IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E' NEW DLEHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER

ITA No. 740/Del/2020
Assessment Year: 2016-17

Punjab National Bank, (Successor of erstwhile Oriental Bank of Commerce), Finance Division, Plot No. 4, Sector-10, Dwarka, New Delhi **PAN: AAACP0165G** (Appellant)	VersuS	Addl. Commissioner of Income-tax, Spcl. Range-7 New Delhi. (Respondent)

Appellant by : Sh. KVSR Krishna, Ld. CA &
Sh. Aman Goel, Ld. CA
Respondent by : Ms. Sarita Kumar, Ld. CIT/DR

Date of hearing: 06.03.2023
Date of order : 31.03.2023

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Assessee against the order dated 31.12.2019, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-38, New Delhi Delhi (in short "Ld. Commissioner") u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2016-17.

2. The Assessee has raised following concise grounds of appeal:

1. The Ld. CIT(A) has erred in law and on facts in confirming the disallowance u/s 14A to the extent of Rs. 5.99 crores applying Rule 8D(2)(iii). No expenditure is incurred for earning tax free income, no satisfaction by AO and hence the disallowance made is wrong and bad in law and deserves to be deleted.

2. The Ld. CIT(A) has erred in confirming the disallowance of 100% depreciation on temporary erections of Rs. 30,76,16,842/-. The claim of the appellant is in accordance with I.T. rules part A under Building item No.4. These are wooden partitions, cabins etc. which are purely temporary erections and not disputed by AO. Consequently 100% claim of depreciation should be allowed.

3. The CIT(A) has erred in treating sum of Rs. 17,78,06,658/- being software expenses alleging them to be capital in nature instead of treating the entire amount as revenue expenditure. The appellant contends that the software expenses has not resulted in bringing into existence any asset nor any benefit of enduring nature and should be allowed as revenue expenditure.

4. The Ld. CIT(A) as well as AO has erred in law and on facts in disallowing the ' claim of amortization of premium on HTM securities amounting to Rs. 81,44,33,541/- to maintain SLR from time to time a mandate by RBI for doing banking business. The claim is allowable in view of the decision of the Hon'ble Mumbai High Court in the case of CIT v. HDFC Bank Ltd. 366 ITR 505 (Mum).

5. The Ld. CIT(A) as well as AO has erred in law and on facts in disallowing sum of Rs. 2153,02,00,000/- claimed as bad debt by the assessee u/s 36(1)(vii). The disallowance made is wrong and bad in law and the claim of bad debt should be allowed as complete details of all loan accounts were furnished and the condition of write off is duly satisfied by the appellant.

6. The AO as well as CIT(A) has erred in law and on facts in applying the provisions of 115JB (MAT) erroneously, without appreciating that the appellant is a Nationalized bank under the Banking companies (acquisition and transfer of undertaking, Act,

1980). The provisions of sec. 115JB are not at all applicable to the appellant even after the amendment made by Finance Act, 2012.

7. Without prejudice, the Ld. CIT(A) has erred in law in sustaining addition under MAT in respect of provision for bad and doubtful debts which is actual reduction in the value of advances reflected as such in the balance sheet and not a provision. Hence the same is not falling under any of the items from (a) to (j) of the above explanation to section 115JB and therefore cannot be added in the book profit computation.

8. The Ld. CIT(A) has erred in upholding addition of Rs. 81,44,33,541/- being loss on amortization of permanent investment alleging the same to be notional loss. The loss is according to the RBI mandate which has to be followed by the bank for ascertaining its book profits.

9. Therefore, the same cannot be added in the book profit computation.

10. The above grounds are independent and without prejudice to one and other.

11. The appellant may be allowed to add, amend and forgo any of the ground at the time of hearing."

3. During the course of hearing, the ld. AR of the Assessee by drawing our attention to the consolidated order dated 04.03.2022 passed by Hon'ble Coordinate Bench of this Tribunal in the cases of Assessee itself (in appeals No. 1581 to 1583/Del/2017 & 1199/Del/2018 filed by the Assessee and cross appeals Nos. 1823, 2173, 2174/Del/2017 & 1812/Del/2018 filed by the Revenue Department for A.Yrs. 2012-13 to 2015-16 respectively), submitted that all the issues as raised in the grounds of the instant appeal are covered by the aforesaid decision of the Hon'ble Coordinate Bench of

the Tribunal in the identical facts and circumstances, and therefore, the issues involved in the instant appeal may be decided accordingly.

4. The ld. DR though supported the impugned order passed by the ld. Commissioner, but did not refute the claim of the Assessee, hence we are inclined to decide this appeal in the light of the decision rendered by the Hon'ble Coordinate Bench of Tribunal in the cases of Assessee itself for the preceding years. For the sake of brevity, we will decide this Appeal ground-wise.

5. **Ground No. 1** challenges the affirmation of the disallowance made by the Assessing Officer u/s. 14A of the Act read with Rule 8D(2)(iii) of the Income-tax Rules, 1962 (in short "the Rules") to the extent of Rs.5.99 crores. We observe that this issue is squarely covered by the order of Hon'ble coordinate Bench of Tribunal referred to above, whereby this issue has been decided in favour of the Assessee in the identical facts and circumstances of the case. Relevant part of the Tribunal order is reproduced herein below for ready reference:

> "**Disallowance u/s 14A:**
>
> *2. This issue is related to disallowance of Rs.5.46 crores u/s 14A applying Rule 8D(2)(iii).*
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> *3. According to the assessee bank has sufficient non-interest bearing funds like share capital, reserves, current account balances for making any investment in tax free securities. Further, all expenses of the bank are for carrying on the banking business. Even the investments in the case of bank are held as stock-in- trade and*

part of business of the bank. Thus, no expenses can be disallowed u/s 14A.

4. It was argued that the AO has applied Rule 8D without recording any satisfaction for rejecting the assessee's claim and embarking upon Rule 8D nor there is any finding of any expenses incurred for earning of any tax free income.

5. The ld. CIT(A) has given part relief by upholding the disallowance as per last limb of Rule 8D namely Rule 8D(2)(iii).

