similar issue on identical facts has been adjudicated by the ITAT, Mumbai Bench in the case of State Bank of India vs DCIT vide ITA No.3644/Mum/2016 dated 03rd February, 2020.

7. On the other hand, the Ld.DR supported the orders of lower authorities.

8. With the assistance of Ld.representatives, we have gone through the decision of ITAT, Mumbai Bench in the case of State Bank of India vs DCIT (supra).

The relevant operating part of the decision is reproduced as under:-

71. We have noted the facts that the assessee has claimed that provision for standard assets should be taken into consideration for computing the deduction under section 36(1)(viiia) of the Act. The assessee has also filed the details vide note 17 and Annexure 6 to the revised return of income on pages 8, 9 and 20 of Paper Book – 1 filed by assessee. As per the provisions of section 36(1)(viiia) of the Act, a bank is eligible to avail deduction in respect of provision made for bad and doubtful debts, of an amount not exceeding 7.5% of total income and 10% of the aggregate average advances made by the rural branches of the bank. The provision is created by the assessee on the basis of RBI Guidelines. The assessee is required to create provision on non-performing assets on the basis of the classification of assets into the four prescribed categories i.e. loss assets, doubtful assets, substandard assets and standard assets [refer para 5.1.2 of the RBI Guidelines].

72. The Revenue before us emphasized that the provision for standard assets is not same as provision for bad and doubtful debts and the same is contingent in nature, since it is created only out of abundant caution. We noted from the provisions that the assessee is required to make a provision on all its debts ranging from 0.25% to 100% depending upon the categorization of the loan in terms of the guidelines issued by RBI. The provision on debts made by the assessee is in line with the RBI guidelines and section 36(1)(viiia) of the Act does not have a requirement that the provision for debts should be in respect of specified debts only. Section 36(1)(viiia) of the Act provides for a deduction to the bank in respect of 'any provision made for bad and doubtful debts' subject to certain ceiling. It does not specify the methodology for calculation of provision for bad and doubtful debts. The banks are required to make provision for bad and doubtful debts in accordance with the RBI guidelines. All the loan assets are initially classified as 'Standard'. Later on depending upon the problems arising, if any, and symptoms of sickness shown including delays in the repayment of the

principal and interest, deterioration of security, etc., they may be shifted to other categories. A provision made on any loan assets is a provision for 'bad and doubtful debts' irrespective of the category in which the loan falls. This is to provide for the inherent risk of loan losses which the bank may suffer in subsequent years.

73. We noted from the provision of Section 36(1)(viiia) of the Act that the same allows a deduction to banks in respect of any provision made 'for' bad and doubtful debts. It does not restrict the allowance to provision made 'on' bad and doubtful debts. Even in respect of assets that are classified as standard assets, a part of the debts are doubtful of recovery. The fact that a provision is made for standard assets by itself indicates that a part of the standard assets are doubtful of recovery. Accordingly, the entire provision made by the assessee, including in respect of standard assets, is for bad and doubtful debts as envisaged by section 36(1)(viiia) of the Act. Thus, in light of above, the assessee is eligible to claim deduction under section 36(1)(viiia) of the Act even in respect of the provision made for standard assets. This issue was considered by the ITAT in assessment year 2006-07 in ITA 3145/Mum/2009 dated 6.09.2016, in an appeal against the revision order of the CIT passed under section 263 of the Act, wherein it is held as under:

"So, however, we may also clarify that we are in principle in agreement that a provision for bad and doubtful debts cannot include that against standard assets i.e. which the bank" (assessee) itself regards as good for receipt and, therefore with the decision by the tribunal in Bharat Overseas Bank Ltd. (supra) relied upon by the Revenue. A provision by definition a charge against profits, while that in respect of an asset, considered good, would be more in the nature of an appropriation of profit i.e. a reserve. This is precisely what the Tribunal in Bharat Overseas Bank Ltd. (supra) means when it states of the deduction being not in the nature of a standard allowance. No contrary judgement by the Tribunal or a higher court has even otherwise been brought to our notice. At the same time, the provision as per RBI guidelines – which are contended to have been followed / adopted, provide for the minimum provision, and the bank is free to make a higher provision, i.e., than that prescribed by the RBI norms. Provisioning, it may be noted, is a management function, made reflecting its risk assessment qua different assets. If therefore, the assessee-bank is able to satisfy the assessing authority that the provision as made is justified with reference to the debts considered by it as bad and doubtful, we see no reason as to why the same cannot be allowed. The matter is accordingly restored back to the file of the A.O. for fresh determination by issuing definite findings of fact. Even as the primary onus would be on the assessee, the A.O. cannot substitute his own judgement with regard to the risk assessment qua a particular asset and, correspondingly, the provision in its respect. His purview would be to examine the reasonableness of the assessee's claim in light of the facts and circumstances qua each asset/s in respect of which provision is made. In arriving at our decision, we have taken a holistic view of the matter, placing due emphasis on the words 'provision' preceding the words 'for bad and doubtful debts' as well as the words 'not exceeding' occurring in the section, and which stand highlighted for the purpose. We decide accordingly."

