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

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

ITA No. 3239/MUM/2018
Assessment Year: 2014-15

DCIT-2(2)(2), Room No. 545, 5th floor, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai-400020.	***Vs.***	M/s Yes Bank Ltd., 9th Floor, Nehru Centre, Discovery of India, Dr. AB Road, Worli, Mumbai-400018. **PAN No. AAACY 2068 D**
Appellant		**Respondent**

ITA No. 3501/MUM/2018
Assessment Year: 2014-15

M/s Yes Bank Ltd., 9th Floor, Nehru Centre, Discovery of India, Dr. AB Road, Worli, Mumbai-400018. **PAN No. AAACY 2068 D**	***Vs.***	DCIT-2(2)(2), Room No. 545, 5th floor, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai-400020.
Appellant		**Respondent**

Assessee by	**:**	Mr. Yogesh Thar/Ms. Ayushi Modani
Revenue by	**:**	Dr. Kishor Dhule, DR
Date of Hearing	**:**	29/05/2023
Date of pronouncement	**:**	30/06/2023

ORDER

PER OM PRAKASH KANT, AM

These cross appeals by the assessee and Revenue are directed against order dated 31.01.2018 passed by the Ld. Commissioner of Income-tax (Appeals)-5, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2014-15. The grounds raised by the assessee are reproduced as under:

> *GROUND NO. I: SETTING ASIDE THE GROUND TO THE FILE OF THE AO*
>
> *1. On the facts and circumstances of the case and in law, Hon'ble CIT(A) erred in effectively setting aside Grounds of appeal no. III, VIlI and X to the file of the AO for re-examination/ re-verification, which is beyond the powers conferred under section 251 of the Act.*
>
> *2. The Appellant prays that it be held that the order of the CIT(A) is void ab-initio and/or otherwise bad-in-law.*
>
> *GROUND NO. II: DISREGARDING THE DIRECTION OF THE TRIBUNAL WITH RESPECT TO DISALLOWANCE U/S 14A OF THE ACT:*
>
> *On the facts and circumstances of the case and in law, Hon'ble CIT(A) erred in going beyond the order of the Hon'ble ITAT in the Appellant's own case for an earlier year and directing the AO to re-examine the entire claim made by the Appellant.*
>
> *WITHOUT PREJUDICE TO GROUND NOS. I AND II,*
>
> *GROUND NO. III: DISALLOWANCE UNDER SECTION 14A OF THE ACT:*

1. On the facts and circumstances of the case and in law, Hon'ble CIT(A) erred in directing the AO to disallow proportionate interest expense u/s. 14A of the Act

2. He further erred in rejecting the plea of the Appellant that when the securities are held as stock-in-trade, no disallowance can be made us. 14A of the Act

3. The Appellant prays that the disallowance us. 14A of the Act, including the suo-moto disallowance of Rs. 2,09,42,284/- made by the Appellant, be deleted.

GROUND NO. IV: ORDER MADE ON THE BASIS OF SURMISES AND ASSUMPTIONS:

1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the disallowance of deduction w/s. 35D of the Act on the assumption that the shares may have been allotted only to selected Qualified Institutional Buyers ("'QIBs").

2. The Appellant prays that an order made on surmises and presumptions is bad-in-law and void-ab initio.

WITHOUT PREJUDICE TO GROUND IV:

GROUND NO. V: DISALLOWANCE OF DEDUCTION CLAIMED UNDER SECTION 35D ON EXPENSES INCURRED IN CONNECTION WITH THE QUALIFIED INSTITUTIONAL PLACEMENT ("QIP"):

1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the disallowance of deduction of Rs. 2,82,80,291/- claimed u/s 35D in respect of expenses incurred in connection with the QIP on the alleged ground that the issue of shares to OIP does not tantamount to public subscription and such capital expenses are not eligible for deduction us. 35D of the Act.

2. The Appellant prays that the AO be directed to allow Rs. 2,82,80,291/- as a deduction u/s. 35D of the Act.

WITHOUT PRETUDICE TO GROUND NOS. IV AND V:

GROUND NO. VI: DISALLOWANCE OF QIP EXPENSES BY INVOKING SECTION40(a)(i)/(ia) OF THE ACT:

1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in disallowing the expenses in connection with QIP on the ground that the expense may not be allowable in view of section 40(a)(j/ (ia) of the Act.

2. The Appellant prays that the A be directed to allow the expenses in connection with

GROUND NO. VII: SETTING ASIDE TO THE AO THE ISSUE OF ALLOWANCE OF BROKERAGE PAID ON HIM SECURITIES:

On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in directing the AO to verify the bifurcation of securities under different categories when all the details were available on record and no further verification was required.

WITHOUT PREJUDICE TO GROUND NOS. I AND VII

GROUND NO. VILI DISALLOWANCE OF BROKERAGE PAID ON ACOUISITION OF HIM INVESTMENTS:

1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in partly confirming the action of the A of disallowing the brokerage paid on HTM securities even though all the securities are held by the Appellant as stock-in-trade.

2. The Appellant prays that the disallowance of brokerage paid on HTM securities be deleted.

GROUND NO. IX: SETTING ASIDE TO THE AO THE GROUND ON SECTION 36(1)(viia) OF THE ACT:

1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in directing the AO to verify whether the Appellant had rural branches within the meaning of section 36(1) (via) when all the relevant details were available on record.

2. The Appellant prays that the claim for deduction u/s. 36(1) (via) of the Act be allowed without sending it back to the AO for re-verification.

WITHOUT PREJUDICE TO GROUND NOS. I AND IX

GROUND NO. X: NON ALLOWABILITY OF DEDUCTION CLAIMED U/S 36(1) (via)

OF THE ACT:

On the facts and in the circumstances of the case, it be held that the Appellant is eligible for deduction u/s 36(1) (via) as it was not a provision for standard assets as alleged by the AO.

WITHOUT PREJUDICE TO GROUND NOS IX AND X

GROUND NO. XI: IGNORING THE AMENDMENT IN SECTION 36(1)(vi) OF THEACT:

1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in ignoring the amendment in section 36(1) (vii) as per which there is no requirement to maintain separate accounts for rural and urban advances.

2. The Appellant prays that the AO be directed to allow the deduction u/s. 36(1)(via) of the Act amounting to Rs. 135,21,64,723/- as claimed by the Appellant.

WITHOUT PREIUDICE OF GROUND NOS, X AND XI GROUND NO. XII: DEDUCTION U/S. 36(1) (vii) OF THE ACT:

1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in directing the AO to verify the claim w/s. 36(1) (vit) of the Act, based on the accounting entries and provisions made in the books, when all the details were available on record.

2. The Appellant prays that the claim for deduction W/$. 36(1)(vil) of the Act be allowed.

WITHOUT PREJUDICE TO GROUND NOS. X, XI AND XI:

GROUND NO. XIII: ALTERNATIVE PLEA ON DEDUCTION U/S 36(1) (vii) SET ASIDE

1. On the facts and in the circumstances of the case and in law, Hon'ble CIT(A) erred in setting aside to the AO the alternative plea that since the Appellant was not allowed deduction u/s 36(1) (via) in A.Y. 2013-14 bad debts written off in the current financial year ought to be allowed without adjusting the opening balance of provision of bad and doubtful debts u/s. 36(1)(via).

2. The Appellant prays that the AO be directed to allow bad debts written off u/s 36(1)(vi) consistent with his own stand that the provision for bad debts was for non-rural branches.

WITHOUT PREJUDICE TO GROUND NOS. X, XI AND XII:

GROUND NO. XIV: ALTERNATIVE PLEA ON HIGHER DEDUCTION U/S 36(1)(vi) IN SUBSEQUENT YEAR SET ASIDE

1. On the facts and in the circumstances of the case and in law, Hon'ble CIT(A) erred in setting aside to the AO the alternative plea that the bad debts in A.Y. 2015-16 be correspondingly allowed on a higher side by reducing the opening balance of provision for bad and doubtful debts for A. Y. 2015-16.

2. The Appellant prays that the AO be directed to allow bad debts in A.Y. 2015-16 on a higher side by reducing the opening balance of provision for bad and doubtful debts forA.Y. 2015-16.