6. The assessee is a Nationalized Bank and the issue is squarely covered in its favour by the order of the Co-ordinate Bench of ITAT in ITA No.1519/Del/16 and in ITA No.7106/Del/2017 for A.Y. 2012-13 in the case of Punjab National Bank Limited. The relevant portion of the order is reproduced as under:

> *"8. It is observed that decisions relied upon by Ld. Sr. DR has been passed prior to decision of Hon'ble Supreme Court in the case of Maxopp Investment vs. CIT (supra). Further Hon'ble Supreme Court in the case of Maxopp Investment vs. CIT (supra), has rendered a clear finding in respect of banking institutions which is peculiar.*
>
> *Present assessee before us is also a Bank, where shares were held as stock-in-trade and therefore it becomes business activity of assessee. In our opinion specific observation Hon'ble Supreme Court in the case of Maxopp Invesment vs. CIT (supra), reproduced hereinabove are squarely applicable to facts of present case. Respectfully following the view taken Hon'ble Supreme Court in the case of Maxopp Investment vs. CIT (supra), we allow this ground raised by assessee and hold that these were not investments made by assessee in order to fall within the ambit of Rule 8D (iii) of Income tax Rules 1962."*

7. Apart from the above, assessee's own case in its favour. It is further submitted that the Hon'ble Supreme Court in the case of South Indian Bank vs. CIT(2021) 112 CCH 00051 (SC) has held as under:

"25. Proceeding now to another aspect, it is seen that the Central Board of Direct Taxes (CBDT) had issued the Circular no. 18 of 2015 dated 02.11.2015, which had analyzed and then explained that all shares and securities held by a bank which are not bought to maintain Statutory Liquidity Ratio (SLR) are its stock-in- trade and not investments and income arising out of those is attributable, to business of banking. This Circular came to be issued in the aftermath of CIT Vs. Nawanshahar Central Cooperative Bank Ltd. [(2007) 15 SCC 611] / [(2007) 160 TAXMAN 48 (SC)] wherein this Court had held that investments made by a banking concern is part of their banking business. Hence the income earned through such investments would fall under the head Profits & Gains of business. The Punjab and Haryana High Court, in the case of Pr. CIT, vs. State Bank of Patiala, 2017 (393) ITR 476 (P&H) while adverting to the CBDT Circular, concluded correctly that shares and securities held by a bank are stock in trade, and all income received on such shares and securities must be considered to be business income. That is why Section 14A would not be attracted to such income."

8. The Co-ordinate Bench Delhi Tribunal in the case of Punjab & Sind Bank & Anr. vs. Assistant Commissioner of Income Tax & Anr. In ITA No.781/Del/2018, 1208/Del/2018 Jul 12, 2021(2021) 62 CCH 0324 (Del Trib.), had taken the similar view and deleted the disallowance u/s 14A of the Income Tax Act.

9. Therefore, this ground of the assessee is hereby allowed, the Revenue's appeal is hereby dismissed and the disallowance made u/s 14A is hereby deleted. "

5.1 There being no change in the facts and circumstances of the instant case, and therefore in view of the aforesaid findings of the Hon'ble Coordinate Bench, **Ground No. 1 of Assessee's appeal stands allowed**.

6. Ground No. 2 pertains to confirmation of disallowance of 100% depreciation claimed by the Assessee on temporary erections of Rs.30,76,16,842/-. We find that same issue has also been decided in favour of the Assessee, by the aforesaid order passed by coordinate Bench of Tribunal, in Assessee's own case for A.Y.2015-16, by holding as under:

> **"28. This ground is against the allowance of depreciation on temporary wooden structure at 100% by the ld. CIT(A)**. The AO has dealt with on facts, page no.9, para no.4 of his order the facts has not been disputed that the nature of furniture of wooden cabins, wiring etc. which are temporary in nature. The above ground of the department has to be dismissed as it is a covered matter in favour of the assessee by the order of the Co-ordinate Bench of ITAT in A.Y. 2007-08 in ITA No.1937/Del/11 and 1961 /Del/11 The matter was set aside to the AO for verification by the ITAT.
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> 29. The AO after verification has allowed the claim of the assessee for the A.Y. 2008-09 and 2011-12 for the A.Y. 2009-10.
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> 30. The ld. CIT(A) for the year under consideration has given this finding at relevant page no. 8 and 9 of his order para 5. Since the issue is covered in favour of assessee, the appeal of revenue on this ground is hereby dismissed.
>
> 31. On the same issue, the ld. CIT(A) for the AY 15-16 has disallowed the claim of depreciation on the ground that the AO has made additions by invoking provisions of Section 32 Explanation 1 and thus confirmed the disallowance. It is respectfully submitted that the facts in all the year are same namely that the additions are temporary wooden structures, internal partitions, cabin formation, flooring and ceiling wiring etc. for computer, false ceiling, glass windows, interiors etc. as noted by the AO. These are

not in the nature of construction of any structures or renovation or extension or improvement to the building.

32. Therefore, this issue stands covered by earlier orders as explained above and Assessee's appeal vide ground No. 2 of ITA No. 1199/Del/2018 for the A.Y. 15-16 is allowed."

7. Ground No. 3 pertains to the treatment of software expenses of Rs.17,78,06,658/- as "capital in nature" instead of revenue expenditure.

7.1 We observe that this issue too has been decided by the coordinate Bench in the order referred to above in favour of the Assessee, by observing as under:

"**Software Expenses:**

10. This issue is pertaining to addition of Rs. 16,15,97,772/- being software expenses alleging it to be capital in nature as against the claim of the Assessee that the same should be allowed as revenue expenditure.