74. *In view of the above discussion, arguments of both the sides, we are of the view that the assessee is eligible for claim of deduction u/s 36(1)(vii) of the Act on standard assets and this issue is covered by Tribunal's decision in assessee's own case for AY 2006-07 in ITA No.3145/Mum/2004 vide order dated 06.09.2016. Hence, we allow this issue of assessee's appeal."*

9. In view of the decision of the co-ordinate bench as referred above, the issue in appeal in the case of the assessee is squarely covered by the said decision. Therefore, following the decision of the co-ordinate bench, we direct the Assessing Officer to allow the claim of deduction of the assessee under section 36(1)(vii) in respect of standard assets. This ground of appeal of the assessee is allowed.

GROUND 3 : DISALLOWANCE OF BAD DEBTS PERTAINING TO CREDIT CARDS

10. During the course of assessment, the Assessing Officer noticed that assessee has shown bad debt of Rs.3,97,01,560/- from credit card business as bad debt under section 36(1)(vii) of the Act. On query, the assessee explained that the credit card business is undertaken within the purview of banking licence issued by the Reserve Bank of India and that even debt fall under section 6(2) of Banking Regulations Act and this being part of their banking business or alternatively, even if treated as money lending business, the write off is allowable under section 36(1)(vii) of the Act. The assessee further submitted that section 36(1)(vii) read with section 36(2) provided that any bad debt or part thereof would be allowed as deduction if the same represent money lent in the ordinary course of business of banking or money lending which is carried on by the assessee. However, the Assessing Officer has not agreed with the submission of the assessee. He was of the view that assessee was a banking company and credit card business was different from banking

business. The Assessing Officer further stated that credit card business was a payment service and not a business of banking or money lending as defined in the Banking Regulations Act, 1949. After referring to the order passed by the PCIT-2, Mumbai under section 263 in the case of ICICI Bank, the Assessing Officer has disallowed the bad debt claimed pertaining to credit card business of the assessee bank.

11. Aggrieved, assessee filed appeal before the Ld.CIT(A). The Ld.CIT(A) has dismissed the appeal of the assessee.

12. During the course of appellate proceedings before us, the Ld.Counsel submitted that identical issue on similar facts has been adjudicated by the ITAT, Mumbai Benches in the case of ICICI Bank Ltd vide order in ITA No.1112/Mum/2022 for A.Y. 2011-12 vide order dated 14th December, 2022.

13. On the other hand, the Ld.DR supported the orders of lower authorities.

14. With the assistance of Ld.representatives of the parties, we have gone through the order of the co-ordinate bench in the case of ICICI Bank Limited cited supra. The relevant operating part of the decision is reproduced as under:-

“6. We heard the parties and perused the record. In order to buttress the submission that credit card business is also a part of banking business, the Ld A.R took us through the circulars issued by RBI:-

(a) Circular No.: FSC.BC.120/24.01.011/2000-01 dated May 12, 2001 states that “Credit card debt is an unsecured line of credit.”

(b)

(b) Master Circular No.: BOD.No.FSD.BC.16/24.01011/2010-11 dated July 1, 2010 issued on credit card operations states as under with regard to charging of interest on outstanding credit card dues:-

“3. Interest rates and other charges:- Credit card dues are in the nature of non-priority sector personal loans and as such upto June 30, 2010, banks were free to determine the rate of interest on credit card dues

It can be noticed that the RBI itself states that the credit card dues are in the nature of unsecured loans or non-priority sector personal loans. When it is considered as a form of giving "loans", it cannot be said that the credit card business does not form part of banking business. Hence it is a case of lending money in the ordinary course of business of money lending. Accordingly, it satisfies the condition prescribed u/s 36(2) of the Act and hence the same is allowable as deduction u/s 36(1)(vii) of the Act as "bad debts", as it is written off in the books of account as bad. Accordingly, we do not find any infirmity in the decision taken by Ld CIT(A) on this issue."

