# IN THE INCOME TAX APPELLATE TRIBUNAL
# MUMBAI BENCH "G" MUMBAI

**BEFORE SHRI ABY T VARKEY (JUDICIAL MEMBER)**
**AND**
**SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 510/CHANDI/2017**
**Assessment Year: 2013-14**
**&**
**ITA No. 538/CHANDI/2017**
**Assessment Year: 2014-15**
**&**
**ITA No. 1259/CHANDI/2017**
**Assessment Year: 2015-16**

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|---|---|---|
| The State Bank of India<br>(Successor to State Bank of Patiala),<br>DGM & CFO, SBI, Local Head Office – Chandigarh, 2nd floor, Sector 17A,<br>Chandigarh- 160017.<br>**PAN No. AACCS 0143 D** | ***Vs.*** | Asst. CIT Circle-Patiala,<br>Aayakar Bhavan,<br>Patiala-147001 |
| **Appellant** | | **Respondent** |

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| **Assessee by** | : | Mr. Ketan Ved &<br>Mr. NinadPatade, ARs |
| **Revenue by** | : | Dr. Kishor Dhule, CIT-DR |
| Date of Hearing | : | 09/03/2023 |
| Date of pronouncement | : | 31/03/2023 |

**ORDER**

**PER OM PRAKASH KANT, AM**

These three appeals by the assessee are directed against three separate orders passed by the Ld. Commissioner of Income-tax (Appeals), Patiala [in short 'the Ld. CIT(A)'] for assessment year 2013-14, 2014-15 and 2015-16 respectively. As common issue in dispute has been raised in the grounds of appeals, therefore these appeals were heard together and disposed off by way this consolidated order for convenience and avoid repetition of facts.

2. Firstly, we take up the appeal of the assessee for assessment year 2013-14. The grounds raised by the assessee are reproduced as under:

> *1. The Ld. CIT(A) erred in confirming disallowance by Assessing Officer the amount of interest accrued but not due on securities contrary to the provisions of the Act.*
>
> *1.1 The Ld. CIT(A) failed to note that interest on securities accrue only on the dates specified in the security as due date for payment, mere accounting of interest on time period basis for Balance Sheet purposes does not give raise to real income.*
>
> *2.1 The Ld. CIT(A) failed to appreciate that provision towards restructured debts and standard assets are only provision made for bad and doubtful debts referred to in section 36(1) (viia) and hence deduction thereof ought to have been allowed.*
>
> *2.2 The Ld. CIT(A) erred in not granting deduction u/s 36(1)(viia) on the balance outstanding in respect of rural advances as specified in Explanation to section 36(1) (via), but*

*restricting the same to incremental advances by an artificial construction of statute.*

*3. The Ld. CIT(A) erred in not deciding the ground relating to allowability of bad debts written off us 36(1)(vii) claimed based on decision of Apex Court in the case of Catholic Syrian Bank Ltd (343 ITR 270) stating that the same was not raised before Assessing Officer.*

3. Briefly stated, facts of the case are that the assessee i.e. State Bank of Patiala ( which later on merged with State Bank of India ) filed its original return of income on 27.11.2013 declaring total income of Rs.1475,22,52,090/-, which was subsequently revised to Rs.988,32,46,450/- on 20.11.2014. The assessee-company being one of the scheduled banks, was engaged in the providing banking facility to its customers. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. In the assessment completed u/s 143(3) of the Act on 20.01.2016, the Assessing Officer made various additions to the returned income and assessed total income at Rs. 1898,85,40,474/-. On further appeal, the Ld. CIT(A) allowed part relief to the assessee vide order dated 31.01.2017.

4. Aggrieved the assessee is before the Income-tax Appellate Tribunal (in short 'ITAT') raising grounds as reproduced above.

5. At the outset, we may like to mention that the appeals of the assessee came up for adjudication before the Chandigarh Bench of

the ITAT. On the issue raised by the assessee in Ground No. 2.2, the Ld. Counsel of the assessee relied on few decisions of the Division Bench of the Tribunal, however, the Chandigarh Bench of the Tribunal disagreed with the view expressed by the other Division Benches cited by the Ld. Counsel of the assessee and accordingly, reference was made to the Hon'ble President ITAT for constituting a Special Bench on the issue raised in ground No. 2.2 in the appeal. The relevant reference was made for constitution of a Special Bench, wherein following questions was framed:

> *"Whether deduction under section 36(1) (via) of the Income Tax Act 1961 r.w.r6ABA of the Income Tax Act 1962 is to be allowed on the total outstanding advances including opening balances upon which the assessee bank has already claimed such deduction in earlier years or the same has to be allowed in respect of incremental advances made during the year?"*
>
> *The proposed common order in respect of the appeals bearing IT No. 510, 538 & 1259/Chd/2017 is attached herewith."*