11. This issue is covered in favour of the assessee in its own case by the Hon'ble Delhi High Court for Assessment Years 2008-09 to 2011-12 in ITA No.129/2018, 451/2017, 56/2018 and 414/2017 enclosed at page 61 to 66 in the paper-book vide order dated 17.04.2018, the operating part of the Hon'ble Delhi High Court Order at page no. 5, para 7 upto page no. 6 is reproduced as under:

"7. The mere circumstance that the depreciation rate is spelt out in the Schedule to the Income-tax act in our opinion is not conclusive as to the nature of the expenditure and whether it resulted an enduring advantage to a particular assessee. It is nobody's case that assessee is dealing with computer softwares or is in the business of any related services. Rather

it uses specific customized software, which is specific to its banking activities. But for the use of such software, the nature of expenditure otherwise incurred for streamlining its functions i.e. towards fee payable to the consultants for systems and employment of special professionals to carry on the tasks that the software in fact performs, would have fallen undoubtedly in the revenue stream. Taking these into account and the further circumstance that the software itself would have run its course or life span as it were, given that the earlier assessment year in question is 2008-09, we are of the opinion that the question of law framed is to be answered in favour of the assessee and against the revenue. The appeals are consequently allowed. No order as to costs."

12. The details of the software expenses filed before the AO and before the ld. CIT(A) page 59 and 60 of the paper book.

13. We find that this issue stands covered in favour of assessee and the appeal of the department (AY 2013-14) is hereby dismissed."

7.2 Respectfully following the decision of Hon'ble Coordinate Bench on the issue under consideration, **Ground No. 3 of appeal stands allowed.**

8. Ground No. 4 challenges the disallowance of Assessee's claim of amortization of premium on HTM securities amounting to Rs.81,44,33,541/- to maintain SLR from time to time, a mandate by RBI for doing banking business. The Assessee claimed that amortization of this premium is allowable in view of the decision of the Hon'ble Mumbai High Court in the case of CIT vs. HDFC Bank Ltd., 366 ITR 505 (Mum.). We find that this issue also stands covered in favour of the Assessee and against the Revenue Department by the decision

of coordinate Bench referred to above in the identical facts and circumstances of the case. The relevant observations of the Hon'ble Coordinate Bench reads as under:

*"**HTM Securities:***

19. This issue pertains to allowability of deduction of Rs.30,74,50,811/- being amortization of premium on HTM securities.

20. This was a claim made as an additional ground before the ld. CIT(A). The ld. CIT(A) at page 22, para 10 of his order has dismissed the assessee's ground by not admitting the claim relying on the decision of the Hon'ble Supreme Court in the case of Goetze India Ltd. vs. CIT 284 ITR 373 (SC).

21. This issue is also covered in favour of the assessee by the order of the Co-ordinate Bench of ITAT in the assessee's own case for the A.Y. 2011-12 in ITA No.6443/Del/2014 and ITA No.5969/Del/2014. The relevant part of the order is reproduced as under:

"15. The assessee has raised an additional ground reading as under:

"1. The appellant by this additional ground is claiming relief of Rs.30,73,30,286 being the amortized premium on HTM securities which may kindly be allowed"

16. This being a legal ground taken up before the Tribunal for the first time is hereby admitted for disposal on merits. The Id. AR contended that mortised premium on HTM securities be allowed as deduction. It was fairly admitted that the amount was offered for taxation and no deduction was claimed either before the Assessing Officer or before the CIT(A). He submitted that the additional claim has been raised because of the favourable judgment of the Hon'ble Bombay High Court in CIT vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom). Since this issue was not raised before the authorities below, we are of the considered opinion that the ends of justice would meet

adequately if the Assessing Officer is directed to consider the assessee's claim in the light of the judicial precedents available on the issue. Needless to say, the assessee will be allowed a reasonable opportunity of being heard in the matter."

22. The Hon'ble Bombay High Court in the case of CIT vs. HDFC Bank Limited (2014) 366 ITR 505(Bom), confirmed the ITAT Order wherein the claim of bank as deduction of amortized premium and HTM securities was allowed. The ITAT order has been upheld which is approved by the Bombay High Court:

> *"We find the Tribunal in the case of Lord Krishna Bank Ltd. (supra) has considered and adjudicated the issue in paragraphs 3 and 4 as under:*
>
> *"3. We have heard the rival submissions and perused the relevant material on record. The learned authorized representative has relied on Circular DBOD. No. BP. BC. 29/21.04.048/98, dated April 11, 1998, issued by the Reserve Bank of India prescribing the method to be followed for valuation of Government and other securities. The learned authorized representative invited our attention towards page 4 of the paper book, which is the method suggested by the RBI to be adopted by the banks in respect of permanent investments. Clause (ii) of point No. 1 of this, being valuation of permanent investments, which has been pressed into service by the learned authorized representative, reds as under:*
>
> *"Permanent" investments should be valued at cost and in case cost price is higher than the face value, the premium should be amortized over the remaining period of maturity of the security. On the other hand, where the cost price is less than the face value, the difference should be ignored and should not be amortized or taken to income account since the amount represents unrealized gain'.*
>
> *4. When we view the above method of valuation, it comes to notice that the permanent investment should be valued at cost and where such cost price is higher than the face value,*

'the premium should be amortized for the remaining period of maturity of the security'. From the above, it is clear that the premium has to be amortized for the remaining period of maturity of the security. The learned authorized representative fairly conceded that details of such premium splitting over the remaining period of the maturity was not readily available and hence, the matter be remitted to the file of the Assessing Officer for deciding it as per the above part of the Circular. No serious objection was taken by the learned Departmental representative. In view of these facts we set aside the impugned order and restore the matter to the file of the Assessing Officer for deciding this point in accordance with the above noted method."

Therefore, respectfully following the order of the Tribunal we decide the issue in favour of the assessee and against the Revenue and confirm the order of the Commissioner of Income-tax (Appeals) on this issue."

23. The above judgment of the Hon'ble Bombay High Court has been followed by the Hon'ble Karnataka High Court in the case of CIT vs. ING Vysya Bank Limited (2020) 422 ITR 116. The Hon'ble Karnataka High Court decided on two issues— one was whether the provision of section 115JB of the Income Tax Act would apply to a banking company and the second was whether the amortization of investment under HTM category done as per RBI guidelines was allowable expenditure u/s 37(1) of the Act.

24. At page 20 of the paper book is the question of law as under:

"In addition, in ITA No. 18/2014, an additional substantial question of law arises, viz., whether the Tribunal committed an error of law in allowing the claim of the assessee on the issue of amortization of investment "held to maturity" without appreciating the fact that though the same was done as per the Reserve Bank of India guidelines, yet the same was not an allowable expenditure under section 37(1) of the Act".