15. Respectfully following the decision of co-ordinate bench as referred above, we direct the Assessing Officer to allow the claim of deduction under section 36(1)(vii) read with section 36(2) in respect of bad debts claimed on credit cards.

GROUND 4 : INTEREST ON NPA UNDER SECTION 43D READ WITH RULE 6EA

16. During the course of assessment, Assessing Officer observed that in the case of banks, provision of section 43D of the Act to allow them to offer interest in respect of NPAs on receipt basis. The guidelines of RBI also specify the non performing assets in respect of which the income cannot be recognized on accrual basis. The assessee has computed income in respect of NPAs on the basis of RBI guidelines. The Assessing Officer further stated that the advances (NPAs) in respect of which banks are at liberty to offer interest on cash basis are specified in Rule 6EA of the I.T. Rules, 1962. As per rule 6EA, interest is not to be offered for taxation with respect to advances which have become NPA for a period of 180 days or more. However, as per the guidelines of RBI, interest is not to be recognized on NPAs if they have become non performing for a period of 90 days or more. Therefore, Assessing Officer was of the view that provisions of Rule 6EA read with section 43D are very clear that irregularity of the nature referred in Rule 6EA should be noticed for a period of six months or more. The Assessing Officer also observed that as per guidelines of RBI, non

performing assets are recognized for a default of 3 months or more, however, as per the I.T. Rules, the period of 3 months has not been recognized anywhere. Therefore, the Assessing Officer has not accepted the interest derecognized by the assessee and made an addition of Rs.5,15,36,039/- by estimating the interest income from 91 to 180 days.

17. Aggrieved, assessee filed appeal before the Ld.CIT(A). Ld.CIT(A) has dismissed the appeal of the assessee.

18. During the course of appellate proceedings before us, the Ld.Counsel, at the outset, contended that similar issue on identical facts has been adjudicated by the Hon'ble ITAT, Mumbai Bench in the case of ICICI Bank Limits vs ACIT vide ITA No.3215/Mum/2019 dated 22/08/2022.

19. On the other hand, Ld.DR supported the orders of lower authorities.

20. With the assistance of Ld.representatives of the parties, we have gone through the order of the co-ordinate bench in the case of ICICI Bank Limited cited supra. The relevant operating part of the decision is reproduced as under:-

6. Heard both the sides and perused the material on record. The assessee has recognized the amount of interest attributable on sticky advances as NPA for a period of 90 days or more as per the guidelines issued by the RBI in accordance with Sec. 43D of the Act. However, the A.O was of the view that as per Rule 6E, interest is not to be offered for taxation with respect to advances which become Non Performing Assets for a period of 180 days or more. With the assistance of ld. representative we have perused the decision of ITAT, Mumbai in the case of Union Bank of India VS. ACIT, 16 taxman.com 304 wherein on identical issue and similar facts held that bank had no option but follow the RBI guidelines to make a provision for unrealized interest on the NPA by debiting profit and loss account. In the case of DCIT Vs. Karur Vysya Bank ITA No. 2433 & 2467 of ITAT Chennai dated 29.03.2017 held that it becomes necessary to read down such rules so that it is in consonance with the RBI regulation or prudential norms for recognizing income.