5.1 The Special Bench constituted by the Hon'ble President ITAT heard the parties on the reference made and decided the issue in favour of the assessee in its order dated 10/11/2022,observing as under:

> *"8. We have considered the submissions of both sides and perused the material available on record. Since, it has been submitted that this issue has already been decided by the Hon"ble Calcutta High Court and the Hon"ble Madras High Court in aforesaid decisions, therefore, at the outset we have dealt with these decisions. We find that the following question of law was proposed for admission by the Revenue in its appeal*

*before the Hon"ble Calcutta High Court in UttarbangaKshetriya Gramin Bank (supra):*

> *—Whether on the facts and in the circumstances of the case the Ld. Tribunal has erred in law in allowing deduction under section 36(1)(viia) of the I.T. Act, 1961, for the same advances made for all previous years leading to multiple deductions in every assessment year by misinterpreting the Rule 6ABA of the I.T. Rules, 1962 and also against the ratio of judgment in the case of J.K Synthetics Ltd. v. UOI 199 ITR 43 (SC).?"*

*9. While dismissing the Revenue□s appeal and upholding the findings of the Tribunal, the Hon□ble Calcutta High Court, in the aforesaid decision, observed as under:*

> *—5. The assessee's appeal, however, was allowed by the Tribunal. The Tribunal's interpretation of the aforesaid statutory provisions would appear from the following passage:—*
> *"From this Rule, it is apparent that for the purpose of section 36(1) (viia), the aggregate average advance made by the rural branches of as scheduled bank shall be computed by taking the amount of advances made by each rural branch as outstanding at the end of the last day of each month comprised in the previous year has to be aggregated separately. The CIT (Appeals) instead of giving the direction to the Assessing Officer to take the amount of advances as outstanding at the end of the last day of each month in the previous year directed the Assessing Officer to take loans and advances made during the year only, we therefore, set aside the order of CIT (Appeals) on this issue and amend the direction of the CIT (Appeals) and direct the Assessing Officer to compute 10% of the aggregate monthly average advances made by the rural branch of such Bank by taking the amount of advances by each rural branch of such Bank by taking the amount of advances by each rural branch as outstanding at the end of the last day of each month comprised in the previous year and aggregate the same separately as given under Rule 6ABA of the Income Tax Rules, 1962."*

*6. Mr. Nizamuddin, learned advocate appeared on behalf of the Revenue and submitted the amended direction made by the Tribunal on the ITO has resulted in the assessee getting double deduction which is not permissible on computation made under Rule 6ABA. He submitted a double deduction in the manner thus obtained by the assessee has not been expressly provided. He relied on a judgment of the Supreme Court in the case of Escorts Ltd. v. Union of India [1993] 199 ITR 43, on the following portion in the said judgment appearing in page 64 of the report.*

*"A double deduction cannot be a matter of inference, it must be provided for in clear and express language, regard being had to its unusual nature and its serious impact on the revenues of the State."*

*7. Mr. Khaitan, learned senior Advocate appeared on behalf of the assessee and submitted that the computation to be made as prescribed by Rule 6ABA is for the purpose of fixing the limit of the deduction available under section 36(1)(viia). Clauses (a) and (b) in Rule 6ABA cannot be given the restricted interpretation. The amounts of advances as outstanding at the last day of eachmonth would be a fluctuating figure depending on the outstanding as increased or reduced respectively by advances made and repayments received. The assessee might provide for bad and doubtful debts but the deduction would only be allowed at the percentage of aggregate average advance, computation of which is prescribed by Rule 6ABA.*

*8. We find from the amended direction made by the Tribunal that such direction is in terms of Rule 6ABA. The ITO had made the computation of aggregate monthly advances taking loans and advances made during only the previous year relevant to assessment year 2009-10 as confirmed by CIT (A). The Tribunal amended such direction, in our view, correctly applying the rule.*

*9. For the reasons aforesaid we do not find the questions suggested to be substantial questions of law involved in the case. As such the application and appeal are dismissed.*

*10. We further find that the following question of law came up for consideration before the Hon□ble Madras High Court in M/s City Union Bank Ltd. (supra):*

*—5. By order dated 29.11.2010, this court admitted the aforesaid tax case appeal on the following substantial questions of law:*

*1. ……*

*2. Whether in the facts and circumstances of the case, the Tribunal was right in deleting disallowance of provision before bad debts under Section 36 (1) (viia) of Rs.8.53 crores observing that as per Rule 62ABA of the Income Tax Rules 1962, the aggregate average advances made by the rural branches have to be computed by taking the amounts of advances made by each rural branch as outstanding at the end of last day of each month comprised in the previous year, whereas the aggregate average has to be worked out only in respect of advances made during the year as otherwise, there would be double deduction?"*