25. At page 24 of the paper book the judgment of the Karnataka Bank Ltd. (2013) 356 ITR 549 wherein it was held as under:

"12. Now we may advert to the second substantial question of law involved in ITA No. 18 of 2014. The aforesaid substantial question of law is squarely covered by Instruction No. 17 of 2008 dated November 26, 2008 issued by the Central Board of Direct Taxes/RBI and is covered by Clause)vii) provided herein. The decision in the case of Southern technologies was considered by a Division Bench of this court in Karnataka Bank Ltd. (supra) and it has been held that where the assessee maintains the accounts in terms of the Reserve Bank of India Regulations, the assessee is entitled to deductions and it cannot be denied by the authorities under the pretext that it was showing as investment in the balance-sheet. Accordingly, the common questions of law are answered in favour of the assessee and against the Revenue."

26. Similar view has also been taken by the Bombay High Court in the case of PCIT vs. Bank of Maharashtra in ITA No.920 of 2015, copy of the same is enclosed at paper book page 26 upto page no.29.

27. Since the issue stands covered, this ground of the assessee is hereby allowed and the appeal of the department is dismissed."

8.1 In view of the aforesaid decision of the coordinate Bench of Tribunal in Assessee's own case, on the issue in hand, **Ground No. 4 of appeal also stands allowed**.

9. By ground No. 5, the Assessee has challenged the disallowance of a sum of Rs.2153,02,00,000/- claimed by the Assessee as bad debt u/s. 36(1)(vii) of the Act, in respect of which complete details of all the loan accounts were furnished and the condition of write off was claimed to be duly satisfied by the Assessee.

9.1 We observe that this issue also stands decided by the Coordinate Bench of Tribunal in favour of the Assessee in its case for A.Y. 2015-16 in the identical set of fact. Relevant part of the Tribunal order is reproduced herein below for ready reference:

> "*40. This issue relates to disallowance of Rs.315 crores u/s 36(1)(vii) claimed as bad debts written-off by the assessee in its books of accounts.*
>
> *41. The AO disallowed the claim of Rs. 315 Crores u/s 36(1)(vii) stating that:*
>
> > *"8.3 I have perused the details and reply submitted by the assessee and the same is not acceptable as per the provisions of the Income Tax Act. Accordingly the claim of the assessee is disallowed."*
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> *42. However, the assessee has claimed deduction u/s 36(1)(vii) for a sum of Rs.315.00 crores in respect of bad debts written off identified separately in the profit & loss account other than those provisions which were claimed u/s 36(1)(viia). The AO has mentioned in his order that the assessee has provided complete details of the bad debts claimed u/s 36(1)(vii) of Rs.315.00 crores at page 16-17 of his order.*
>
> *43. The ld. CIT(A) has reproduced in her order at page no.66 the relevant page of the Annual accounts wherein the assessee has shown under the code 2404 separately "provision for bad and doubtful debts further provision (write off)" of Rs.315 cr. The provisions u/s 36(1)((viia) are separate which has also been noted by the Id. CIT(A) in her order pages 66-67. However, the ld. CIT(A) has concluded that it is not a "bad debt written off but it is still a "provision for bad and doubtful debts" and is not a write off. Further, the ld. CIT(A) has relied on the CBDT Circular No.314 of 2014 and the amendment to section 36(1)(vii) wherein Explanation-2 was inserted by the Finance Act, 2013 with effect from A.Y. 2014-15 which [CIT(A)'s order at page 67] is again reproduced:*

"11.7 In order to clarify the scope and applicability of provision of clause (vii), (via) of sub-section (1) and sub-section (2), an Explanation in clause (vii) of sub-section (1) of section 36 has been inserted stating that for the purposes of the proviso to clause (vii) of sub-section (1) of section 36 and clause (v) of sub-section (2) of section 36, only one account as referred to therein is made in respect of provision for bad and doubtful debts under clause (via) of sub-section (1) of section 36 applies, the amount of deduction in respect of the bad debts actually written off under clause (vii) of sub¬section (1) of section 36 shall be limited to the amount by which such bad debts exceeds the credit balance in the provisions for bad and doubtful debts account made under clause (viia) of sub-section (1) of section 36 without any distinction between rural advances and other advances."

44. From the above, it was noticed that the deduction u/s 36(1)(vii) will be limited only in those cases where such bad debt exceeds provision u/s 36(1)(viia). That means there should be a debt against which a provision u/s 36(1)(viia) should exist and such debt is a subject matter of write off u/s 36(1)(vii). Under such circumstance only the excess will be allowed. Whereas as per the facts accepted by the AO in his order and also by the ld. CIT(A), a separate debit in the profit & loss account of Rs.315.00 crores in respect of debts which are listed by the ld. CIT(A) at page no.64 has been claimed as written off u/s 36(1)(vii) against which there has been no claim u/s 36(1)(viia). There is no double claim made by the assessee nor there are any such findings by the AO or by the ld. CIT(A).

45. The assessee submitted that all these bad debts are relating to advances which are reduced from the loans & advances and no deduction against such provisions has been claimed by the assessee in any of the assessment year u/s 36(1)(viia) of the Income Tax Act.