In Royal Bank of Scotland Vs. DCIT vide ITA No. 477/Kal/2015 ITAT Kolkata held as under:

"2.6 We have heard the rival submissions and perused the materials available on record including the detailed paper book filed by the assessee. The facts stated hereinabove remain undisputed and hence the same are not reiterated for the sake of brevity. It is not in dispute before the lower authorities that the

loan accounts had become sticky and doubtful of recovery. The only contention of the revenue is that section 43D of the Act read with Rule 6BA of the Rules permits accounting of interest income on receipt basis only if the loan account had become overdue for more than six months, whereas in the instant case, it is more than three months but less than six months as on 31.3.2010. The loan account becoming overdue and becoming sticky was never disputed. The next issue is whether the prudential norms of RBI for income recognition would override the provisions of the IT Act. This issue has been addressed by the Hon'ble Supreme Court in the case of Southern Technologies Ltd supra in the context of allowability of deduction towards 'Provision for NPA. We find that the same decision clearly stated that the interest income on NPA accounts should not be recognized on accrual basis which is in line with RBI prudential norms for income recognition. This fine distinction has been duly considered in the decision of the Hon'ble Delhi High Court in the case of CIT vs Vasisth Chay Vyapar Ltd supra. When the account becoming NPA is not disputed by the revenue, the recognition of income is to be done only on receipt basis which is in consonance with the real income theory. In these circumstances and respectfully following the decisions of Hon'ble Delhi High Court in 330 ITR 440 and various other decisions referred to supra, we hold that the interest income on NPA accounts should not be assessed on mercantile basis and the same is to be taxed only on receipt basis. Accordingly, the grounds raised by the assessee are allowed."

We have also perused the provision of Sect. 43D of the Act which are reproduced as under:

"43D. Notwithstanding anything to the contrary contained in any other provision of this Act,-

a) in the case of a public financial institution or a scheduled bank or "[a cooperative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank or] a State financial corporation or a State industrial investment corporation "[or a deposit taking non-banking financial company or a systemically important non-deposit taking non-banking financial company] the income by way of interest" in relation to such categories of bad or doubtful debts as may be prescribed" having regard to the guidelines issued by the Reserve Bank of India in relation to such debts,

(b) in the case of a public company, the income by way of interest" in relation to such categories of bad or doubtful debts as may be prescribed having regard to the guidelines issued by the National Housing Bank in relation to such debts,

shall be chargeable to tax in the previous year in which it is credited by the public financial institution or the scheduled bank or "[a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank or] the State financial corporation or the State industrial investment corporation or "[a deposit taking non-banking financial company or a systemically important non-deposit taking non-banking financial company or] the public company to its profit and loss account for that year or

as the case may be, in which it is actually received by that institution or bank or corporation or company, whichever is earlier.”

It is categorically provided in the provisions of section 43D that income by way of interest in relation to bad and doubtful debts to be prescribed in accordance with guidelines issued by the RBI. The section 43D was introduced by the Finance Act, 1991 as per the section the category of bad and doubtful debts to be prescribed in the Income Tax Rules having regard to the guidelines issued by the RBI in relation to such debts. In 1992 the Rules 6E was framed and as per RBI guidelines the norms for categorization of advances as NPA were those advances which remained over due for more than 6 months. The RBI has revised the guideline from time to time and made changes in the period of overdue of advances for categorization of NPA. During the year under consideration the RBI has reduced the period to 90 days for categorization of interest on sticky loan as NPA, however, similar changes was not made to Rule 6EA. After considering the provisions of Sec. 43D and judicial findings as supra we consider that norms for categorization of bad and doubtful debts had to be prescribed considering the guidelines issued by the RBI. Therefore, the Id. CIT(A) is not justified in substituting the limit for recognizing of interest on account of NPA to 180 days from 90 days in view of the clear provisions of Sec. 43D(a) that in the case of public financial institutions or schedule bank or a state financial corporation or a State Industrial Investment Corporation, the income by way of interest in relation to such categories of bad and doubtful debt as may be prescribed having regard to the guidelines issued by the RBI in relation to such debts. Therefore, both the ground of appeals of the assessee are allowed.”

21. Respectfully following the decision of co-ordinate bench as referred above, we direct the Assessing Officer to allow the claim of deduction under section 43D r.w.r. 6EA of I.T. Rules in respect of interest on NPAs.

GROUND 1 : INVALID RE-ASSESSMENT PROCEEDINGS

22. Since we have allowed the appeal of the assessee on merit, therefore, this legal ground is left open.

ITA No.3268/Mum/2019

GROUND I: PROVIION FOR STANDARD ASSET FOR DEDUCTION U/s 36(1)(Viiia)

23. This issue has already been considered and decided in appeal for A.Y. 2013-14. The facts and circumstances being identical, the decision arrived at therein shall apply mutatis mutandis here also.