GROUND NO. XV: NON ADMISSION OF ADDITIONAL GROUND OF APPEAL:

1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in rejecting the Additional ground raised by the Appellant, in respect of discount on issue of shares under the employee stock option plan ("ESOP"), without appreciating the fact that the appellate authorities can admit and adjudicate the additional claim raised by the assessee during the course of Appellate proceeding.

2. The Appellant prays that the claim for deduction in respect of discount on issue of shares under the ESOP be allowed.

WITHOUT PEJUDICE TO GROUND NO. XV

GROUND NO. XVI: DEDUCTION OF DISCOUNT ON ISSUE OF SHARES UNDER THE EMPLOYEE STOCK OPTION PLAN ("ESOP"):

1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in not allowing the claim for deduction in respect of discount on issue of shares under the ESOP amounting to Rs. 53,27,10,069/-.

2. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in not giving any findings on the additional evidence filed by the Appellant

3. The Appellant prays that the claim for deduction in respect of discount on issue of shares under ESOP be allowed.

2. The grounds raised by the Revenue are reproduced as under:

1. "Whether on the facts and in the circumstances of the case and in law, Ld.CIT(A) was right in directing to delete the disallowances made Us 14A of the ITAct without appreciating the fact that the disallowance us 14A has to be mandatorily calculated as per rule 8D of IT Rules and no discretion is available with the A.O for estimated disallowances?"

2. "Whether on the facts and in the circumstances of the case and in law, Ld.CIT was right in directing to delete the disallowance of brokerage paid on acquisition of investments without appreciating the fact that such expenditure is in the nature of capital expenditure and forms a part of cost of assets?"

3. "Whether on the facts and in the circumstances of the case and in law, Ld.CIT(A) was right in directing to allow deduction us 36(1)(viia) after verificationhence not entitled for the said deduction claimed?"

4. "Whether on the facts and in the circumstances of the case and in law, Ld.CIT(A) was right in directing to allow deduction u/s 36(1)(via) after verification without appreciating the fact that the assessee has not created any provisions on account of rural branches and hence not entitled for the said deduction claimed?"

5. "Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) was right in directing to allow deduction u/s 36(1)(vi) after verification of provisions for bad and doubtful debt accounts of the earlier assessment years and examine claim of allow ability of deduction us 36(1)(vi) of the IT Act without appreciating the fact that the proviso to section 36(I)(vii) comes into operation only when the case of the assessee squarely falls u/s 36(1)(viia) of theIT Act and since the assessee's case does not fall us 36(1)(viia) of the IT Act, hence not entitled for the said deduction claimed?"

6. "Whether on the facts and in the circumstances of the case and in law, Ld.CIT(A) was right in directing to allow deduction u/s 36(1)(vii) after verification of provisions for bad and doubtful debt accounts of the earlier assessment years and examine claim of allow ability of deduction us 36(1)(vi) of the IT Act without appreciating the fact that the assessee has not actually written off the bad debts as irrecoverable as also the requirement of section 36(2) of the IT Act not satisfied and hence not entitled for the said deduction claimed?"

7. "Whether on the facts and in the circumstances of the case and in law, Ld.CIT(A) was right in directing to delete BPI without appreciating the fact that theHTM category of Securities are long term securities held till maturity and forming a part of investment and not a stock in trade hence BPI on HTMSecurities is a capital outlay and hence not an allowable deduction?"

8. "Whether on the facts and in the circumstances of the case and in law, Ld.CIT(A) was right in directing to delete BPI without considering the decision of honorable supreme court in the case of Vijaya Bank Ltd. v/s Addl. CIT (1991)187 IT 547(S.C.) wherein it is held that BPI is a part of capital outlay for acquisition of securities and hence not an allowable deduction?"

9. "Whether on the facts and in the circumstances of the case and in law, Ld.CIT(A) was right in directing to delete premium amortized without appreciating the fact that the HTM category of Securities are held as investment i.e. acapital asset and hence amortization of premium paid on such securities will form part of cost of acquisition of HTM securities and hence not an allowable deduction?"

3. Briefly stated, facts of the case are that the assessee company filed its return of income for the year under consideration on 29.11.2014, which was subsequently revised on 30.03.2016 declaring total income of Rs.22,75,02,02,660/-. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. The assessment u/s 143(3) of the Act was completed on 30.03.2016, assessing total income at Rs.2,710,009,76,971/-. On further appeal, the Ld. CIT(A) allowed part relief. Aggrieved, both the assessee and Revenue are before the Income-tax Appellate Tribunal (ITAT) raising the grounds as reproduced above.

4. Before us, the Ld. Counsel of the assessee filed a Paper Book containing pages 1 to 234.

5. The ground Nos. 1 to 3 of the appeal of the assessee and ground No. 1 of the appeal of the Revenue are connected with the issue of disallowance u/s 14A of the Act r.w. Rule 8D of the Income-tax Rules,1962 (in short 'the Rules').

6. The brief facts qua the issue in dispute are that the assessee reported tax free exempted income from two sources. **Firstly,** dividend income of Rs.2,87,07,418/- from investment in equity and preference shares of Rs.93,24,79,690/-. **Secondly**, tax free interest income amounting to Rs.29,42,88,665/- was shown from investment in tax free interest bond of Rs.544.20 crores and Rs.188,56,84,686/- from investment in pass through certificates (PTC) of Rs.4869.00 crores. Against the tax-free exempted income, the assessee made suo motu disallowance of Rs.2,09,42,284/- out of the proportionate administrative expenses related to treasury and industrial finance department and claimed that those expenses were directly and indirectly relatable to the earning of the tax free dividend and tax free interest income through the year. Regarding the investments in shares i.e. equity and preference shares, it was submitted by the assessee that same were part of the corporate debt restructuring (CDR) of the borrowers under the direction of the Reserve Bank of India and as a part of rehabilitation package under which part of the outstanding loan was converted into equity or preference shares. Regarding the pass throughcertificates(PTC), it was claimed that the assessee invested in securitization trust and the interest received was accordingly exempted in the hands of the assessee. Regarding the breakup of suo moto disallowance, the assessee submitted a detailed working of direct and indirect expenses related to the treasury division/department and also worked out the expenses incurred pass through certificates. The

relevant computation of disallowance reproduced by the Assessing Officer on page 16 to 18 of the assessment order is extracted as under:

> *"In this connection, Yes Bank submits that it has identified certain expenses actually incurred in connection with the activity of buying and selling of securities/equities/tax free instruments/ servicing of pass through certificates issued by securitisation trust and has offered the same for disallowance u/s. 14A of the Act. The details of such expenses are as under:*
>
> *Certain direct expenditure which are incurred solely for the purpose of earning exempt income are fully disallowed. Such expenditure is fully disallowed us 14A of the Act. Details of such expenditure is as below.*

Custody charges	*10,240*	*10,240*	*100%*	*10,240*
Brokerage on Equity	*11,723*	*11,723*	*100%*	*11,723*
Sec Transaction tax	*22,695*	*22,695*	*100%*	*22,695*
Total				***44,658***

> *In so far as indirect expenses in relation to earing income from dividend income from equity or preference share, interest income from tax free instruments and maintenance of PT deals are concerned, Yes Bank has, based on its internal records such as the books of accounts and the number of equity deals/tax free/PTC deals to the total number of treasury deals done in the financial year, has computed the disallowance under section 14A of the Act as under:*

Name	*Total Cost*	*Treasury*	*% Distribution*	*(Amt in Rs.)*
Salary	*7,843,990,647*	*361,442,070*	*0.07%*	*246,071*
Rent – Corporate Office	*38,567,489*	*5,449,196*	*0.07%*	*3,710*
Rent – IFC	*1,838,645,861*	*74,131,200*	*0.07%*	*50,469*
Electricity – Corp Office	*6,540,202*	*726,689*	*0.07%*	*495*
Electricity – Branch	*228,832,431*	*9,129,022*	*0.07%*	*6,215*
Telephone	*38,515,087*	*1,028,766*	*0.07%*	*700*
Other Operation	*4,111,173,324*	*43,245,820*	*0.07%*	*29,442*

Expenses				
	17,498,673,623		***Total***	***337,102***

4.4.6 Other Operating cost Cost has been allocated based on no. of employees in treasury department to the total number of employees of the Bank

Note 1 :

Deals Made in Financial Year 2013-14	Nos.
Deals in tax free instruments (including PTCs where tax is paid by Secu trust) in FY 2013-14	177,731
% of tax free deals (including PTC deals where tax is paid by Secu trust) to Total Deals	**0.07%**