46. Further, the ld. CIT(A) in para 9.3.11 for the A.Y. 2015-16 accepted factual position that the sum of Rs.315.00 crores reduced from the loans & advances and thus the principle of the Hon'ble

Supreme Court in the case of Vijaya Bank vs. CIT 323 ITR 166 for write off u/s 36(1)(vii) duly satisfied. The relevant extract of Hon'ble Supreme Court in the case of Vijaya Bank vs. CIT reported in (2010) 323 ITR 166 (SC) is reproduced as under:

> *"To this extent, we agree with the contentions of Shri Bhattacharya. However, as stated by the Tribunal, in the present case, besides debiting the P&L a/c and creating a provision for bad and doubtful debt, the assessee-bank had correspondingly/simultaneously obliterated the said provision from its accounts by reducing the corresponding amount from loans and advances/debtors on the asset side of the balance sheet and, consequently, at the end of the year, the figure in the loans and advances or the debtors on the asset side of the balance sheet was shown as net of the provision "for impugned bad debt". In the judgment of the Gujarat High Court in the case of Vithaldas H. Dhanjibhai Bardanwala (supra), a mere debit to the P&L a/c was sufficient to constitute actual write off whereas, after the Explanation, the assessee(s) is now required not only to debit the P&L a/c but simultaneously also reduce loans and advances or the debtors from the asset side of the balance sheet to the extent of the corresponding amount so that, at the end of the year, the amount of loans and advances/ debtors is shown as net of provisions for impugned bad debt. This aspect is lost sight of by the High Court in its impugned judgment. In the circumstances, we hold, on the first question, that the assessee was entitled to the benefit of deduction under s. 36(1)(vii) of 1961 Act as there was an actual write off by the assessee in its books, as indicated above. "*

47. Therefore, in assessee's case also, it is an actual write off in view of the decision of the Hon'ble Supreme Court, this issue is fully covered in favor of assessee. The appeal of the assessee is hereby allowed on this ground."

9.2 In view of the aforesaid decision qua issue in hand, in Assessee's own case by the Hon'ble tribunal, we find no reason to deviate from the findings given by the Hon'ble Coordinate Bench. Accordingly, **Ground no. 5 of appeal also stands allowed**.

10. By Ground No. 6, the Assessee challenged the action of the ld. CIT(A) in applying the provisions of section 115JB(MAT) without appreciating that the Assessee is a nationalized bank under the Banking Companies (acquisition and transfer of undertaking Act, 1980) and that the provisions of section 115JB are not at all applicable to the Assessee even after the amendment made by the Finance Act, 2012.

10.1 We find that this issue has also been dealt with by the Hon'ble coordinate Bench of Tribunal, in the case referred to above, whereby the appeal of the Assessee stood allowed on this issue. The observations of the Hon'ble coordinate Bench are reproduced herein below:

> "***MAT Provisions:***
>
> *48. Vide this ground the assessee bank contended that being a Nationalized Bank under the Banking Company (Acquisition & Transfer of Undertaking Act, 1980) the provisions of section 115JB are not at all applicable to the appellant bank. The AO in his order has directly embarked about computation of book profit under 115JB.*
>
> *49. The ld. CIT(A) in his order at page 22 to 32 has discussed and not allowed the ground of the assessee with respect to non-applicability of the provision of section 115JB on the ground that the assessee bank has itself made book profit computation not only for the year under consideration but also in the earlier years.*

50. This issue with regard to the applicability of 115JB to a banking company is a legal issue and the claim will depend on the provisions of the Act. Merely because assessee has made book profit computation in the return, the legal position would prevail and cannot be denied the relief if legally 115JB would not apply.

51. This issue is no longer res-judicata following judgments of the tribunals and the High Courts wherein it is categorically held that MAT provision u/s 115JB will not apply to a Banking Company:

- *Canara Bank vs. JCIT, LTU in ITA No. 530/Bng/2010 & other dtd. 30.03.2016*
- *M/s. Canara Bank vs. CIT(LTU) In ITA No. 305/Bang/2011 dtd. 18.06.2012*
- *Krung Thai Bank PCI vs. Joint Director of Income Tax (ITAT) (Mumbai) in ITA No.3390/Mum/09 dtd. 30.09.2010 reported in (2010) 45 DTR 218*
- *Union Bank of India vs. ACIT, LTU (ITAT) (Mumbai) in ITA Nos.4702 to 4706/Mum/2010 dtd. 30.06.2011*
- *Indian Bank vs. Addl. CIT (ITAT) (Chennai) in ITA No.469/Mds/2010 dtd. 03.08.2011*
- *Union Bank of India (ITAT Mumbai) in ITA Nos.4155 to4161 of 2011 dtd. 27.03.2012*
- *Oriental Insurance Co. Ltd. vs. DCIT I ITA No.447/2015 dtd 30.08.2017*
- *CIT vs. Union Bank of India (2019) 308 CTR 797 (Bom) HC*

52. In the above referred judgment of the Bombay High Court, at relevant page 8, para no.11 (paper book page no.13) the court has held as under:

"This legal dichotomy emerging from the provisions of sub-section (2) of Section 115JB particularly having regard to the first proviso contained therein in case of banking company, would convince us that machinery provision provided in sub-section (2) of section 115JB of the Act, would be rendered wholly unworkable in such a situation.

In a well known judgment the Supreme Court in case of Commissioner of Income-Tax, Bangalore vs. B.C. Shrinivasa Setty, Vo. 128ITR 294, had observed that in the Income Tax Act, a charging section and the computing provisions together constitute an integrated code. In a case where the computation provision cannot apply, it would be evident that such a case was not intended to fall within the charging section. It was a case of charging a partnership firm for transfer of a capital asset in the nature of goodwill. The Supreme Court was of the opinion that it would not be possible to envisage a cost of acquisition of goodwill. Since computation of capital gain cannot be done without ascertaining the cost of acquisition, it was held that no capital gain tax can be levied. "

53. Concluded at page 12 para 21 as under:

"27. In the result, we hold that sub-section 115JB as it stood prior to its amendment by virtue of Finance Act, 2012, would not be applicable to a banking company. We answer the question No. 2 in favour of the assessee and against the revenue. In view of this, question of correctness of the order of rectification passed by the Assessing Officer becomes unimportant. Question No. 1 is therefore not answered. All the appeals are dismissed."

54. For the AY 2013-14 and onwards, vide ground no. ground no. 3 of ITA no. 1582/Del/2Q17 (AY 13-14), ITA no. 1583/Del/2017 (AY 14-15) and ground no. 6 of ITA no. 1199/Del/2018 (AY 15-16), the assessee has contended that provisions of section 115JB (MAT) will not apply as the assessee is a Nationalized Bank under the Banking Company (Acquisition and Transfer of Undertaking) Act, 1980.