GROUND III: ADDITION OF INTEREST INCOME U/S 43D R.W.R.6EA

24. This issue has already been considered and decided in appeal for A.Y. 2013-14. The facts and circumstances being identical, the decision arrived at therein shall apply mutatis mutandis here also.

GROUND I: INVALID RE-ASSESSMENT PROCEEDINGS

25. Since we have allowed the appeal of the assessee on merit, therefore, this legal ground is left open.

ITA NO.3269/MUM/2019

GROUND I : DISALLOWANCE OF ADMINISTRATIVE EXPENSES U/S 14A R.W.R.8D(2)(iii)

26. During the course of assessment, the Assessing Officer noticed that assessee company has made investment in shares / bonds with subsidiaries and joint ventures of Rs.1208.81 crores and has received exempt income under section 10 of the Act of Rs.7,35,14,698/-. However, the assessee has worked out an expenses of Rs.1,23,71,7217/- as inadmissible as per the provisions of section 14A, in respect of expenditure incurred in relation to income which does not form part of the total income. The AO asked the assessee that working of disallowance was not in accordance with the provisions of section 14A read with rule 8D(2) of the I.T. Rules. It was explained that assessee company had made investment in subsidiary companies / group companies and submitted that disallowance of administrative expenditure should be restricted to only @0.5% of average investment excluding strategic and group companies. However, the Assessing Officer has not agreed with the submission of the assessee and computed the disallowance for administrative expenditure under rule 8D(2)(iii) of the I.T. Rules, 1962 @0.5% of average value of investment at Rs.4,24,89,475/-.

27. Aggrieved, assessee filed appeal before the Ld.CIT(A). The Ld.CIT(A) dismissed the ground of the assessee.

28. During the course of appellate proceedings before us, the Ld.Counsel submitted that identical issue on similar facts in the case of the assessee itself has been adjudicated by the ITAT, Mumbai Bench in ITA No.781 & 782/Mum/018 for the A.Ys 2013-14 & 2014-15 vide order dated 27/08/2019.

29. On the other hand, the Ld.DR supported the orders of lower authorities.

30. We have perused the order of the co-ordinate bench as referred above in assessee's own case. The relevant operating part of the decision is reproduced as under:-

9. We have considered the rival submissions and perused material placed before us. The Hon'ble Supreme Court in the case of Maxopp Investment Ltd (supra) held that where the shares are held as stock-in-trade, the expenditure incurred for earning business profits will have to be apportioned and allowed as a deduction. Only that expenditure which is "in relation to" earning dividends can be disallowed u/s 14A & 8D. Further, the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg Co Ltd (supra) has upheld the finding of the ITAT that the expenditure incurred in relation to exempt income can be disallowed only if the assessing officer is not satisfied with the correctness of the expenditure claimed by the assessee.

10. Be that as it may, we find from records that the ITAT, for AYs 2008-09 to 2011-12, after considering a plethora of judgements, has directed the assessing officer to make disallowance u/r 8D(2)(iii) @0.5% of the average value of investments after excluding strategic investments. Considering the decision of Special Bench of Delhi Tribunal in Vireet Investment (P) Ltd (supra), we direct the assessing officer to disallow 0.5% of the average value of investments excluding strategic investments for the making of Rule 8D(2)(iii) of I.T. Rules. As such, ground 2 of the assessee succeeds in part."

31. Following the decision of ITAT as referred above, we direct the Assessing Officer to disallow 0.5% of the average value of investment excluding strategic investments for the making of disallowance as directed in the decision of ITAT in assessee's own case for A.Y.2013-14 & 2014-15. This ground of the assessee is partly allowed.

GROUND II : ADDITION OF INTEREST INCOME ON NPAs U/S 43D R.W.R. 6EA OF I.T. RULES

32. This issue has already been considered and decided in appeal for A.Y. 2013-14. The facts and circumstances being identical, the decision arrived at therein shall apply mutatis mutandis here also.

GROUND III : PROVISION FOR STANDARD ASSET FOR DEDUCTION U/S 36(1)(viiia)

33. This issue has already been considered and decided in appeal for A.Y. 2013-14. The facts and circumstances being identical, the decision arrived at therein shall apply mutatis mutandis here also.