- *The Treasury Department ('TD*) of Yes Bank is the Department which is exclusively engaged in the buying and selling of securities. The TD is engaged in buying and selling of Government Securities, Treasury Bills, Corporate /PSU Bonds, Equity, Mutual Funds and other investments. Hence, Yes Bank has considered the expenses of the TD for the purpose of computation of the disallowances under section 14A of the Act. The TD of Yes Bank operates from its office in India Bulls Financial Centre which also has its Back Office ('Back Office"). The locations is in situated in Mumbai.*
- *As the first step, Yes Bank has identified the specific expenses of the TD which are incurred in relation to the buying and selling activities of Government Securities, Treasury Bills, Corporate / PSU Bonds and Shares.*
- *These specific expenses are salary expense of TDs, Rent of the corporate office, rent of Back Office, electricity and telephone expenses of TD.*
- *Other expenses from the total operating expenses incurred by Yes Bank for the assessment year under consideration are also considered on the basis of the employee strength of the TD to the total employee strength on a conservative basis.*
- *Since the TD is involved in buying and selling of different types of securities (i.e. shares and other securities), ratio of equity deals to the total deal is used on the expenses referred to in the earlier*

paragraphs TD to finally compute the disallowance under 14A of the Act.

- *Expenses (such as Custody charges) which specifically pertain to the equity deals are identified and disallowed completely.*

Expenses incurred for Pass Through Certificates

In addition to treasury expenses, for investments in Pass through certificates issued by securitisation trust, 9 employees of the of Corporate Finance department (CF) and 4 employees of Indian Financial Instution (IFI) group are involved in the activity of sourcing and servicing the the PTs. Both these departments are based in Mumbai in IndiaBulls Finance Centre, Mumbai.

Based on the management estimate of the time spent (50% for corporate Finance) and (15% of Indian Financial Institution group) we have computed and allocated the salary and administrative cost which are given below in the table.

Working for disallowance of administrative cost u/s 14A for the period of Apr 13 – Mar 14			
		(Amt in Rs.)	
Name	Corporate Finance/Indian Financials Institution group	Cost allocated	Rationale
Salary	15,055,508	15,055,508	Actual at 50% for Corporate Finance and 15% for IFI.
Rent – India Bulls Finance Centre	3,093,525	3,093,525	Actuals
Electricity – Branch	374,613	374,613	Actuals
Telephone	39,093	39,093	Actuals
Other Operating Expenses	3,426,006,452	1,997,786	No of Employees
		20,560,525	

Employee Database	**IFI**	**CF**
CF/IFI Employees	4	9
Total no of employees	8,746	8,746
Cost allocation % of the employees	15%	50%
	235,034	**1,762,752**
Total		**1,997,786**

Accordingly, Yes Bank calculated total sum of Rs.20,942,284/- for the assessment year under

consideration and disallowed the same under section 14A of the Act."

7. The Assessing Officer however was not satisfied with the computation of the suo motu disallowance and therefore after recording dissatisfaction as to the computation of the assessee in para 4.8.2 to 4.8.9 of the assessment order, computed the disallowance in terms of Rule 8D as under :

"4.4.10 The provisions of Sec 14A, inserted by Finance Act, 2001 w.e.f. 1.04.1962 reads as follows: 'No deduction shall be allowed in respect of expenditure incurred by assessee in relation to income, which does not form part of the total income under this Act'. Further, Rule 8D of the I.T. Rule is also applicable retrospectively.Therefore, disallowance of expenditure under Sec 14A is as follows:

Disallowance working u/s 14A of Income-tax Act for AY 2013-14		
	Closing balance	
	INR ('000s)	
Investment in shares/tax free bonds as on 31-Mar-2013	3,218,715	
Investment in shares /tax free bonds/Pass through certificates as on 31-Mar-2014	55,254,609	
Average Investment for FY 2013-14	29,236,662	(A)
Interest cost for FY 2011-12	72,650,918	(B)
Total Assets as on 31-Mar-2013	991,041,273	
Total Assets as on 31-Mar-2014	1,090,157,899	
Average total asset for FY 2013-14	1,040,599,586	(C)
Interest to be disallowed (A*B/C)	2,041,199	
Add:1/2 % of total investment	146,183	
Total disallowance Rs.	2,187,382	

The disallowance u/s. 14A of the Act has to be read in consonance with Rule 8D of I.T. Rules which has been made effective w.e.f. A.Y. 2008-09. The working of the disallowance given in the table above clearly shows that there are elements of expenditure which the assessee has incurred and which are relatable to the investment made in

shares, etc, the income from which is not includible in the total works out to Rs. 2,187,382,000/- is required to be made, however as the assessee has already made disallowance of Rs. 20,942,284/- in computation balance amount of Rs. 2,166,439,716/- is therefore added to the income of the assessee u/s 14A of the Act."

7.1 The Assessing Officer after reducing the suo moto disallowance made balance addition of Rs.2,166,430,716/-. On further appeal before the Ld. CIT(A), the assessee challenged the addition mainly on the ground that,**firstly**, Rule 8D of the Rules is not automatic, **secondly**, no disallowance could be made u/s 14A of r.w. Rule 8D if securities are held in stock in trade, **thirdly**, if own funds and interest free funds are more than tax free investments, no disallowance u/s 14A r.w. Rule 8D should be made, **fourthly**, no disallowance can be made in respect of investment converted from loans to equity shares, **fifthly**,only securities yielding exempted income should be considered for computing disallowance ,**sixthly**, no disallowance u/s 14A of the Act can be made where investments are strategic in nature, **seventhly**, investments made to comply with the statutory requirement should not be included while computing disallowance u/s 14A of the Act. The Ld. CIT(A) after considering submission of the assessee given a detailed finding in para-No. 3.4 of the impugned order, however restored the matter to the Assessing Officer for reexamining the entire case from factual angle and worked out for quantum of interest relatable to tax free income yielding security and disallow the same. No finding was given in

respect of disallowance for administrative expenses, which was suo moto computed by the assessee. The relevant finding of the Ld. CIT(A) is reproduced as para 3.4 as under:

> ***"3.4 Decision:***
>
> *I have carefully considered the facts of the case and examined all the submissions, details and documents furnished by the assessee while adjudicating the appeal. Assessee in its submissions has admitted following facts:*
>
> *1) It earned tax free dividends of Rs. 38,77,418/- on investments in shares of Rs.93,24,79,619/- and Rs. 29,42,88,685/- on tax free interest bonds of Rs. 544.20 Crores and Rs. 188,56,84,686/- on investments in pass through certificates (PTC) of Rs. 4869.00 Crores.*
>
> *2) It had incurred certain administrative expenses which were directly and/or indirectly relatable to the earning of tax free dividend and tax free interest income during the year,*
>
> *3) It had invested in Shares, Tax Free Bonds andPass ThroughCertificates (PTs) of several companies/ trust during the year.*
>
> *Assessee is engaged in the business of banking in India and is governed by the Banking regulation act and RBI Act and as part and parcel of its business requirements and strategy and as the statutory guidelines issued byRBI, it invests in securities and shares and thus made several investments in shares and securities in earlier assessment years and during the year and derived tax free income from these investments. Now, the investments require funds and these funds have to come from somewhere and that is the moot point for debate in the case. It is observed from the records that assessee's Investments yielding tax free incomes and Interest bearing borrowings went up during the year simultaneously and its position as on 31/3/2013 and 31/3/2014 was as follows:*
>
	INR ('000s)

Investment in shares/tax free bonds as on 31-03-2013	3,218,715
Investment in shares /tax free bonds/Pass through certificates as on 31-03-2014	55,254,609

Schedule 4 – Borrowings		March 31, 2014	March 31, 2013
1.	Innovative perpetual debt instruments (IPDI) and tier II debt		
	A. Borrowing in India		
	i. IPDI	7,410,000	7,510,000
	ii. Upper tier II Borrowings	19,367,000	19,367,000
	iii. Lower tier II Borrowings	30,255,000	31,255,000
	Total (A)	57,032,000	58,132,000
	B. Borrowing outside India		
	i. IPDI	299,575	271,425
	ii. Upper tier II Borrowings	20,382,401	9,334,984
	iii. Lower tier II Borrowings	-	-
	Total (B)	10,681,976	9,606,409
	Total (A+B)	67,713,976	67,738,409
2.	Other borrowings		
	A. Borrowing in India		
	i. Reserve Bank of India	35,020,000	48,958,900
	ii. Other Banks	26,610,000	30,832,500
	iii. Other Institution and agencies	31,554,417	24,759,375
	Total (A)	93,184,417	104,550,775
	B. Borrowing outside India (B)	52,244,469	36,932,288
	Total (A+B)	145,428,886	141,483,063
	Total(1+2)	213,142,862	209,221,472