55. The provisions of section 115JB as amended by the Finance Act, 2012 w.e.f. 1.4.2013, inserting clause (a) and clause (b) in sub-section (2) to section 15JB are as under:

> *"115JB. (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as*

computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, [2012], is less than [eighteen and one-half per cent] of its book profit, [such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of [eighteen and one-half per cent]].

(2) [Every assessee,—

(a) being a company, other than a company referred to in clause (b), shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Part II of Schedule VI to the Companies Act, 1956 (1 of 1956); or

(b) being a company, to which the proviso to sub-section (2) of section 211 of the Companies Act, 1956 (1 of 1956) is applicable, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of the Act governing such company:]
Provided that while preparing the annual accounts including profit and loss account,—

(i) the accounting policies;
(ii) the accounting standards adopted for preparing such accounts including profit and loss account;
(iii) the method and rates adopted for calculating the depreciation,
shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956):

Provided further that where the company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under this Act,—

(i) the accounting policies;

(ii) the accounting standards adopted for preparing such accounts including profit and loss account;

(iii) the method and rates adopted for calculating the depreciation,

shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant previous year. ”

56. Thus, the understanding of the above amendment to section 115JB is where a company which are not required u/s 211 (129) of the Companies Act to prepare their P&L account in accordance with Schedule - VI of the Companies Act, 1956 profit & loss account prepared in accordance with the provisions of their Regulatory Acts shall be taken as a basis for computing the book profit u/s 115JB.

57. The assessee’s contentions for non-applicability of 115JB provisions are:

“i) It is a case of Nationalized Bank, under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980.

ii) Assessee is not a company incorporated under the Companies Act, 1956, nor recognized under section 3 of the Companies Act.

iii) The second proviso to sub-section (1) of section 129 (earlier provision 211) of the Companies Act, 2013 is not applicable to the assessee.

iv) Under section 11 of the Banking Companies (Acquisition and Transfer of

Undertaking) Act, 1980 provides that "for the purposes of the Income-tax Act, 1961, every corresponding new bank shall be deemed to be Indian company and a company in which public is substantially interested".

v) It is settled principle of law where deeming fiction is created by the legislature it has to be confined to the purpose for which it is created. CIT, Panji vs. Dempo Company Limited reported in (2016) 74 TAXMAN.com 15 (SC). Therefore, the Income-tax Act must recognize such banking company for the purpose section 115JB in order to make the provisions applicable.

vi) When the charging section and the computing provision together would constitute an integrated code. In case charging section does not apply then the computation section fails. CIT vs. B C Shrinivas Setty 128 ITR 294."

58. However, the plea of the assessee with respect to non-applicability of section 115JB to the Banking Companies was rejected by the ITAT Mumbai "B" Bench in ITA No.1767/Mum/2019 for the A.Y. 2015-16 in the case of Bank of India vs. ACIT Mumbai vide order dated 11th December, 2020.

59. There is no jurisdictional High Court decision or for that matter any other High Court decision against the assessee. In view of the fact that two use are possible, the view that favour the assessee may kindly be considered, more so in the case of a Nationalized Bank as held by the Hon'ble Supreme Court in the case of CIT vs. Vegetable Products Ltd. 88 ITR 192.

60. Even if it is considered that book profit provisions would apply to the assessee bank, the adjustments carried out by the AO is not possible under the book profit computation as provided under Explanation to section 115JB of the Act.

61. The relevant extracts of Explanation to Section 115JB giving the meaning of "Book Profits" are reproduced for your ready reference:

> *"Explanation [1],—For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by—*
>
> *(a) the amount of income-tax paid or payable, and the provision therefor; or*
> *(b) the amounts carried to any reserves, by whatever name called &?[other than a reserve specified under section 33AC1; or*
> *(c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or*
> *(d) the amount by way of provision for losses of subsidiary companies; or*
> *(e) the amount or amounts of dividends paid or proposed; or*
> *(f) the amount or amounts of expenditure relatable to any income to which [section 10 (other than the provisions contained in clause (38) thereof) or [****] section 11 or section 12 apply; or]*
> *(g) the amount of depreciation,]*
> *(h) the amount of deferred tax and the provision therefor;*
> *(i) the amount or amounts set aside as provision for diminution in the value of any asset,*
> *(j) the amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset,*
> *if any amount referred to in clauses (a) to (i) is debited to the profit and loss account or if any amount referred to in clause (j) is not credited to the profit and loss account, and as reduced by,—]]]*
> *(i) the amount withdrawn from any reserve or provision (excluding a reserve created before the 1st day of April, 1997 otherwise than by way of a debit to the profit and loss account), if any such amount is credited to the profit and loss account:*

Provided that where this section is applicable to an assessee in any previous year, the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this Explanation or Explanation below the second proviso to section 115JA, as the case may be; or]

(ii) the amount of income to which any of the provisions of [section 10 (other than the provisions contained in clause (38) thereof)] or [***] section 11 or section 12 apply, if any such amount is credited to the profit and loss account; or
(iia) the amount of depreciation debited to the profit and loss account (excluding the depreciation on account of revaluation of assets); or
(iib) the amount withdrawn from revaluation reserve and credited to the profit and loss account, to the extent it does not exceed the amount of depreciation on account of revaluation of assets referred to in clause (iia); or]
(iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

Explanation.—For the purposes of this clause,—
(a) the loss shall not include depreciation;
(b) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation is nil; or]
(iv) to (vi) [****]
(vii) the amount of profits of sick industrial company for the assessment year commencing on and from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 171 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and ending with the

assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

Explanation.—For the purposes of this clause, "net worth" shall have the meaning assigned to it in clause (ga) of sub-section (1) of section 32- of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986); or
(viii) the amount of deferred tax, if any such amount is credited to the profit and loss account.]"

62. On a reading of the above explanation, it is clear that tax liability as per MAT provisions will be on the book profits, as increased by the amounts, if any, from items (a) to (j) and reduced by the items from (i) to (viii). Therefore there are specified adjustments which can only be made to the net profits as per profit & loss account. Since this is a section wherein the assessee is taxed by a deeming fiction, it has to be strictly construed and no adjustments are possible other than what is mentioned in the Explanation.