*11. While in principle agreeing with the submission of the taxpayer, the Hon□ble Madras High Court took into consideration the aforesaid decision of Hon□ble Calcutta High Court. The relevant observations of Hon□ble Madras High Court are as under:*

*—10.2 Similarly, the second issue relating to deduction of Rs.8.53 crores u/s 36(1)(viia) with regard to the provision for bad and doubtful debts, is coveredby the decision in Principal Commissioner of Income Tax, Jalpaiguri v. UttarbangaKshetriya Gramin Bank [(2018) 94 taxmann. Com 90 (Calcutta), in favour of the assessee and the relevant passage of the same is usefully extracted below:*

*"6. Mr. Nizamuddin, learned advocate appeared on behalf of the Revenue and submitted the amended direction made by the Tribunal on the ITO has resulted in the assessee getting double deduction which is not*

*permissible on computation made under Rule 6ABA. He submitted a double deduction in the manner thus obtained by the assessee has not been expressly provided. He relied on a judgment of the Supreme Court in the case of Escorts Ltd. v. Union of India reported in (1993) 199 ITR 43, on the following portion in the said judgment appearing in page 64 of the report.*

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*7. Mr.Khaitan, learned senior Advocate appeared on behalf of the assessee and submitted that the computation to be made as prescribed by Rule 6ABA is for the purpose of fixing the limit of the deduction available under section 36(1)(viia). Clause (a) and (b) in Rule 6ABA cannot be given the restricted interpretation. The amount of advances as outstanding at the last day of each month would be a fluctuating figure depending on the outstanding as increased or reduced respectively by advances made and repayments received. The assessee might provide for bad and doubtful doubts but the deduction would only be allowed at the percentage of aggregate average advance, computation of which is prescribed by Rule 6ABA.*

*8. We find from the amended direction made by the Tribunal that such direction is in terms of Rule 6ABA. The ITO has made the computation of aggregate monthly advances taking loans and advances made during only the previous year relevant to assessment year 2009-10 as confirmed by CIT (A). The Tribunal amended such direction, in our view, correctly applying the rule.*

*9. For the reasons aforesaid we do not find the questions suggested to be substantial questions of law involved in the case. As such the application and appeal are dismissed."*

*11. This court has no disagreement with the legal proposition laid down in the aforesaid decisions. However,*

*in the present case, though there was no double deduction, as alleged by the appellant / Revenue, there was no clear vision about the advances made by the rural and non-rural branches of the bank and the quantum of deduction was not properly determined by the assessing officer based on the materials furnished by the respondent / assessee. In this context, the relevant paragraphs of the assessment order dated 31.03.2006 passed by the assessing officer are quoted below:*

*—5.3 When the assessee was asked to clarify whether the advances which were considered to be bad and doubtful in earlier years and for which the provision was made so as to claim deduction under section 36(1)(viia) of the Act, have been recovered subsequently, it was stated that as the provision claimed was not with reference to any particular debt due to the assessee but on an overall basis, it is not possible to certify that the bad debts claimed as trading loss for deduction under section 36(1)(viia) was recovered or not. It was also stated that theassessee would not be able to give age-wise details of outstanding advances for the branches more so for the rural branches with reference to which the deduction was claimed, so as to determine whether any advance of earlier year for which provision was made is still outstanding.*

*5.4. In other words, the assessee is not in a position to give details of the advances with reference to which the deduction of Rs.14.99 crores was allowed as per Annexure 2 as deduction under section 36(1)(viia) towards unknown and anticipated trading loss by virtue of mere provision made on ad-hoc basis for bad and doubtful debts and to confirm that these advances were still outstanding as at the end of the previous year relevant to this accounting year.*

*—6.3.1. Therefore due to assessee's inability to relate the provision to any particular advance of a branch, it cannot be said whether it is a provision for rural advance or for non-rural advance so as to examine the monetary limit prescribed under section 36(1)(viia) for allowing deduction thereunder. Then such provision is only reserve for bad*

*debts and not provision for bad and doubtful debts. Though the provisions of section 36(1)(viia) may be understood as a beneficial provision to the assessee company to claim deduction even in respect of reserve created by it to meet certain anticipated loss or contingency due to default of its debtors whom the assessee may not be able to easily identify at the end of the previous year, yet the computation machinery for determining the deduction admissible in the matter of write off bad and doubtful debts of rural or non-rural advance under section 36(1)(v) read with the proviso thereunder and section 36(2)(v) of the Act would fail.*