This is the main reason why the interest expenditure went up from Rs.607.52 Crores to Rs.726.50 Crores during the F.Y 2013-14 relevant to A.Y2014-15. Assessee has admitted that it has earned tax free interest on tax free bonds and if the bank account had been checked, it would have revealed that there is a direct nexus between the borrowings and the investments from time to time since borrowings by way of loans and deposits were made from time to time, month to month, week to week, and may be day to day depending on various factors. It may be mentioned here that whether the shares and securities were held as investments or stock-in-trade or investments treated as stock in trade as per RBI norms, each one of these purchases required funds and these could have come from a basket of deposits and/or loans and/or own funds by way of share capital/premium. Basically it is a question of fact and then law, and hence basic facts have not been highlighted under the weight of legal submissions.

Moreover, assessee has meticulously worked out expenses relating to administrative wing of the treasury department and newly created wing of the industrial finance wing of the assessee bank during the year.

In this regard, assessee has come up with several alternate arguments as to why interest should not be disallowed notwithstanding the fact that it has itself offered "direct expenses of Rs. 209,42,284/-out of administrative expenses of its treasury wing and newly set up industrial finance department for disallowance in the computation of total income computed by it. It is worth noting here that the figure of Rs. 209,42,284/- has been worked out meticulously by the assessee, however, it has not worked out any interest and bill discounting charges allocable to the activity of the Treasury Wing especially when the auditors of the company and the directors of the company have themselves admitted in annual accounts that the treasury wing had segmented liabilities and hence segmented expenses including interest and bill discounting charges allocable to the Tax Free Income yielding investments even though rule 8D of the IT. Rules 1962 mandates it. It is important to note that assessee has cited numerous decisions of the High court/ITAT favoring it,however, the matter is not ultimately decided by the Supreme Court of India and even the ITATHC decisions cited by the assessee have also reiterated the issue that "It is a question of fact and whether there was a direct and/or indirect nexus between the borrowings" on which interest had been paid and the investments on which tax free interest/dividends/any other income has been carned or not. These decisions show beyond doubt that in facts and circumstances of the case "rule and provisions will apply or not" and not otherwise. So, if the facts are clear, then the rule and the law will apply.Moreover, legislature had already envisaged all such eventualities and decided in its wisdom to frame the law and formulate the rules. Various issues raised in the matter.

Assessee's business operations are governed by the B.R. Act 1949 and RBI Guidelines issued from time to time. As per B.R. Act 1949, every bank operating in India is required to maintain certain percentage of its deposits in Government Securities and assessee, being a bank and in the banking

business in India, was required to comply with the same as well. Assessee has submitted that it was complying with the statutory requirements of maintaining certain percentage of its deposits received from public, by depositing certain percentage of it in Government Securities and Bonds to comply with RBI Guidelines. Now, deposits made by the customers vary from day to day, week to week, month to month, depending on various needs of the customers and yet a bank is required to comply with RBI guidelines strictly so as not to invite penal clauses of the B.R.Act. Thus assessee was complying with the statutory provisions applicable to it and hence it made investments in tax free income yielding securities totaling Rs. 5507 Crores which yielded tax freedeposits bearing interest received by the assessee during the year" since the assessee was complying with statutory requirements and had invested in tax free investments. There is another advantage of investing in such securities in as much as "the income by way of interest and dividends was tax free.' Thus, prima face it would appear that borrowed funds by way of interest bearing savings and other deposits were utilized by the assessee in investing in tax free income yielding securities and there is direct nexus between the two by way of statutory compliance requirement since the assessee is a Bank governed by the provisions of the B.R.Act 1949 and RBI Act. It is therefore held that the'borrowed funds were utilized for investing in tax free income yielding securities and hence provisions of section 14A of the IT Act 1961 and rules 8D of the ITRules 1962 will squarely apply to the facts of the case. However, the assesseein its submissions cited that 'the ITAT, Mumbai in assessee's own case for AY2008-09 vide order dated 1/1/2016 has held as follows:

"4.We heard the rival contentions on this issue and perused the record. We agree with the contention of the assessee that no disallowance under Rule 8D(@)G) and (i) is required to be made, if the non-interest bearing funds available with the assessee are more than the amount of investment which generate tax free income, since the said view has been upheld by the Hon'ble Bombay High Court in the case of CIT Vs. HDFC Bank Ltd. (2014)366 IT 505 (Bom). However, the fund position of the assessee is required to be examined at

the end of the AO. Accordingly, we set aside the order of Ld. CIT(A) on this issue and restore the same to the file of the AO with the direction to examine this issue by following the ratio rendered in the case of HDFC Bank Ltd. (Supra) and also any other decision that may be relied upon by the assessee and take appropriate decision in açeordance with the law.

5. With regard to the expenditure with requires to be disallowed under Rule 8D(2)(iii), the Id. AR submitted that there is no requirement to make any disallowance during the year under consideration, since the assessee has not received any exempt income. However, when it was pointed out that the assessee would have spent some portion of expenses for the purpose of purchase, maintenance and sale of investments and hence a portion of administrative expenses is required to be disallowed even if no dividend income is received, the Ld. AR agreed that the disallowance may be restricted to Rs. 2,09,42,284/- as computed by the assessee before the tax authorities.

6. We find merit in the said submissions, since the object of the assessee in making investment is to hold them as stock in trade.Accordingly, we are of the view that the methodology prescribed under Rule 8D(2)(iii) cannot be applied to the facts and circumstances of the instant case. Accordingly, we modify the order of the Ld. CIT(A) and direct the AO to restrict the addition under Rule 8D(2)(ji) to Rs.2,09,42,284/-

It would thus appear that 'the two main issues raised in the appeal relating to the quantum of disallowance u/s. 144 relating to interest on borrowed funds and disallowance vis-à-vis the tax free securities held as stock in trade are already decided in this appeal'. Keeping in view the orders of the ITAT dated 1/1/2016 in assessee's own case for AY 2008-09, it is directed that the AO will follow the directions of the ITAT, Mumbai for AY 2008-09 for AY2014-15 also in the spirit of various decisions quoted in the ITAT decision and also in light of subsequent decision and direction of Bombay High Court in the case of HDFC Ltd. v/s. DCIT 368 IT 529 vis-@-vis the facts of the assessee'scase and re-examine the entire case from factual angle and work out the quantum of interest relatable to these tax free income

yielding securities and disallow the same to enable the AO to verify the facts of the case as per ITAT's directions. In nutshell, assessee's appeal is partly allowed subject to verification."

8. Before us, the assessee by way of ground NO. 1 has challenged the direction of the Ld. CIT(A) for restoring the matter for re-examination/re-verification, which according to the assessee is beyond the powers conferred u/s 254 of the Act. It is the contention of the assessee in ground No. 2 that said direction of the Ld. CIT(A) is beyond the direction of the ITAT in the assessee's own case for earlier years. Alternatively, in ground No. 3, the assessee has prayed for relief for disallowance on proportionate interest expenses, no disallowance if securities as stock in trade and also submitted for deleting the suo moto disallowance also. The Ld. Counsel appeared before us and made various propositions praying deletion of the addition. Regarding the, first **proposition**, that no interest disallowance could be made to the extent of interest free funds available with the assessee, the assessee submitted as under :

"The Assessee Bank submits that when own funds and interest free funds are more than tax free investments, no disallowance of interest w/s 144 r.w.r. 8D(fi) be made. The said proposition is supported with the position of own funds and tax-free investments as on March 31, 2014, tabulated below for reference:

Details of Owned funds and other non-interest bearing funds	Amount (Rs. In Lacs) As on March 31, 2014
Share Capital (a) (Pg. 8 of FPB)	36,063
Reserves and Surplus (b) (Pg. 8 of FPB)	6,76,110
Current Account Deposits	

- From Banks (c)	23,469
- From Others (d)	6,78,246
Total current account deposits (e=c+d) (Pg. 9 of FPB)	7,01,715
Total own funds (a+b+e)	14,13,888
Tax free investments	5,53,525

Reliance is placed on various judicial precedents listed in the index of Legal Paper Book running from pg. no. 1-343 ("LPB-I) under proposition 1, including the decision of Hon' ble ITAT in Assessee's own case for AY 2008-09 at LPB-I pg. no. 2, para 4.