63. The Hon'ble Supreme Court in the case of Apollo Tyres Ltd. vs. CIT (2002) 255 ITR 273 (SC) (copy enclosed) has on page 280 held as under:

"Therefore, we are of the opinion, the Assessing officer while computing the income under section 115J has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The Assessing Officer thereafter has the limited power of making increases and reductions as provided for in the Explanation to the said section. To put it differently, the Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to section 115J."

64. Owing to the provisions of the Act that amended, we hereby allow the appeal on this ground."

10. Respectfully following the decision of Hon'ble Coordinate Bench, on the issue in hand, **Ground no. 6 also stands allowed**.

11. Ground No. 7 challenges the sustenance of addition under MAT in respect of provision for bad and doubtful debt, by the ld. Commissioner, ignoring the fact that it was actual reduction in the value of advances reflected as such in the balance sheet and not a provision and hence, the same is not falling under of the items from (a) to (j) of the Explanation to section 115JB of the Act and cannot be added in the book profit of the Assessee.

11.1 We find that this issue too, in the identical facts and circumstances, has been decided by the coordinate Bench of Tribunal in the decision referred to above by holding as under :

> ***"Bad and Doubtful Debts:***
>
> *65. The assessee is a banking company and is governed by the RBI regulations. The above provisions for bad and doubtful debts are made by the assessee bank as per the RBI Regulations which are called prudential norms and are in the nature of statutory provisions. The same are not in the nature of provisions which are set aside by the assessee for meeting any contingent liability/ or provision set aside for any diminution in the value of assets. The same are in relation to actual debts and debited in the Profit & Loss account.*
>
> *66. The assessee submitted that the amount debited in the profit & loss account is reduced from the value of the loans and advances*

and therefore the net values of advances are shown in the books of accounts. It is not a provision which is shown as liability in the books. This fact has been noted by the AO in his order as well as by the ld. CIT(A) in his order.

67. Therefore, there is an actual diminution in the value of advances and it is reflected as such in the balance sheet of the bank. Hence the same is not falling under any of the items from (a) to (j) of the above explanation to section 115JB. The Hon'ble Supreme Court in the case of Vijaya Bank vs. CIT reported in [2010] 323 ITR 166 has categorically held that:

"Though a mere debit to the profit and loss account would constitute a provision for bad and doubtful debts yet that would not constitute actual write off. But where besides debiting the profit and loss account and creating a provision for bad and doubtful debt, the assessee has correspondingly / simultaneously obliterated the said provision from its accounts by reducing the corresponding amount from loans and advances / debtors on the asset side of the balance sheet, and, consequently at the end of the year, the figure in the loans and advances o the debtors on the asset side of the balance sheet is shown as net of provision for "impugned bad debt", the assessee will be entitled to the benefit of deduction u/s 36(1)(vii), as there is an actual write off by the assessee in his books."

68. Further, Hon'ble Karnataka High Court in the case of CIT vs. Yokogawa India Ltd. reported in [2012] 204 Taxman 305 has taken similar view and has held as under:

"In the instant case, the debt is an amount receivable by the assessee and not any liability payable by the assessee and, therefore, any provision made towards irrecoverability of the debt cannot be said to be a provision for liability. Therefore, item (c) of the Explanation is not attracted to the facts of the case. Item (c) in section 115JA and 115JB (1) are identical. In order to attract the Explanation the debt which is doubtful or bad should satisfy the requirement contemplated in item (c) of the Explanation. It is the amount or

amounts set aside as provisions made for meeting the liability other than the ascertained liabilities. In the instant case also the bad and doubtful debt for which a provision is made which is in the nature of diminution in the value of any asset would not fall within item (c) of Explanation (1). It is in that context the appellate Commissioner as well as the Tribunal has granted relief to the assessee. Realizing the fatality of the said argument, it is contended now that item (i) cannot amount to satisfaction as provision for diminishing in the value of assets is substituted, if case of the assessee falls under item (c). In meeting the aforesaid case, the assessee brought on record the judgment of the Apex Court in the case of Vijaya Bank vs. CIT [2010] 323 ITR 166 / 190 Taxman 257 where the Apex Court had an occasion to consider this Explanation . It accepted the argument on behalf of the revenue to the effect that the Explanation makes it very clear that there is a dichotomy between actual write off on the one hand and provision for bad and doubtful debt on the other. A mere debit to the profit and loss account would constitute a bad and doubtful debt, but it would not constitute actual write off and that was the very reason why the Explanation stood inserted. Prior to the Finance Act, 2001 many assessees used to take the benefit of deduction under section 36(1)(vii) by merely debiting the impugned bad debt to the profit and loss account and, therefore, the Parliament stepped in by way of Explanation to say that a mere reduction of profits by debiting the amount to the profit and loss account per se would not constitute actual write off. The Apex Court accepted the said legal position. However, it was clarified that besides debiting the profit and loss account and creating a provision for bad and doubtful debt, the assessee correspondingly/simultaneously obliterated the said provision from its accounts by reducing the corresponding amount from loans and advances/debtors on the assets side of the balance sheet and consequently, at the end of the year, the figure in the loans and advances or the debtors on the assets side of the balance sheet was shown as net of the provision for the impugned bad debt. Then, the said amount representing bad debt or doubtful debt cannot be added in order to compute book profit. Therefore, after the Explanation the assessee is now required not only to debit the profit and loss account but simultaneously also

reduce the loans and advances or the debtors from the assets side of the balance sheet to the extent of the corresponding amount so that, at the end of the year, the amount of loans and advances/debtors is shown as net of the provisions for the impugned bad debt. Therefore, in the first place if the bad debt or doubtful debt is reduced from the loans and advances or the debtors from the assets side of the balance sheet the Explanation to section 115JA or 115JB is not at all attracted. In that context even if amendment which Is made retrospective the benefit given by the Tribunal and the appellate Commissioner to the assessee is in no way affected. In that view of the matter, there is not merit in this appeal."