*Thus, it is evident from the above extract that the quantum of deduction arrived at by the assessing officer was not based on the documents produced by the respondent / assessee. The CIT(A) as well as the Tribunal also, did not look into those aspect, while allowing the deduction claimed by the respondent / assessee. Therefore, this court is of the opinion that for that limited purpose, the matter has to be re-examined by the assessing officer and the same has also been agreed upon by the learned counsel appearing for both sides.*

*12. We find that one of the reasons recorded by the Division Bench of the Tribunal for referring the issue to the Special Bench was "No decision of any higher authorities was brought to our notice by either of the parties". However, now decisions of two Hon'ble High Courts have been brought to our notice, wherein similar issue has been considered in favour of the taxpayer.*

*13. As noted above, the Hon'ble Calcutta High Court, vide aforesaid decision, has affirmed the findings rendered by the Division Bench of the Tribunal in Uttar Banga Kshetriya Gramin Bank vs ACIT, in ITA No. 846 and 1745/Kol/2012, wherein the Division Bench of the Tribunal vide order dated08/07/2015 held that for the purpose of section 36(1)(viia), to compute the aggregate monthly average advance made by the rural branch of scheduled Bank, the amount of advances by each rural branch as outstanding at the end of the last day of each month comprised in the previous year be taken into*

*consideration. The Hon□ble Madras High Court, vide aforesaid decision, has concurred with the decision of the Hon□ble Calcutta High Court. Thus, once two Hon□ble High Courts of the country have expressed their opinion in respect of the issue which arose before us, in absence of contradictory view by any other Hon□ble Court of equivalent or higher judicial hierarchy being brought to our notice, we as a matter of judicial propriety are bound to follow the view so expressed by the Hon□ble High Courts in decisions cited supra. In this regard, it is also relevant to note the following observations of the Hon□ble Supreme Court in ACCE vs Dunlop India Ltd., [1985] 154 ITR 172 (SC):*

*—8. We desire to add and as was said in Cassell & Co. Ltd. vs. Broome (1972) AC 1027 (HL), we hope it will never be necessary for us to say so again that "in the hierarchical system of Courts" which exists in our country, "it is necessary for lower tier", including the High Court, "to accept loyally the decisions of the higher tiers". "It is inevitable in a hierarchical system of Courts that there are decisions of the supreme appellate tribunal which do not attract the unanimous approval of all members of the judiciary.... But the judicial system only works if someone is allowed to have the last word and that last word, once spoken, is loyally accepted" (See observations of Lord Hailsham and Lord Diplock in Broome vs. Cassell). The better wisdom of the Court below must yield to the higher wisdom of the Court above. That is the strength of the hierarchical judicial system.□*

*14. As regards the submission of the learned Departmental Representative that no substantial question of law was admitted by the Hon□ble Calcutta High Court, we are of the considered view that non-admission of a substantial question of law under section 260A of the Act by the Hon□ble High Court does not render the decision of Hon□ble Court to be non-binding and the doctrine of merger would still be applicable. In any case, we find that the Hon□ble Madras High Court in the aforesaid decision concurred with the legal proposition laid down by the Hon□ble Calcutta High Court after admitting the question of law as proposed by the Revenue in its appeal on this*

*issue. Thus, we find no merits in this plea raised by the learned Departmental Representative.*

*15. Therefore, respectfully following the aforesaid decisions passed by Hon□ble Calcutta High Court and Hon□ble Madras High Court, we decide the question referred for our adjudication in favour of the assessee and held that the deduction under section 36(1)(viia) r/w Rule 6 ABA is to be allowed on the total outstanding advances at the end of each month considering the opening balances. Since other issues arising in the appeals are still pending adjudication, therefore, we send the matter back to the Division Bench for disposing of the appeals in the above terms."*

5.2 In view of the issue in dispute involved in ground No. 2.2 of the appeal decided by the Special Bench (supra), the ground No. 2.2 of the appeal stands allowed in favour of the assessee.

6. As far as other grounds of appeal are concerned, we have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record.

7. The ground No. 1 and 1.1 of the appeal relate to taxability of interest on securities on account of difference between interest accrued and interest due method for the year under consideration. The facts qua the issue-in-dispute are that the assessee earned interest from investment in various Government Securities on which interest become due in the calendar year or specified date. Though in the books of accounts, the assessee made entries for the interest for the period from January to March or remaining period after specified date on accrual basis, however, same was not offered

for the purpose of Income-tax, on the ground that same was not due. The assessee in original return of income declared total income of Rs. 1475,22,52,090/- but in revised return declared income of Rs. 988,32,46,450/- and thus reduced income of Rs. 486,90,05,631/- as interest on securities was not due as on 31/03/2013. According to the Assessing Officer, in view of the mercantile system of accounting followed by the assessee, the interest accrued for the period from January to March of the Financial Year accrued in the hands of the assessee and same was liable for taxation in the year under consideration. The finding of the Ld. Assessing Officer was upheld by the Ld. CIT(A) observing as under:

> *"Therefore, by relying on the judgements and on the facts stated above, it is clear that the non-accounting of interest on accrual basis shall distort the appellant bank's taxable income as it shall violate the principle of consistency of debiting of expenditure and crediting of income along with the provisions of section 145 of the IT. Act, 1961. The appellant has not accounted for the interest income on accrual basis which means it ought to have followed the same principle with regard to the debiting of expenditure on account of interest payment to depositors on the deposits on accrual basis which obviously it has not done. The appellant's contention that it is in consonance with the RBI guidelines is misplaced as the said guidelines are meant to regulate the affairs of the banks whereas the tax liability of the appellant shall be strictly computed in accordance with the provisions of the Income Tax Act, 1961. Each year is an independent assessment year and that appelant cannot be allowed to manipulate the fundamental principles of accounting and provisions of section 145, todefer its liability to the subsequent years. In*

*fact, the appellant has prepared its accounts by crediting the interest on accrual basis, it is only in computation that the interest on securities has been subtracted on accrual basis.*

*In view of the facts stated above and the applicable legal position, theaction of the AO in disallowing the impugned claim of deduction of interest on securities on accrual basis is upheld and the addition made on that count is confirmed.This ground of appeal is, therefore, dismissed."*

8. Before us, the Ld. Counsel of the assessee submitted that the issue-in-dispute is covered in favour of the assessee by the order of the ITAT dated 03.02.2020 in its own case for assessment year 2008-09 in ITA No. 4563/Mum/2016. The relevant finding of the Tribunal is reproduced as under:

*"107. The next issue in this appeal of revenue is as regards to the order of CIT(A) deleting the addition made by AO on account of interest on securities on accrual basis as the assessee is following mercantile system of accounting. For this revenue has raised the following Ground No. 2:-*

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

*108. Brief facts relating to this issue are that the AO made addition in respect of interest of securities on accrual basis instead of due basis of Rs. 3,804,07,30,799/-. The facts are interest on securities is payable six-monthly on the coupon date i.e. 30th June and 31st December. While closing the books as on 31st March, there is accrued interest on securities of 3 months i.e. from 1st January to 31st March. However, the bank is not eligible to receive*

*such interest as on 31st March, as the payment of interest gets due only on the coupon date i.e. 30th June. It is the practice of the Bank to account for the interest on securities on accrual basis while arriving at the book profit. However, in the return of income, the interest on securities is taxed on due basis since the right to receive interest on securities arises on due date only which falls after the accounting year. Accordingly, for the AY 2008-09, the interest on Government securities of Rs.771.67 crore that had not become due to the Bank as on 31st March 2008 has not been offered for tax. However, AO considered it as interest accrued and taxed the total amount which bank claimed in the book profit as income and Rs. 771.67 crore was taxed by the AO on accrual basis. The CIT(A) allowed the claim and deleted the addition by observing as under: -*

*"4.3 In the case of the appellant, the facts are discussed above. Here appellant had offered the income based on the principle of right to receive interest on securities. In the case of securities there are two coupon dates on which interest is received i.e 3oth June & 3151 December. As the bank has to close its books on 313t March, there is accrued interest on securities from 15, January to 31St March. Bank had not offered interest which has to be received on 301h June as it has no right to receive any income tax return, but while calculating the book profit bank had offered the interest on accrual basis. However, AO had assessed the total interest due to the bank in the A.Y. This issue is recurring in nature which has arisen in appellants own case in A.Y. 1999- 00 to 2007-08 and also ITAT's order in appellant's own case for the A.Yrs 1991-92 to 1996-97 which are in favour of the appellant and which are as under:*

*……*

*4.4 In view of the above decision of CIT(A) and ]TAT, claim of the appellant is allowed.*

*This ground of appeal is allowed. Aggrieved, revenue came in appeal before Tribunal.*

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

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

*111. But assessee contended that the issue is squarely covered in favour of the assessee in its own case for assessment years1991-92 to 1994-95 by the order of Tribunal dated 19.05.2008, which is filed in Assessee Paper Book- II, which was followed by the Tribunal in the subsequent assessment years. Moreover, the Hon'ble Bombay High Court on appeal by Revenue for assessment year 1996-97 has upheld the decision of Tribunal vide its order dated 01.08.2016.*

*112. The facts of the case in the year under consideration are same as the facts of the earlier years. In view of the above, this ground of appeal is covered in favour of the assessee vide the aforementioned orders of the Tribunal and Bombay High Court. The right to receive interest on*