8.1 Regarding the **second proposition** that the Assessing Officer has not recorded dissatisfaction as to the claim of the assessee, the Ld. Counsel submitted as under:

"Proposition 2: Satisfaction not recorded

The AO while rejecting the suo-moto working failed to record satisfaction (Pg. no. 22 of AOOrder) as to how the working is wrong but states a generic reason as to why Rule 8D should be applied.

The AO needs to record 'satisfaction having regard to the accounts of the Assessee as to how he is not satisfied about correctness of the claim of Assessee before applying Rule 8D

Reliance is placed on various judicial precedents filed in LPB-I at Pg. no. 6-109 under Proposition 2, including the decision of Hon'ble ITAT in Assessee's own case for AY 2011-12 to AY 13-14 (Refer LAB-I Pg. No. 17, Para 17 for AY 2011-12)."

8.2 Regarding the **other propositions** that no disallowance u/s 14A of the Act could be made when securities were held as stock in trade business etc., the Ld. Counsel submitted as under:

"No disallowance us 14A of the Act when securities are held as stock-in-trade of the business

The Assessee Bank being in the business of banking, holds all its investments as stock-in-trade.Any income/loss from sale of such investments is offered for tax under the head "Income from Business or Profession". Kindly note that no income under the head Capital Gains is offered by the Assessee in its COI (Pg. no. 60 of FPB). Any exempt income earned out of such investments is only incidental.

Reliance is placed on various case laws filed in LPB-I at Pg. no. 1-204 under Proposition 3 including the decision of Hon'ble ITAT in Assessee's own case for AY 2008-09 (LPB-1 Pg.

No. 3, Para 6). Out of the above decisions, the following judicial precedents, after considering the decision of Hon'ble SC in Maxopp Investments Ltd. v. CIT (402 ITR 640) have held that no 144 disallowance is warranted with respect to investments held as stock-in-trade:

- *Nice Bombay Transport (P) Ltd vs. ACIT (20191 175 ITD 684 (Delhi-Trib.)*
- *Punjab National Bank vs. ACIT ITA No. 1519/Del/2016 & ITA No. 7106/Del/2017] (Delhi-Trib.)*
- *ACIT vs. UCO Bank [ITA No. 1615/Kol/2016| (Kolkata-Trib.)*
- *Bank of Maharashtra v. DCIT (ITA No. 1370 /Pun/2014)*

Proposition 4: Only those investments yielding exempt income to be considered for calculating disallowance us 14A

Without Prejudice to proposition 1, 2, 3 & 4

Proposition 5: Only net interest expenditure after setting off interest income should be considered for the purpose of interest disallowance u/s 14A r.w.r. 8D

The Assessee has earned an amount of Rs. 9.981/- crores as interest and incurred interest expenditure of Rs. 7,265/- crores.

The Assessee prays that since the interest income earned is higher than the interest expense incurred, no disallowance u/s 14A r.w.r. 8D is warranted.

As for propositions 2 to 5 are concerned, the Assessee submits that if the Assessee under a mistake or misconception, has over assessed income in the return, relief ought to be given as per provisions of law. Reliance is placed on various judgements attached at LPB-II Pg. Nos.344 to 382 under Proposition 5."

8.3 However, the Ld. Counsel proposed that only investment yielding exempted income should be considered for calculating disallowance u/s 14A. Further, the Ld. Counsel in 5th propositions submitted in the net interest expenditure after setting off interest income should be considered for the purpose of interest disallowance u/s 14A r.w.r. 8D.

9. On the contrary, the Ld. Departmental Representative (DR) submitted that dissatisfaction has been recorded by the Assessing Officer on the claim of the assessee and thereafter, he worked out disallowance as per Rule 8D of Rules , therefore, he justified in computing the disallowance as per the law i.e. as per Rule 8D of the Rules. He submitted that the Ld. CIT(A) has not given any finding in respect of disallowance under Rule 8D(2)(iii) and only given direction in respect of interest disallowance under Rule 8D(2)(ii) of the Rules. He accordingly submitted that disallowance as per Rule 8D should be upheld.

10. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. It is evident that the Ld. CIT(A) has not adjudicated the issue in dispute in support of disallowance of expenses related to exempted income u/s 14A r.w.r. 8D of the Rules and directed the Assessing Officer for re-examination/re-verification of the disallowance of interest component related to investment in assets yielding exempted income. In our opinion, under the provisions of section 251 of the Act the power of the Ld. CIT(A) for restoring the matter back has been withdrawn and issuing direction for re-examination or re-verification of the facts and then decide the issue, is beyond the power of the Ld. CIT(A). In the facts and circumstances of the case, the finding of the Ld. CIT(A) being beyond his authority,therefore, the matter need to be restored back to the file of the Ld. CIT(A) for deciding afresh. Further, as far as the contention of the assessee that funds and interest free funds are more than the investment in tax free assets, the Ld. Counsel of the assessee was asked to provide the position of the availability of the own funds and interest free funds at the time of investment in those funds rather than availability of the funds in the year under consideration. However, no such details could be made available during the course of the hearing. In the circumstances, the proposition by the Ld. Counsel of the assessee cannot be adjudicated. Accordingly, we restore this issue of disallowance u/s 14A of the Act to the file of the Ld. CIT(A) for deciding afresh after taking into consideration submissions of

the assessee. The ground Nos. 1 to 3 of the appeal of assessee and ground No. 1 of the appeal of the Revenue, are accordingly allowed for statistical purposes.

11. The ground Nos. 4, 5 and 6 of the appeal of the assessee relate to disallowance of deduction claimed u/s 35D on the expenses related to qualified institutional placement (QIP).

12. Brief facts qua the issue in dispute are that during the assessment year 2010-11, the assessee had raised Rs.103.87 crores by way of issue of share capital through QIP, in which it placed its share capital with qualified institutional buyers (QIB). In connection with issue of shares to QIB, the assessee incurred expenses aggregating to Rs.14,14,01,453/- on account of payments to lead managers of the issue and payments, to legal consultants and auditors for the finalization of placement document for the purpose of QIP. The assessee claimed 1/5th of those expenses amounting to Rs.2,82,80,290/- u/s 35D of the Act for the captioned year. This is last year of its claim out of 5 years beginning with AY 2010-11. It is noted that section 35D of the Act allows deduction of 1/5th of the expenses incurred in connection with the issue, for public subscription of shares in or debentures of the company. Thus, the question involved in the appeal is whether Qualified Institutional Buyers (QIB) can be regarded as public and whether the offer made to them can be regarded as offer made to public for the purpose of section 35D of the Act.

13. Before us, the Ld. Counsel of the assessee relying on the decision of the **Tribunal Hyderabad Bench in the case ofDCIT v. Deccan Chronicle Holdings Ltd. (70 SOT 600)** along with provisions of Securities and Exchange Board of India (SEBI) issue on capital and disclosure requirements regulation, 2009 submitted that QIB falls in the category of offer made to public. The Ld. Counsel also referred to the order of the Tribunal in the case of the assessee for assessment year 2010-11 wherein QIB have been held to be forming part of the public. The Ld. Counsel submitted that Hon'ble Supreme Court in the case of CIT v. Andhra Chamber of Commerce (AIR 1965 SC 1281) held that QIB are a class of investors, which forms a part of the larger investor community and accordingly would be considered as public for the purpose of section 35D. However, the Co-ordinate Bench of the Tribunal in the case of assessee's own case for assessment year 2011-12 and 2013-14 has remanded the issue to AO for examining whether issue of shares to QIB was a public subscription or not. A Miscellaneous Application filed by the assessee against the said order has also been rejected by the Tribunal vide order dated 22.05.2023.

13.1 Before us, the Ld. Counsel of the assessee submitted that order of the Tribunal for assessment year 2011-12 to AY 2013-14 should be ignored and order for assessment year 2010-11 should followed.