ITA NO.3863/MUM/2019: REVENUE'S APPEAL

34. All the three grounds raised by the Revenue pertain to deletion of disallowance under section 36(2)(vii) pertaining to credit cards. This issue has already been considered and decided in appeal for A.Y. 2013-14. The facts and circumstances being identical, the decision arrived at therein shall apply mutatis mutandis here also.

ITA NO.3865/MUM/2019 : REVENUE'S APPEAL

GROUND 1 : DELETION OF DISALLOWANCE UNDER RULE 8D(2)(ii) OF INTEREST EXPENSES OF RS.5494.13 CRORES

35. In the course of assessment, the Assessing Officer noticed that assessee company has made investment in shares, bonds, subsidiaries and joint ventures of Rs.1208.81 crores and has received exempt income under section 10 of the Act of Rs.7,35,14,698/-. The assessee has worked out an expense of Rs.1,23,71,727/- as inadmissible as per the provisions of section 14A of the Act. On query, the assessee explained that it had made investments from own funds and no interest

disallowance is required under section 14A r.w.r. 8D(2)(ii). However, the Assessing Officer has not agreed with the submission of the assessee and computed the disallowance under section 14A r.w.r. 8D(2)(ii) on the ground that assessee has not proved that day to day investment was made out of own funds. Aggrieved, the assessee has filed appeal before the Ld.CIT(A). The Ld.CIT(A) has allowed the appeal of the assessee holding that in the case of the assessee reserves and surplus were at Rs.12275.09 crores and Rs.14141.09 crores at the beginning and at the end of the year, whereas the investments capable of yielding exempt income was made of Rs.1195.04 crores only.

36. During the course of appellate proceedings before us, the Ld.Counsel for the assessee submitted that similar issue on identical facts has been adjudicated by the ITAT in assessee's own case in ITAs No.781 & 782/Mum/2018 vide order dated 27/08/2019.

37. It is evident from the above fact that assessee had share capital and reserves which was far in excess of the investments made by the assessee in the instruments yielding exempt income. Therefore, following the decision of Hon'ble jurisdictional High Court in the case of HDFC Bank Ltd vs DCIT 67 taxmann.com 42 (Bom) and decision in the case of Reliance Utilities & Power Ltd, a presumption would come into play that the investment in the instruments yielding exempt income has been made out of own funds. Therefore, disallowance under rule 8D(2)(ii) cannot be made and on following the decision of the co-ordinate bench in assessee's own case. Therefore, we do not find any infirmity in the decision of the Ld.CIT(A). Therefore, this ground of appeal of the Revenue stands dismissed.

GROUND 2 : DISALLOWANCE OF ADMINISTRATIVE EXPENSES UNDER RULE 8D(2)(ii)

38. This issue has already been considered and decided in appeal for A.Y. 2015-16 vide ITA No.3269/Mum/2019. The facts and circumstances being identical, the decision arrived at therein shall apply mutatis mutandis here also. This ground of the Revenue is dismissed.

GROUND 3 : ALLOWING OF BROKEN PERIOD INTEREST

39. During the course of assessment, the assessee was asked to explain why the broken period interest on HTM (held to maturity) should not be treated as capital expenditure. The assessee made a detailed submission which has been reproduced by the Assessing Officer in para 10.2 of the assessment order wherein the assessee had also relied on the decision of the Bombay High Court in the case of American Express vs CIT 258 ITR 601 (Bom). The assessee has also relied on the various other decisions of the Tribunal. However, the Assessing Officer has not agreed with the submission of the assessee and held that the broken period interest is not allowable on investment as the same constitutes capital expenditure. The assessee filed appeal before the Ld.CIT(A). The Ld.CIT(A) allowed the claim of the assessee.

40. During the course of appellate proceedings before us, the Ld.Counsel submitted that identical issue on similar facts in the case of the assessee has been adjudicated by ITAT, Mumbai in ITAs No.781 & 782/Mum/2018.

41. On the other hand, the Ld.DR supported the order of the Assessing Officer.

42. The relevant paragraph of the decision of the Tribunal is as under:-

"14. We have considered the submissions of the parties and perused the order of lower authorities and the various case laws relied by the Ld AR for the assessee. During the assessment the AO required the details of the broken period interest expenses. The assessee furnished such interest on broken period expenses of Rs. 88,41,69,624/-. The AO disallowed the same holding that the securities are held till

the maturity which constitute the investment of the bank and cannot be considered as stock in trade. Before Id CIT(A) the assessee contended that all the investments were made in accordance with RBI guidelines. The closing balance has been shown in the balance sheet. The interest income on Government securities and the profit / loss has been offered in the return of income for the current year. Similar treatment is consistently offered by the assessee in earlier years. The assessee also relied on the CBDT Circular No.18/2015 dated 02.11.2015. The Ld CIT(A) accepted the contention of the assessee granted relied to the assessee by relying on the CBDT circular and on the decision of Hon'ble Supreme Court in CIT Vs Citi Bank NA in Civil Appeal No.1549 of 2006) and Bombay High Court in American Express International Banking Corporation vs CIT (125 Taxman 488 Bom). We have noted that this issue is also covered in favour of the assessee, hence, we affirms the order of the Ld CIT(A) and accordingly dismissed the ground of appeal raised by the revenue."

43. Following the decision of the co-ordinate bench as above, we do not find any infirmity in the order of the Ld.CIT(A). Therefore, the ground raised by the Revenue is dismissed.

GROUND 4: ALLOWING EXPENDITURE INCURRED ON ESOP

44. During the course of assessment, the Assessing Officer noticed that assessee has claimed an amount of Rs.73,77,70,906/- on the ground that the liability on account of ESOP has been crystallized in the year when the ESOP have been exercised during the year under assessment in accordance with the principle laid down by the Bangalore Tribunal in the case of Biocon Ltd ITA No.368 to 371/Bang/2010 & 206/Bang/2010. However, the Assessing Officer has not agreed with the submission of the assessee. He observed that the ESOP discount were incurred in relation to issue of shares to employees and they are not related to profits & gains arising or accruing from a business / trade. The Assessing Officer was of the view that it cannot be claimed as an expenditure wholly and exclusively laid out or expended for the purpose of trade. There is no specific provisions for such deduction from section 30 to 36 of the Act. Therefore, the residuary section 37 only goes to play when the

revenue expenditure are incurred wholly and exclusively for the purpose of business. Therefore, the Assessing Officer has disallowed an amount of Rs.73,77,70,906/- on account of ESOP.

45. Assessee filed appeal before the Ld.CIT(A). The Ld.CIT(A) has allowed the appeal of the assessee.

46. During the course of appellate proceedings before us, the Ld.Counsel submitted that identical issue on similar facts has been adjudicated by the ITAT in the case of the assessee itself vide ITA No.7811 & 782/Mum/2018.

47. On the other hand, the Ld.DR supported the order of the Assessing Officer.

48. We have gone through the order of ITAT. Relevant part of the order is reproduced as under:-

“17. We have considered the submissions of both the parties and perused the record. We have noted the AO disallowed the ESOP as we have recorded in para 15 above. However, the Ld CIT(A) allowed relief to the assessee by following the order of his predecessor in assessee's case for AY 2009-10 dated 12.11.2015 and for AY 2012-13 dated 19.06.16. The Ld CIT(A) also relied on the decision of Special Bench of Bangalore Tribunal in Biocon Ltd vs DCIT 144 ITD 21 (Bang)(SB). We have further noticed that the orders of the CIT(A) in appeal for AY 2009-10 & 2012-13 has been affirmed by Tribunal in ITA No. 698/Mum/2016 dated 20.12.2017 and in ITA No.2817/mum/2016 dated 28.02.2018, thus, we do not find any reason for interfering with the order of Ld CIT(A), which we affirm. In the result this ground of appeal is dismissed.”

49. Respectfully following the decision of the co-ordinate bench in assessee's own case we dismiss the ground of the Revenue.

GROUND 5 TO 7 : DISALLOWANCE OF BAD DEBTS REGARDING CREDIT CARDS

50. This issue has already been considered and decided in appeal for A.Y. 2013-14. The facts and circumstances being identical, the decision arrived at

therein shall apply mutatis mutandis here also. This ground of the Revenue is dismissed.

51. In the result, appeals of the Revenue are dismissed and the appeals filed by the assessee are partly allowed.

Order pronounced in the open court on 16/02/2023.

Sd/- (ABY T VARKEY)	sd/- (AMARJIT SINGH)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 16 February, 2023

pavanan

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR,
ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Dy./Asstt. Registrar) ITAT, Mumbai