69. The same view was taken by Co-ordinate Bench of ITAT Mumbai in the case of Bank of India Vs. ACIT in ITA No. 1767/Mum/2019 and 2048/Mum/2019 dated 11.12.2020. The relevant portion of the order is as under:

"37. In the course of arguments before us learned counsel for the assessee has simply placed his reliance on the judgment of Hon'ble Gujarat High Court in the case of CIT Vs Vodafone Essar Gujarat Limited [(2017) 85 taxmann.com. 32 (Guj)] but has not even dealt with the specific issues, as discussed above by he learned CIT(A). Be that as it may, one thing that is clear is that the Assessing Officer has not, at any stage, even verified whether he assessee has reduced the corresponding amount, of the provision of Rs.5359,64,38,015, from the loans and advances on the asset side of the balance sheet, because if that be so, in terms of Vodafone Essar (supra) judgment of Hon'ble Gujarat High Court particularly as there is nothing contrary thereto by Hon'ble jurisdictional High Court, that amount will have to be reduced from the book profits. It cannot indeed by open to us to disregard the law laid down by Hon'ble non jurisdictional High Court, on the ground that coordinate branches of the Tribunal have taken a particular view- as has been done by the CIT(A), and that it is not the view of Hon'ble jurisdictional High Court, as is laid down by Hon'ble Bombay High Court in the matter of CIT v. Godavari Devi Saraf [(1978) 113 ITR 589 (Bom.)]. In the hierarchical judicial system that we have, wisdom of the Court below has to yield

to higher wisdom of the Court above and, therefore, one a authority higher than this Tribunal has expressed an opinion on that issue, we are no longer at liberty to rely upon earlier decisions of this Tribunal. The decisions of the coordinate bench, on that issue, cease to be relevant, nor is it open to us to take a call on merits, and thus sit de facto in judgment over what a higher judicial authority has decided. Whatever be the merits of the stand of the revenue on this issue, it is not for us to take call on merits. That exercise on merits, in the light of the non-jurisdictional High Court judgment, can only be done by Hon'ble Courts above. In the light of these discussions, and having clarified the legal position as such, we remit the matter to the file of the learned CIT(A) for limited examination of facts so far as reduction of the corresponding amount, of the provision of Rs.5359,64,38,015 from the loans and advances on the asset side of the balance sheet, is concerned. In the event it is found that the correspondence amount is indeed reduced from the loans and advances reflected in the assets of the balance sheet, the learned CIT(A) will direct CIT(A) the AO for excluding the same in the computation of book profits. Ordered, accordingly."

70. Though in the said Mumbai ITAT case the issue was referred back to the ld. CIT(A), in assessee's case the AO as well as ld. CIT(A) has verified and accepted this factual aspect namely that provision of bad debts have been reduced from the loan and advances reflected in the asset side of the balance sheet.

71. Further, the assessee being a banking company; even there are specific provisions in the Income Tax Act, 1961 u/s 36(1)(viia) which allows deduction to the banks in respect of provisions made for bad and doubtful debts. The Income Tax Act has considered this peculiarity in the case of banking industry and has allowed deduction on the basis of provision whereas under normal circumstances, any provision made in the books is not allowed as deduction. The fact that the provisions of Section 115JB are now allowing the profit & loss account to be prepared in accordance with the regulatory act under which the bank operates, all provisions as mandated by RBI and duly recorded in the books should be allowed.

Also when in the Income Tax Act itself the deduction is allowed to the assessee, it cannot be held that the computation under book profit provisions contemplated addition of such claim under the garb of provision for diminution in the value of assets.

72. Therefore also the addition made by the AO on this ground is directed to be deleted as it is not an adjustment contemplated u/s 115JB of the Act."

11.2 In view of the aforesaid decision of ITAT in Assessee's own cases qua issue in hand, **Ground no. 7 too stands allowed**.

12. Ground No.8 challenges the upholding of addition of Rs.81,44,33,541/- being loss on amortization of permanent investment alleging the same to be notional loss.

12.1 We observe that this issue also stands decided in favour of the Assessee in the identical set of facts & circumstances by the Hon'ble coordinate Bench of Tribunal in the aforesaid decision, in the cases of Assessee for the preceding assessment years. For the sake of convenience, the findings reached by the Tribunal are being reproduced herein below:

"HTM Investment:

73. The assessee submitted that loss on amortization of investment is on account of the investments purchased at the prevailing market price which is higher than its face value. The difference between the purchase price and face value of investments is amortized in equal installments over the life of the investments.

This is as per the RBI guidelines master circular No RBI/2013-14/109 DBOD No BP.BC. 8/21.04.141/2013- 14 July 1, 2013 which the bank has to follow mandatorily for arriving at the book profit results.

74. The amortized value of the investment is reflected in the accounts. This is also clearly mentioned in note to the annual report.

75. The loss on amortization is neither a provision nor a reserve and does not fall under any of the items from (a) to (j) of the above explanation to section 115JB. The AO has wrongly considered the same as falling within the preview of Clause (i) to the Explanation 1 to Sec. 115JB(2) whereas the same is not a provision for diminution in the value of assets. It is the actual loss on amortization of investments and the same is allowed under the Income Tax Act, 1961 under normal provisions also as held by Hon'ble Bombay High Court in the case of CIT vs. HDFC Bank Ltd. reported in [2014] 366 ITR 505 elaboratly explained while dealing with the grounds on allowing the amortization of HTM investment as allowable business deduction u/s, 37(1) of the Income Tax Act.

76. Hence, the same cannot be considered for the MAT computation."

12.2 In view of the aforesaid decision of Hon'ble Coordinate Bench in the cases of Assessee itself, on the issue in hand, **Ground No.8** of the Assessee's appeal also stands allowed.

13. No other issue is involved in the instant appeal. Therefore, having finding no reason and/or material for deviating from the conclusions reached by the Hon'ble Coordinate Bench of the Tribunal in the appeals of the Assessee itself for preceding assessment years, the instant appeal of the Assessee deserves to be allowed.

14. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 31/03/2023.

Sd/-	**Sd/-**
(ANIL CHATURVEDI)	**(N.K. CHOUDHRY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

*aks/-

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Assistant Registrar
ITAT New Delhi

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