14. We have heard the rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that the issue in dispute is squarely covered by the order of the Tribunal for AY 2011-12 to 2013-14 in ITA No. 3498 to 3500/Mum/2018 and the Miscellaneous Application filed against that order has also been rejected by the Tribunal and therefore, the Tribunal (supra) has duly considered the order of the Tribunal for assessment year 2010-11, therefore, this order is a binding precedent. The relevant finding of the Tribunal (supra) in MA No. 442 to 444 of 2022 are reproduced as under:

> *"09. However, claim of the assessee is that the decision of the coordinate bench in A.Y. 2010-11 has categorically decided that assessee is entitled to deduction under Section 35D of the Act and therefore, the decision cannot be revisited and the Tribunal has to follow the same. Coordinate bench has decided this issue as under :-*
>
> *"031. We have carefully considered rival contentions and perused the orders of the lower authorities. According to provisions of section 35D (2) (c) (iv) of the act companies are allowable following deduction:- c) Where the assessee is a company, also expenditure (iv) in connection with the issue, for public subscription, of shares in or debentures of the company, being underwriting commission, brokerage, and charges for drafting, typing, printing, and advertisement of the prospectus;*
>
> *032. So the only issue is whether the issue of shares made by assessee to QIB is "Public subscription of shares" or not. Allotment of shares to QIB can be permitted on "Private Placement basis "or*

also in "Public Issue". 033. We find that issue is decided in favour of the assessee in assessee"s own case for Assessment Year 2010-11 in ITA NO. 3497/Mum/2018 dated 14 July 2020 so far the issue was whether QIB is "Public" or not . The co-ordinate Bench in that case considered whether theallottees Qualified Institutional Buyers is " public" or not. The coordinate Bench following the decision of ITAT in Deccan Chronicle Holdings Ltd. (supra) hold that QIB is " Public" so deduction under Section 35D of the Act is allowable. It held as under:-

"6. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below. The appellant is a banking company. It filed its revised return of income for the AY 2010-11 on March 30, 2012 declaring total income at 7,90,10,18,157/-.

As mentioned earlier, the question involved in this appeal is whether QIB can be regarded as "public" and whether the offer made to them can be regarded as "offer made to public" for the purpose of section 35D of the Act.

In Deccan Chronicle Holdings Limited (supra), the Tribunal has held as under :

"6. With respect to ground No. 4 for the assessment year 200809, we find that the Assessing Officer has not disallowed for the assessment years 2006-07 and 2007- 08.

However, the Assessing Officer has disallowed the expenditure on the issue of qualified institutional buyers for the assessment year 2008-09 which has been allowed by the Commissioner of Income-tax (Appeals) holding as under :

"5. I have gone through the factual and legal contentions of the appellant in support of its argument that the deduction was claimed under section 35D read with section 37 i.e., both under sections 35D and 37. I agree with the argument of the appellant that the language used in section 35D is so plain and unambiguous that the only condition laid down in that section is that the issue should be offered for public subscription and the mode of placement is immaterial. Thus, the only issue for consideration is whether QIB can be called 'public' or not. After a careful and comprehensive consideration of the relevant provisions of the Company Law, Securities Contract (Regulation) Rules, SEBI Guidelines/Instructions, I am of the considered opinion that QIBs constitute 'public' and accordingly, the subscription made by the amount to public subscription. In this view of the matter and also considering the facts with regard to the utility of funds raised through QIB issue, I hold that the issue expenditure, to the extent attributable to the funds utilised for extension of the appellant's undertakings, is eligible for deduction under section 35D. So far as the remaining funds, utilised for modernisation and working capital requirements of the appellant's business are concerned, I have considered both factual and legal submissions of the applicant, in support of its contention that the expenditure was in the nature of revenue expenditure since the primary objectand intent of raising these funds was to meet the operational requirements, in order to run the business more efficiently and profitably. The hon'ble High Court of Delhi, after analysing plethora of case law on this subject, had laid down certain broad guidelines, in the case of CIT v. J.K. Synthetics Ltd. [2009] 309 ITR 371 (Delhi), to decide whether a particular expenditure is capital or revenue in nature. Tested against these broad legal principles, I am of the opinion that there is considerable force in the arguments of the appellantcompany that the expenditure claimed by it clearly

falls in the revenue field. These guidelines were impliedly approved by the hon'ble Supreme Court, in view of the fact that the special leave petition filed against this decision was dismissed. There is also merit in the argument of the appellant-company that the facts of its case are distinguishable from those in the case of Brooke Bond, for the detailed reasons submitted by it, and therefore its claim cannot be denied by relying on that decision. It was further claimed that though the entire expenditure was allowable in one year under section 37, the same was treated as deferred revenue expenditure and claimed over five years, starting from the assessment year 2007-08. The concept of deferred revenue expenditure is now legally recognised by various judicial authorities and in fact, this was upheld even in the case of the appellant by my predecessor, while deciding the appeal for assessment year 2006-07. In view of the above facts, I hold that the expenditure of 2,07,00,112 claimed for assessment year 2008-09 is allowable under sections 35D and 37. As the claim of this expenditure under section 35D read with section 37 is in order, the disallowance on this account is deleted."

7. We find that during the year 2007-08, the company incurred debenture expenses of 2.07 crores and QIB issue expenditure of 8.28 crores, both totalling to 10.35 crores. The expenditure referred to above of 10.35 crores was adjusted against the share premium account as per the provision of the Companies Act. However, the expenditure being deferred revenue expenditure falls within the ambit of section 35D read with section 37 of the Income-tax Act which is eligible to be charged to profit and loss account. Accordingly as per the provisions of section 35D of the Income-tax Act, onefifth of the QIB issue expenditure i.e., 207 lakhs was written off. Qualified Institutional Buyers (QIBs) are a class of investors as a part of the large investor community and the

companies sought for QIB issues because the funds can be raised within a short span. This is an extremely important investment for larger investors and since the buyers are only a class of investors, the issue of shares to QIB have been considered as public issue. The expenses in connection with public issue of shares or debentures of the company are allowable. Reliance is placed on CIT v. Shree Synthetics Ltd. [1986] 162 ITR 819 (MP). Hence on the merits of the issue, theQIB expenditure can be treated as revenue expenditure and eligible for deduction under section 35D of the Income-tax Act is confirmed. Hence on merits of the issue as well as the fact that the same issue has been allowed in the earlier years and the Department cannot come upon in appeals in the subsequent years would be the reason to dismiss the Departmental appeal. We confirm the order of the Commissioner of Income-tax (Appeals) with respect to qualified institutional buyers expenses and dismiss the Departmental appeal on this issue. In the result, the Departmental appeal for the assessment years 2007-08 and 2008-09 are dismissed."

6.1 A perusal of the above order of the Tribunal clearly indicates that the present issue is directly covered in favour of the appellant.

6.2 Further, we find that the appellant being a listed company is bound by "Listing Agreement", which provides for the disclosure requirements for the share holding pattern of a listed company. As can be seen therefrom, there are only two categories of shareholders- "promoter/promoter group" and "public". For the definition of these terms in Clause 35, reference is made to Clause 40A of the Listing Agreement. As can be seen therefrom, Mutual Funds/Financial Institutions which are QIBs are classified under "public shareholding". The terms are defined in Clause 40A of the SEBI Listing Agreement. Further, the listing agreement takes us to

Securities Contracts (Regulation) Rules, 1957 (in short "SCRR"). Also Rule 19(2)(b) and Rule 19A of the SCRR provide that companies are required to maintain minimum public shareholding of 25% in case of first time listing and in case of continuous listing agreement respectively. In this context, we may refer to section 2(d) of SCRR defining the term "public". It (public) is defined to mean any person other than the promoter, promoter group, subsidiaries and associates of the company. Thus any person other than these four qualify to be considered as public. As can be seen from the list of QIBs to whom shares are issued, the shares are not issued to any of the aforesaid category. Thus QIBs, not being promoters, promoter group, subsidiaries and associates of the company would qualify as "public".