*securities arises on due date only, which falls after the accounting year and, accordingly, it cannot be taxed in the accounting year itself. In DIT vs. Credit Suisse First Boston (Cyprus) Ltd. [2013] 351 ITR 323 (Bombay) Hon'ble Bombay High Court was concerned with a case wherein the tax officer had taxed interest accrued but not due on securities held as on 31st March. The Bombay High Court held that right to receive the interest vested only on the due date mentioned in the securities and, hence, the same cannot be taxed since interest was not payable on the 31st March as per the terms of the said securities.*

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

*Taparia Tools Ltd. Vs. JCIT [2003] 260 ITR 102 (Bombay). It is to be clarified that the matching concept theory referred by the CIT DR in the decision of the Bombay High Court in the case of Taparia Tools Ltd. (supra) has been reversed by the SupremeCourt in the case of Taparia Tools Ltd. Vs. JCIT [2015] 372 ITR 605 (SC).*

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

8.1 The issue in dispute involved in the year under consideration being identical to the issue adjudicated by the Tribunal (supra) for assessment year 2008-09, therefore, respectfully following the same, the finding of the Ld. CIT(A) on the issue-in-dispute is set aside. The Assessing officer is directed to allow the claim of the assessee as directed by the Tribunal(supra). The ground of appeal of the assessee is accordingly allowed.

9. The ground No. 2.1 of the appeal of the assessee relates to deduction u/s 36(1)(viia) towards standard assets and restructuring debts.

10. Briefly stated, facts qua the issue-in-dispute are that the assessee made provision for bad and doubtful debts in its books of accounts for amount of Rs.593,81,63,000/-. This provision was made even on standard assets, corporate debts, structuring/non-

CDR, SME restructuring. According to the Assessing Officer provision on standard asset etc. cannot be considered for the purpose of making provision of bad and doubtful debts u/s 36(1)(viia) of the Act. According to the assessee, however, those debts were classified as per guidelines of the Reserve Bank of India however they are non-performing assets and therefore there were falling in the category of bad and doubtful debts. The contention of the assessee was not accepted and the Assessing Officer and he restricted the provision of bad and doubtful debts to the amount of Rs.236,92,32,723/- as against claim of Rs.593,81,63,000/- by the assessee and therefore, he made addition of Rs.356,89,30,277/-.

11. On further appeal, the Ld. CIT(A) upheld the finding of the Assessing Officer observing as under:

> *"11.1.2 I have considered the submissions made by the appellant and thearguments given by the AO in the assessment order. The crux of the arguments of the appellant is that the provisions for bad and doubtful debts have been made as per strict guidelines of the RBI which is a statutory regulatory authority in its case. The A0, on the other hand, relied on the plain and unambiguous language of the relevant provision of the Act, which mentions the words "any provision for bad and doubtful debts". The first proviso to this sub section, as averred by the AO, provides for "deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf,..." Thus, it is quite clear that the provision on standard assets and corporate debt restructuring and non-CDR and SME restructuring are outside the ambit of this subsection. These are good and financially recoverable assets earning*

*income. The decisions of the Hon'ble ITATs cited by the AO also support his action. In view of the above, I'm of the considered view that the A is justified in reducing the provision for bad and doubtful debts to be considered for deduction u/s 36(1)(viia) of the Act. This ground of appeal is, therefore, dismissed."*

12. We have heard rival submission of the parties on the issue in dispute. Before us, the Ld. Counsel of the assessee submitted that issue-in-dispute is covered in favour of the assessee by the order of the Tribunal dated 03.02.2020 passed in its own case for assessment year 2008-09 in ITA no. 3644/Mum/2016. The relevant part of the decision is reproduced as under:

*"69. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in disallowing deduction claimed by assessee under section 36(1)(viia) of the Act being the amount of standard assets. For this assessee raised the following ground No. 8: -*

*"8. Deprecation under section 36(1)(viia) of Rs.566,96,68,537*

*8.1 The learned CIT(A) erred in holding that the provision for standard assets amounting to Rs.566,96,68,537 is to be excluded for determining the deduction under section 36(1)(viia).*

*8.2 The learned CIT(A) erred in not appreciating that even in respect of assets that are classified as standard assets, a part of the debts are doubtful of recovery and accordingly qualifies for deduction under section 36(1)(viia)."*

*70. Brief facts are that the assessee is claiming deduction under section 36(1)(viia) of the Act for provision for bad and doubtful debts including provision made for standard assets of Rs. 566,96,68,537/-. The AO has held that the*

*provision for standard asset amounting to Rs. 566,96,68,537/- is to be excluded for determining the deduction under section 36(1)(viia) of the Act. The CIT(A) also confirmed the action of the AO by observing as under:*

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

*The issue is considered. The arguments and the plea so raised by the assessee is misplaced. The section 36(J)(viia) is for providing provision in respect of bad and doubtful debts only and not in respect of the standard assets. In view thereof, it is held that the AO has rightly excluded the amount of provision of Rs. 589,18,98,060 onto standard assets out of the claim made by the assessee under section 36( l)(viia). The addition is accordingly confirmed.*

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

*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)(viia) 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)(viia) of the Act, a bank is eligible to avail deduction in respect of provision made for bad and doubtful debts, of an amount not exceeding 7.5% of total income and 10% of the aggregate average advances made bythe 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)(viia) of the Act does not have a requirement that the provision for debts should be in respect of specified debts only. Section 36(1)(viia) 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. Aprovision 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)(viia) 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)(viia) of the Act. Thus, in light of above, the assessee is eligible to claim deduction under section 36(1)(viia) 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 its 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 thefile 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)(viia) 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."*

13. As the issue-in-dispute involved in the ground raised is identical to the issue adjudicated by the Tribunal (supra) above and therefore, respectfully following the finding of the Tribunal (supra) the finding of the Ld. CIT(A) on the issue-in-dispute is set aside and the Assessing Officer is directed to allow the claim of the assessee for deduction u/s 36(1)(viia) as adjudicated by the Tribunal (supra). The ground of appeal of the assessee is accordingly allowed.

14. In ground No. 3 of the appeal, the assessee has raised the issue that issue of bad and doubtful debt written offu/s 36(1)(vii) of the Act has not been adjudicated by the Ld. CIT(A) as according to the Ld. CIT(A) this claim was neither made in the return of income nor was raised by the Assessing Officer during the assessment proceedings.

15. Before us, the Ld. Counsel of the assessee submitted that issue-in-dispute is covered in favour of the assessee by the order of the Tribunal dated 03.02.2020 in its own case for assessment year 2008-09 in ITA No. 3644/Mum/2016.

16. We find that the issue-in-dispute raised by the assessee was raised before the Ld. CIT(A) but the Ld. CIT(A) has not decided the issue.In Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC), the Supreme Court held that the assessee can make a claim for deduction, which has not been claimed in the return, only by filing a revised return within the time allowed. In the same decision, it was made clear that the power of the Tribunal to admit an additional ground under s. 254 is not affected by its decision. It was however clarified that the case was concerned with only the power of the assessing authority and not the appellate authority. Under s. 250(5), the CIT(A) has the power to allow the appellant to go into any ground of appeal not specified in the grounds of appeal if he satisfied that the omission of the ground from the form of appeal was not willful and unreasonable. **In CIT v. Pruthvi Brokers & Shareholders Pvt. Ltd. – [TS-463-HC-2012(BOM)-O]** , It is held that *an assessee is entitled to raise not merely additional legal submissions before the appellate authorities, but is also entitled to raise additional claims before them. The appellate authorities have the discretion whether or not to permit such additional claims to be raised. It cannot, however, be said that they have no jurisdiction to consider the same.*In view of settled law as held above, in our opinion the action of the Ld. CIT(A) in rejecting the claim of the assessee is not justified. Accordingly, this claim of the assessee is admitted and matter is restored to the Ld. CIT(A) for examining this

claim of the assessee of deduction u/s 36(1)(vii) in accordance with law. The ground No. 3 of the appeal is accordingly allowed for statistical purposes.

17. Now we take up the appeal of the assessee for assessment year 2014-15. The ground No. 1 and 1.1; 2.1; 2.2 and ground No. 3 raised in the appeal of the assessee for assessment year 2014-15 are identical to the corresponding grounds for assessment year 2013-14 and therefore, same are decided mutatis mutandis.

18. In ground No. 4 of the appeal, the assessee has contested the interest levied by the Assessing Officer u/s 234A of the Act.

19. Before us, the Ld. Counsel of the assessee submitted that return of income for the year under consideration was filed on 24.11.2014 which is within the due date (i.e. 30.11.2014) prescribed u/s 139 of the Act and therefore, no interest could be levied u/s 234A of the Act. As this is a matter of verification at the end of the Assessing Officer, therefore, accordingly we restore this issue to the file of the Assessing Officer for verification and decide in accordance with law.

20. The ground No. 5 raised by the assessee is in respect of u/s 234B levied by the Assessing Officer which being consequential in nature, hence same is dismissed as infructuous.

21. The ground No. 6 relates to levy of interest u/s 234C of the Act which according to the Ld. Counsel of the assessee should have been levied on the returned income. This matter of levy of interest u/s 234C is also matter of verification by the Assessing Officer therefore, issue is restored back to the file of the Ld. Assessing Officer for deciding in accordance with law.

22. The grounds raised by the assessee in ITA 1259/CHANDI/2017 for assessment year 2015-16 are reproduced as under:

> *"1. The Ld. CIT(A) erred in confirming disallowance made by the Assessing Officer of the amount of interest accrued but not due on securities contrary to the provisions of the Act.*
>
> *1.1 The Ld. CIT(A) failed to note that interest on securities accrue only on the dates specified in the security as due date for payment, mere accounting of interest on time period basis for Balance Sheet purposes does not give raise to real income.*
>
> *2.1 The Ld. CIT(A) failed to appreciate that provision towards restructured debts and standard assets are only provision made for bad and doubtful debts referred to in section 36(1)(via) and hence deduction thereof ought to have been allowed.*
>
> *2.2 The Ld. CIT(A) erred in not granting deduction us 36(1)(viia) on the balance outstanding in respect of rural advances as specified in Explanation to section 36(1)(via), but restricting the same to incremental advances by an artificial construction of statute.*

*3. The Ld. CITIA) failed to appreciate that when income is increased C(7 $ consequent on additions in the assessment order, deduction W/S puLL*

*36(1)(viia) shall be increased to that extent in conformity with the provisions of the said section.*

*4. The Ld. CIT(A) erred in not deciding the ground relating to allowability of bad debts written off u/s 36(1)(vii) claimed based on decision of Apex Court in the case of Catholic Syrian Bank Ltd (343 ITR 270) stating that the same was not raised before AO.*

*5. The Ld. CIT(A) erred in holding that the interest charged u/s 234A is consequential in nature without appreciating that there was no delay in furnishing of return and hence no interest could have been charged.*

23. The ground No. 1, 1.1, 2.1, 2.2 and ground No. 4, ground No. 5 raised are identical to the grounds raised by the assessee in the appeal for assessment year 2014-15 and therefore, same are decided mutatis mutandis.

24. As far as ground No. 3 of the appeal is concerned the assessee is aggrieved that deduction u/s 36(1)(viia) shall be increased consequential to addition/disallowance made in the assessment order.

25. Before us, the Ld. Counsel of the assessee fairly admitted that this issue is decided against the assessee by the consolidated order dated 09.02.2018 passed by the ITAT in the assessee's own case for assessment year 2011-12 in ITA No. 861/Chd/2017. The relevant part of the order of the ITAT is reproduced as under:

*15. Ground No.2 raised by the assessee read as under:*

*"2.The Ld. CIT(A) failed to appreciate that when income is increased consequent on additions in the assessment order, deduction wIs 36/1viial shall be increased to that extent in conformity with the provisions of the said section."*

*16. Briefly stated, the only plea of the assessee vis-à-vis this ground is that the assessee ought to have beenallowed deduction u/s 36(1)(viia) of the Act on account of*

*provision for any bad and doubtful debt on the incomeenhanced during assessment proceedings.Ld. CIT(Appeals) rejected this plea of the assessee bystating that the additions made by the Assessing Officerrepresented concealed income of the assessee and,therefore, the same was not eligible for any deduction.*

*17. We are in agreement with the Ld.CIT(Appeals) in this regard, that the assessee is not entitled to claim any deduction on account of the enhancement made to the income of the assessee during assessment proceedings by virtue of various additions/ disallowances made during assessment proceedings and the reason for the same is that as per the provisions of section 36(1) (via) of the Act, deduction is allowed in respect of any provision for bad and doubtful debt made by the assessee. For better understanding Section 36(1) (via) is reproduced as under:*

*"Section 36(1)(via) in The Income- Tax Act, 1995*

*(via) in respect of any provision for bad and doubtful debts made by-*

*(a) a scheduled bank/ not being' | a bank incorporated by or under the laws of a country outside India) or a nonscheduled bank, an amount not exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VIA) and an amount not exceeding? ten/ per cent of the aggregate*

*average advances made by the rural branches of such bank computed in the prescribed manner;"*

*Clearly, no such provision has been made in the books of account of the assessee with respect to the additions/disallowances made. Therefore as per the plain reading of the section itself, the assessee is not entitled to claim any deduction on the enhanced income.*

*In view of the above, ground No.2 raised by theassessee stands dismissed."*

25.1 The issue being identical to the issue decided by the ITAT(supra) above and therefore, respectfully following the finding of the Tribunal (supra) the ground No. 3 of the appeal of the assessee is dismissed.

26. In the result, the appeals of the assessee are partly allowed for statistical purposes.

**Order pronounced in the open Court on 31/03/2023.**

| | |
|---|---|
| **Sd/-** | **sd/-** |
| **(ABY T VARKEY)** | **(OM PRAKASH KANT)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Mumbai;
Dated: 31/03/2023
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

//True Copy//

(Assistant Registrar)
**ITAT, Mumbai**