As specified in clause 40A(ii) of the listing agreement, public shareholding can be increased by any of the modes specified therein to comply with Rule 19(2) and 19A of SCRR. One such note is the issue of IIP in accordance with Chapter VIIIA of the SEBI-ICDR. Chapter VIIIA has been included to provide for fresh issue of shares to comply with minimum shareholding requirement in Rule 19(2) and 19A of SCRR. Reg. 91B defines IPP as a further public offer made only to QIBs. These regulations provide that when a company has a public shareholding lower than the requirements specified, then the company may issue IPP to QIBs and raise the public shareholding to the required levels. Itthus implies that QIBs form part of public. Further, even Reg. 82 which gives conditions for QIP, provides that the same must be in compliance with the requirements of public shareholding.

That "a section of public qualifies as public" has been clarified in Nitta Gelatine India Limited (supra) and Andhra Chamber of Commerce (supra).

7. Facts being identical, we follow the order of the Tribunal in the case of Deccan Chronicle Holdings Limited (supra) and in view of the discussion hereinabove at para 6.2 , hold that the appellant is eligible for deduction u/s 35D of the Act. Thus we set aside the order of the Ld. CIT(A) and allow the 1st , 2nd and 3rd ground filed by the assessee."

034. For Deduction u/s 35 D (2) (C) (iv), allottees of shares and Debentures are immaterial , those may be QIB, FII, DII, Other Investors Individuals etc, but only issue to be seen is whether the expenditure is " in connection with the issue for public subscription " or not.

035. Therefore, as we have already held that if the issue of shares is through " public Subscription" assessee is eligible for deduction u/s 35 D, conversely, if the issue of shares are not " Public Subscription" i.e. such as Private Placement etc, assessee is not eligible for deduction u/s 35 D of the Act . These facts are not on record whether shares issued to QIB are issued in "Public Subscription "or otherwise. Therefore, the matter needs to be set aside to the file of the ld AO for fresh examination, to show before him that the issue was a public subscription and not otherwise, onus lies on assessee. Ld AO may examine the same; if shares are issued in "Public Subscription", deduction may be allowed. 036. Accordingly, ground no. 3 and 4 of the appeal of assessee are allowed with above directions."

010. Coordinate bench while deciding the issue has clearly considered the decision in case of assessee in first year. We do not find there is any finding in the order in the coordinate bench for earlier year whether it was an issue of public subscription or not. This is the basic requirement of that section. ***As no evidence was put forth, the issue was set aside for verification whether***

the expenses were in connection with the issue for ' Public Subscription' or not. The coordinate bench in earlier year allowed claim of the assessee holding that whether QIP is public or not. It did not decide whether it is a 'public subscription' or not.

011. Any way in these proceedings, we cannot go in to the merits of the case as held by Hon Sc in case of CIT V Reliance Telecom Limited2021] 133 taxmann.com 41 (SC). Further, as we have restored the issue to the file of the LD AO, our observation on the merits, even otherwise, may influence the order of the LD AO in set aside proceedings. Therefore, these grounds of all these MA are dismissed, as on this issue there is no mistake in the order."

14.1 Thus, following the finding of the Tribunal for AY 2011-12 to 2013-14 in ITA No. 3498 to 3500/Mum/2018,the issue in dispute of claim of 1/5th of the expense u/s 35D of the Act is restored to the file of the Assessing Officer to be decided in accordance with direction of the Tribunal in 3498 to 3500/Mum/2018 for AYs 2011-12 to 13-14. The ground Nos. 4, 5 and 6 of the appeal of the assessee are accordingly allowed for statistical purposes.

15. The ground Nos. 7 and 8 of the appeal of the assessee and ground No. 2 of the appeal of the Revenue are related to disallowance of brokerage paid on acquisition of the investment which remained unsold during the year.

16. We have heard rival submission of the parties on the issue in disputed and perused the relevant material on record. The Tribunal

for AY 2011-12 to 13-14 has held that said investment are stock in trade of the assessee and brokerage expenses in relation to same ought to be allowed. The relevant finding of the Tribunal (supra) is reproduced as under:

> *"024. We have carefully considered the rival contentions and perused the orders of the lower authorities. On appreciation of facts, we find that assessee offers profit and loss on sale of securities as business income and not as capital gain. This fact has also been accepted by theLD AO. Therefore the securities purchased and sold by assessee are its stock in trade. Therefore, all necessary expenditure incurred by assessee for purchase of stock in trade, like, commission/ brokerage are revenue expenditure only. It is not the case of revenue that, despite these securities being stock in trade, it needs to value at cost or market value whichever is less at the end of the year, and commission or brokerage incurred on its acquisition should have formed part of cost of such securities, subject to available market rate. Ld AO has held that commission or brokerage as far as it relates to unsold stock in trade is not allowable during the year of incurring such expenditure, but would be taken in to consideration when securities are sold. The Central Board of Direct Taxes has issued a circular no. 18 of 2015 provides that in view of the decision of Hon'ble Supreme Court in Nawanshahar cooperative bank Ltd (supra), wherein it has been held that the investment made by banking companies are part of the banking business which is chargeable to tax under the head profit and gains of business and profession and therefore, expenses relatable to investment cannot be disallowed under section 57(i) of the Act.The applicability of deduction of expenditureunder section 28 is also to be treated on the same parameters. When it is not the claim of the Id AO that valuation of securities held as stock in trade at the end of the year is not valued higher to the extent of commission and brokerage incurred on these securities to determine "at cost" valuation, we do not find any reasonto uphold disallowance made by the Id AO. In view of this, we do not find any infirmity in the order of the learned CIT(A) in deleting the above disallowance.Accordingly,ground no. 2 of the appeal of learned Assessing Officer is dismissed."*

16.1 Following the finding of the Tribunal (supra) , the ground Nos. 7 and 8 of the appeal of the assessee are allowed whereas ground No. 2 of the appeal of Revenue is dismissed.

17. The ground Nos. 9 to 14 of the appeal of the assessee and ground No. 3 of the appeal of the Revenue are connected with the issue of deduction u/s 36(1)(1)(viia) of the Act.

17.1 Briefly stated facts qua the issue in dispute are that the ground pertains to disallowance of provision of bad and doubtful debts claimed by the assessee u/s 36(1)(viia) of Rs.135,21,64,723/- with respect to non-performing assets (NPA). The Assessing Officer disallowed the same on the premises that the same pertain to Standard Assets and hence should not be allowed. The Ld. CIT(A) remanded the issue back to the file of the AO for examining whether claim pertain to Rural v. non-rural branches. Before us, the Ld. Counsel of the assessee submitted that the claim pertains to only NPA and not standard assets. He submitted that provision for standard advances is a separate line of item in computation of income (COI) and the claim u/s 36(1)(viia) of the assessee purely pertains to NPAs and claim has not been made for standard advances. He further submitted the there is no such requirement that under section 36(1)(viia) of the Actdeduction can be claimed only with respect to rural branches. The Ld. Counsel further submitted that the issue in dispute is covered in assessee's own

case for AY 2011-12 to 2013-14. The Ld. DR also could not controvert this fact.

18. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The identical issue has been decided by the Tribunal in favour of the assessee for AY 2011-12 to 2013-14. The relevant finding of the Tribunal is reproduced as under:

> *"085. We have carefully considered the rival contention and perused the orders of the lower authorities. The only reason why the deduction is disallowed to the assessee is that assessee does not have any rural branches. we find that deduction u/s 36 (1) (viia) of the act is not restricted to the banks only having the rural branches. This has been dealt with in 42 taxmann.com 303 as under :-*
>
> > *"34. It can be seen from the history of Sec.36(1)(viia) of the Act that at stage-I the deduction was allowed in respect of any provision for bad and doubtful debts made by a scheduled bank in relation to the advances made by its rural branches. At this stage the PBDD had to be linked to the advances made by Bank's rural branches. At stage-II of Sec.36(1)(viia), the deduction while computing the taxable profits was allowed of an amount not exceeding ten per cent of the total income (computed before making any deduction under the proposed new provision) or two per cent of the aggregate average advances made by rural branches of such banks, whichever is higher. At this stage also the PBDD had to be created and debited to the profit and loss account but it was not required to be done in relation to advances made by Bank's rural branches and can be in relation to any debt. PBDD need not be in relation to rural advances but can be in relation to any advances both rural and non-rural advances. The two percent AAA made by rural branches of such banks had to be computed and the PBDD made in books has to be in relation to rural*

advances. The other eligible sum which can be considered for deduction u/s.36(1)(viia) of the Act viz., ten per cent of the total income (computed before making any deduction under the proposed new provision) does not require computation in relation to rural advances. Nevertheless the debit of PBDD to Profit and Loss account is necessary of the higher of the two sums to claim deduction u/s.36(1)(viia) of the Act. If the concerned bank does not have rural branches then they could not claim the deduction. Therefore the deduction was confined only to banks that had rural branches.

35. At Stage-III of the provisions of Sec.36(1)(viia) of the Act, the deduction allowed earlier was enhanced. The enhancement of the deduction was consequent to representation to the Government that the existing ceiling in this regard i.e. 10% of the total income or 2% of the aggregate average advances made by the rural branches of Indian banks, whichever is higher, should be modified. Accordingly, by the Amending Act, the deduction presentlyavailable under cl. (viia) of sub-s. (1) of s. 36 of the IT Act has been split into two separate provisions. One of these limits the deduction to an amount not exceeding 2% (as it existed originally, now it is 10%) of the aggregate average advances made by rural branches of the banks concerned. This will imply that all scheduled or non-scheduled banks having rural branches would be allowed the deduction (a) upto 2% (now 10%) of the aggregate average advances made by such branches and (b) a further deduction upto 5% of their total income in respect of provision for bad and doubtful debts. The further deduction of 5% of total income was available to banks which did not have rural branches.

36. Therefore after 1.4.1987, scheduled or non-scheduled banks having rural branches were allowed deduction., (a) upto 2% (now 10%) of the aggregate average advances made by such branches and (b) Schedule or non-scheduled banks whether it had rural branches or not a deduction upto 5% of their total income in respect of provision for bad and doubtful debts. Even under the new provisions creating a PBDD in the books of accounts is necessary.

> *37. Though under Stage-II and Stage-III of the provisions of Sec.36(1)(viia) of the Act, PBDD has to be created by debiting the profit and loss account of the sum claimed as deduction, the condition that the provision should be in respect of rural advances is not necessary. At stage-II of the provisions of Sec.36(1)(viia) of the Act, this condition was done away with and it was only necessary to create PBDD in the books of accounts and debit to profit and loss account. The quantification of the maximum deduction permissible u/s.36(1)(viia) of the Act had to be done. Firstly it has to be ascertained as to what is 10% of the aggregate average advances made by rural branches, if the Bank has rural branches, otherwise that part of the deduction u/s.36(1)(viia) of the Act will not be available to the bank. The second part of the deduction u/s.36(1)(viia) has to be ascertained viz., 7.5% seven and one-half per cent of the total income (computed before making any deduction under this clause and Chapter VI-A). The above are the permissible upper limits of deductions u/s.36(1)(viia) of the Act. The actual provision made in the books by the Assessee on account of PBDD (irrespective of whether it is rural or non-rural) has to be seen. To the extent PBDD is so created, then subject to the permissible upper limits referred to above, the deduction has to be allowed to the Assessee. The question of bifurcating the PBDD as one relating to rural advances and other advances (Non-rural advances) does not arise for consideration."*
>
> *086. Therefore respectfully following the decision of the coordinate bench we hold that the lower authorities were not justified in denying deduction u/s 36 (1) (viia) of the act. Therefore, we set-aside the whole issue back to the file of the learned assessing officer to compute the deduction allowable to the assessee Under this Section and grant the same. In view of this ground number 10 of the appeal is allowed."*

18.1 Respectfully following the above finding of the Tribunal (supra), the claim of the assessee is allowed and respective grounds are accordingly decided *mutasis mutandis*.

19. The ground Nos. 15 and 16 of the appeal of the assessee relate to non-admission of additional ground of appeal and disallowance of deduction of discount on issue of shares under the ESOP.

20. We have heard rival submission of parties on the issue in dispute and perused the relevant material on record. We find that under similar facts, the Tribunal in assessee's own case for AY 2011-12 to 2013-14 has admitted the additional ground and restored the matter back to the file of the Assessing Officer for examination of the claim in accordance with law. The relevant finding of the Tribunal (supra) is reproduced as under:

> *"056. Ground number 6 has also another subsidiary ground, alternatively raised for claim of deduction of discount on issue of shares Under ESOP scheme. As we have held that, the learned CIT – A should have admitted additional ground of the assessee, we do not find it appropriate here to allow the claim of the assessee for the simple reason that deduction is required to be verified with respect to its quantum by the lower authorities. Accordingly, we setaside the alternative ground of allowability of discount on issue of shares Under the employee stock option plan of 1,432,422,420/– back to the file of the learned assessing officer to examine the claim of the assessee and allow it in accordance with the law. The assessee is directed to produce the requisite details before the learned assessing officer. If the AO, on examination of such details, is not satisfied with the claim of the assessee, a reasonable opportunity of hearing is required to be given.Accordingly, alternative claim of the assessee is restored back to the file of the learned AO. Accordingly, ground number 6 of the appeal is partly allowed."*

20.1 Respectfully following the finding of the Tribunal (supra) the additional ground in the year under consideration is also admitted

and restored back to the file of the Assessing Officer to be decided in accordance with the direction given by the Tribunal in AY 2011-12 to 2013-14. The ground of appeal is accordingly allowed for statistical purposes.

21. The ground Nos. 7 and 8 of the appeal of the Revenue relate to disallowance of broken period of interest on securities.

22. Before us, both the parties agreed that issue is covered in favour of the assessee vide assessment years 2011-12 to 2013-14. The relevant part of the decision is reproduced as under:

> *"0121. Ground number 7 – 8 are with respect to the taxability of broken period interest in held to maturity investments. We find that identical issue has been dealt with in the appeal of the parties for assessment year 2012 – 13 wherein we following the decision of the honourable High Court decided the issue in favour of the assessee. Therefore, ground number 7 and 8 are dismissed."*

22.1 Respectfully following the above finding of the Tribunal (supra), the ground Nos. 7 and 8 of the appeal of the Revenue are dismissed.

23. The ground NO. 9 of the appeal of the Revenue relates to amortisation of premium on HTM securities.

24. Before us, both the parties agreed that issue in dispute is covered in favour of the assessee by the order of the Tribunal for assessment year 2011-12 to 2013-14. The relevant part of order of Tribunal(supra) is reproduced as under:

"093. Ground number 2 and 3 is with respect to the allowance of revaluation loss arising on HTM securities by the learned CIT – A. We find that this issue is linked with ground number 7 of the appeal of the assessee. Ground number 7 is with respect to the amortization of premium paid for acquisition of held to maturity securities.

094. The learned authorised representative stated that that this issue is now squarely covered in favour of the assessee by the decision of the honourable Bombay High Court in case of CIT versus HDFC bank Ltd 366 ITR 505 wherein loss on revaluation of securities classified as held till maturity is a revenue expenditure.

095. The learned departmental representative vehemently supported the order of the learned assessing officer.

096. We have carefully considered the rival contention and perused the orders of the lower authorities. We fully agree with the learned authorised representative that identical issue has been decided by the honourable Bombay High Court in favour of theassessee in CIT versus HDFC bank Ltd 366 ITR 505 while deciding the issue number (C) , the issue being (C) Whether the ITAT is right in law in holding that the assessee is entitled for deduction with respect to the diminution in value of the investment and amortization of premium on investment held to maturity on the ground of mandate by RBI guidelines thereby ignoring the decision of the Supreme Court in the case of Southern Technologies v. CIT (320 ITR 577) ?" The honourable High Court held as Under :

> *7. As far as question (C) is concerned, we find that an identical question of law was framed and answered in favour of the Assessee by this Court in its judgement dated 4-7-2014 in Income Tax Appeal No.1079 of 2012, CIT-2 v. Lord Krishna Bank Ltd. (now merged with HDFC Bank Ltd.). Mr Suresh Kumar fairly stated that question (C) reproduced above is covered by the said order. In view thereof, we are of the view that even question (C) does not raise any substantial question of law that requires an answer from us.*

097. In view of this, ground number 2, 3 and 7 of the appeal of the AO are dismissed."

24.1 Respectfully following the above finding of the Tribunal (supra), the ground No. 9 of the appeal of the Revenue is accordingly dismissed.

25. In the result, both the appeals of the Revenue and assessee are allowed partly for statistical purposes.

Order pronounced in the open Court on 30/06/2023.

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

Mumbai;
Dated: 30/06/2023
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai