

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER**

**&**

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No. 5765/MUM/2008**

**(A.Y.2001-02)**

DCIT Cir 3(1) Room No. 607, 6 <sup>th</sup> Floor, Aayakar bhavan, Mumbai-400020	Vs.	ICICI Bank Ltd. ICICI Towers, BKC, Bandra(E) Mumbai-400051
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AA ACT1398K</b>		
<b>Appellant</b>	<b>..</b>	<b>Respondent</b>

**ITA No. 158/MUM/2023**

**(A.Y.2001-02)**

ICICI Bank Ltd. ICICI Towers, North East Wing, Ground Floor, BKC, Bandra(E) Mumbai-400051	Vs.	DCIT Cir. 2(3)(1) Room No. 552, 5 <sup>th</sup> Floor, Aayakar bhavan, M.K. Road, Mumbai-400020
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AA ACT1398K</b>		
<b>Appellant</b>	<b>..</b>	<b>Respondent</b>

Appellant by :	Ms. Aarti Visanji, AR
Respondent by :	Shri. K.C. Selvamani, DR

Date of Hearing	01.06.2023
Date of Pronouncement	.06.2023

**आदेश / O R D E R**

**PER AMARJIT SINGH (AM)**

1. The appeal filed by the revenue and the cross objection filed by the assessee are pertained to the same assessment year and arising from same order of Ld. CIT(A), therefore, both these appeals are adjudicated together in this order.

## **Revenue's Appeal ITA No. 5765/Mum/2008**

1. The fact in brief is that the return of income declaring total income of ₹314,57,08,980/- was filed on 31.10.2001. The assessee filed revised return of income on 28.03.2003 declaring loss of ₹91,11,71,830/- and total income u/s 115JA was computed at ₹95,72,42,478/-. Thereafter, assessment u/s 143(3) was finalized on 27.02.2004 and total income of the assessee bank was assessed at ₹1263,01,56,820/-, thereafter, order u/s 154 was passed on 25.03.2024 determining total income of the assessee bank at ₹763,72,30,950/-. Subsequently, the case of the assessee was reopened u/s 47 of the Act and notice u/s 148 of the Act was issued on 07.07.2004. Further facts of the case are discussed while adjudicating the grounds of appeal filed by the revenue as follows.

### **2. Ground No.1 : Addition of expenses amounting to ₹374.50 crore from business income as expenditure earning for tax free income.**

3.1 During the course of assessment, the AO noticed that assessee bank had incurred expenses of Rs 486.67 to earn dividend of ₹112.17 crore. The AO found that dividend income was only of ₹112.17 crore whereas as expenses incurred of ₹486.67 crore was incurred to earn the said exempt income. The assessing officer considered that borrowed funds of the assessee at the end of the year was Rs.59834.96 crores and assessee had paid interest of R.6376.78 crores on the borrowed funds. The assessing officer stated that since the assessee has not

maintained separate accounts for each source of receipts and computed average cost @ 10.65% of Rs.485.54 crores as interest expenditure on the utilisation of funds for investing in shares. Therefore, the AO has disallowed the entire remaining expenditure of ₹374.50 crore incurred towards earning exempt income and the assessee's claim of exempt income of Rs.112.17 crores was also rejected.

4. The assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) has allowed the appeal of the assessee.
5. Heard both the sides and perused the material on record. During the year under consideration, the assessee has claimed dividend income of ₹112.17 crore as exempt income u/s 10 sub section 33 of the Act.

At the time of assessment u/s 143(3) of the Act, the AO has restricted the disallowance to the extent of exempt income of ₹112.17 crore. However, in the reassessment proceedings the AO has further disallowed ₹374.50 core [₹486.67 crore - ₹112.17crore] comprising interest expenses for earning of dividend income.

- 5.1 During the course of appellate proceedings before us the Ld. Counsel submitted that similar issue on identical facts the co-ordinate bench of the ITAT Mumbai for the assessment year 2004-05 has adjudicated the issue in favour of the assessee and no expenses pertaining to interest expenses was disallowed after considering the surplus interest free own funds of the assessee available for investment. It is also submitted that during the year under consideration the assessee was having sufficient funds to make investment and assessee's own funds was at

₹8008.32 crore whereas investment made for earning exempt income was to the amount ₹4559.10 crore. With the assistance of Ld. Representative, we have perused the decision of ITAT in the case of the assessee itself vide ITA No. 7589/Mum/2007 and 7508/Mum/2007 for assessment year 2001-02, the relevant operating part of the Para is reproduced as under:

*“22. We have considered the rival submissions and perused the material on record. We note that the identical facts and circumstances, the Tribunal had, while disposing appeal for the Assessment Year 2004-05, (common order dated 03/11/2017 passed in ITA No. 6137 & 6127/Mum/2008) had held as under:*

*"27. We have heard rival contentions and perused the material available on record. The main contention of the assessee against disallowance of interest expenditure is, investment in dividend earning assets were made out of surplus interest free funds available with the assessee. We find substantial merit in the aforesaid submissions of the learned Authorised Representative. If surplus interest free funds are available with the assessee to take care of the investments made in shares giving rise to dividend income, no disallowance of interest expenditure can be made in view of the decision of the Hon'ble Jurisdictional High Court in HDFC Bank Ltd. (supra). As far as managerial / administrative expenditure are concerned, we have noted, in the assessment year 1997- 98, the assessee had furnished a working of disallowance of expenditure to be made for earning exempt income wherein, it has quantified the disallowance for administrative expenditure at 1% of the gross exempt income. Notably, in assessment year 2000-01, the Tribunal while deciding identical issue has restored the*

*matter back to the file of the Assessing Officer observing as under:-*

*"12. We find that the assessee claimed exemption u/s 10(33) of the Act but the AO disallowed interest expenses and managerial & administrative expenses at Rs.257.63 crore and Rs.2.70 crore respectively and disallowed exemption u/s 10(33) of the Act as against the claim of the assessee of Rs.222,69,96,573/-. The CIT(A) partly confirmed the disallowance of interest expenses at Rs.134,37,32,781/- and managerial and administrative expenses at 1%. The assessee before us now claimed that no interest expenses to be allocated as the investment is made out of assessee's own funds. For this, the learned Counsel for the assessee relied upon the decision of the Hon'ble Bombay High Court in the case of CIT Vs. HDFC Bank Ltd. 366 ITR 505 (Bom.) and also in the case of CIT Vs. Reliance Utilities & Power Ltd. 313 ITR 314 (Bom.). It was contended by the learned Counsel for the assessee that the entire interest expenses are to be allowed as expenses and no interest expenses to be allocated as the investment is made out of assessee's own funds. She referred to the Tribunal's decision in assessee's own case assessment year 1997-98 in ITA No.5424/Mum/2001 wherein the issue is decided vide Para 10.3 by observing as under:-*

*"10.3 It is noted that in earlier years, this issue has been decided in favour of the assessee, after considering the judgment of Hon'ble Bombay High in the case of Emerald Co. Ltd. (supra). It is noted that in assessment year 1995-96 (order dt. 09.09.2015), the Tribunal decided this issue after considering not only*

*the judgment of Hon'ble High Court in the case of Emerald Co. Ltd. (supra) but after considering section 14A as well. Therefore, respectfully following the orders of earlier years, this ground is principally decided in favour of the assessee, subject to verification of facts of this year. Thus, AO is directed to follow the orders of earlier years and decide this ground after verification of facts of this year, and compute the deduction allowable to the assessee taking guidance from tribunal's orders of earlier years. This ground is treated as allowed for statistical purposes".*

*13. After hearing both the sides, we find that the AO while examining the assessee's own funds vis-à-vis investments in shares will follow the decision of the Hon'ble Bombay High Court in the case of HDFC Bank Ltd. (supra) and Reliance Utilities & Power Ltd. (supra). In case, the investment is made out of assessee's funds, then, no interest expenses is to be allocated to the interest income. Accordingly, we set aside this issue to the file of the AO to verify the facts. This issue of the assessee is allowed for statistical purposes and the issue in Revenue's appeal is dismissed."*

*28. Consistent with the view expressed by the Co-ordinate Bench of the Tribunal reproduced herein above, we direct the Assessing Officer to verify the facts and decide the issue keeping in view the directions of the Tribunal herein above. Ground no.5, raised by the Revenue corresponding to ground no.4, in assessee's appeal are allowed for statistical purposes" (Emphasis Supplied)*

23. *Since facts in the present appeal are identical to appeal for the Assessment Years 2000-01 and 2004-05, consistent with the above view expressed by the Co-ordinate Bench of the Tribunal, we direct the Assessing Officer to verify the facts and decide the issue keeping in view the directions given by the Tribunal while deciding appeal for the Assessment Years 2000-01 and 2004-05 reproduced herein above. Accordingly, the Ground No. [3], raised by the Assessee is allowed for statistical purposes.”*

Following the decision of co-ordinate bench of the ITAT as above after considering the undisputed facts that assessee was having much more interest free funds than the investment made to earn exempt income as discussed supra, we do not find any infirmity in the decision of the Ld. CIT(A). Therefore, this ground of appeal of the Revenue stand dismissed.

**6. Ground No. 2 Deleting the addition on account of reworking of deduction computed u/s 36(1) (viii) of I.T. Act amounting ₹ 70 crore**

6.1 During the course of assessment the AO noticed that assessee has claimed special reserve in the computation of income. The AO was of the view that while computing the deduction u/s 36(1)(viii) the dividend of ₹112.17 crore should have been reduced since the same has not been derived from long term financing activities. The assessing officer also considered that write back of specific provision of Rs.393.83 crores, interest on income tax refund, capital gains were to be reduced from the business income before computing eligible deduction u/s 36(1)(viii).

The AO has recomputed the deduction u/s 36(1)(vii) of the Act at ₹Nil by reducing following income from business income by treating the same as income from non-finance activity.

<i>Particulars</i>	<i>Amount₹</i>
<i>Dividend</i>	<i>112,17,49,605/-</i>
<i>Bad debts written back</i>	<i>393,83,00,000/-</i>
<i>IT Refund and capital gain</i>	<i>9,10,49,847/-</i>
<b>Total</b>	<b>515,10,99,452/-</b>

- 7** The aggrieved assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) has allowed the appeal of the assessee. The Relevant part of the decision of Ld. CIT(A) is reproduced as under.

*“2.4 I have considered facts of the case and the submissions made on record. The write back of specific provision of Rs.393.83 crores in respect of specific provisions created in earlier years was utilized for write off of bad debts in the aforesaid assessment year. The A.O. himself in the assessment allowed deduction for write off of bad debts to the extent of Rs.797.24 crores (696.47 +393.83 - 226.70-66.36) including deduction for write off out of provision write back to the extent of Rs.327.47 crores. The Appellant is a financial institution engaged in the business of lending and thus the bad debts write off and write back pertains to the business of financing only. The Appellant after considering all the disallowances and deductions including bad debt write off of the aforesaid year, computed the income from business or profession. On the basis of "profits and gains of business or profession" computed in the assessment only the deduction u/s 36(1)(viii) was calculated after making adjustment for non-finance income only. Thus since the said amount of write back has been utilized for writing off bad debts during the year and reduced from the business income, further reducing the same for calculation of deduction w/s 36(1)(viii) is not required.”*

8. Heard both the sides in this issue and perused the material on record. The assessee submitted that in the original assessment proceedings, the deduction u/s 36(1)(viii) was allowed at 20% of profit derived from the eligible business computed under the head business subject to the amount transfer to the special reserves. In the original assessment order, the AO computed the deduction u/s 36(1)(viii) at ₹140.69 crore but restricted it to the amount transferred of Rs.70 crore to the special reserve. In the reassessment order the AO has computed the aforesaid deduction u/s 36(1)(viii) at ₹ Nil.

8.1 During the course of appellate proceedings before us the Ld. Counsel at the outset submitted that after giving effect to the order of CIT(A) the assessee's income under the head business has been determined at a loss of ₹192.21 crore. Since the income under the head 'Business' is a loss, therefore, the assessee is not eligible for deduction u/s 36(1)(viii) of the Act. Considering foresaid undisputed submission of the assessee, this ground of appeal of revenue becomes academic. Therefore, this ground of appeal of the revenue stand dismissed.

9. **Ground No. 3 Deleting addition made by the AO to the extent of ₹3515090/- in respect of exemption claim u/s 10(23G) of the Act.**

9.1 During the Course of reassessment the AO has allocated proportionate investment management fees paid amounting to Rs.₹35,15,090/- in respect of investment and thereby reduced the claim of exemption u/s 10(23G) of the Act by the aforesaid allocated amount.

10. The assessee filed appeal before Ld. CIT(A). Ld. CIT(A) has allowed the appeal of the assessee.
11. Heard both the sides and perused the material on record. It is undisputed facts that no managerial expenditure has been claimed by the assessee. The assessee submitted that it had incurred aggregate managerial fees of 2.75 crore, however, the same has not been claimed while working of capital gains. It is also submitted that the profit of Rs.343.78 crore on sale of investment was net of managerial expenditure of Rs.2.75 cr which had also been reduced from the business income and shown under the head capital gain. The revenue could not controvert these facts therefore, we do not find any error in the decision of Ld. CIT(A). Accordingly, this ground of appeal of the revenue is dismissed.
12. **Ground No.4:Against the decision of Ld.CIT(A) of Charging interest u/s 234D up to the date of regular assessment under 143(3).**

In this regard the relevant part of the decision of Ld. CIT(A) order is reproduced as under. (Para 4.5)

*“4.5 I have gone through the facts of the case. In the present case, the original assessment u/s. 143(3) 4.5 was passed on 27-2-2004 and interest u/s. 234D levied. The entire demand including interest raised has been paid/adjusted by the Appellant. In view of the original assessment made u/s. 143(3), the assessment u/s 143(3) r.w.s. 147 cannot be considered as an assessment for the first time as provided by Expl. to section 234D. Under the circumstances, I hold that the A.O. was not correct in charging interest u/s 234D upto the date of the re-assessment order as the same is not applicable*

*in case of re- assessments done subsequent to regular assessment already completed u/s. 143(3). Interest u/s. 234D is to be calculated upto the date of the original assessment order viz. 27-2-2004. The Appellant gets relief accordingly. As a result, the appeal is partly allowed.”*

Since in the case of the assessee the assessment u/s 143(3) of the act was originally made before the reassessment made u/s 147 of the act therefore we do not find any reason to interfere in findings of the CIT(A) holding that the interest of u/s 234D is to be calculated up to the date of original assessment order. Therefore, we do not find any merit in the appeal of the revenue and same stand dismissed.

In the result appeal of the revenue is dismissed.

### **13. Assessee's Cross Objection ITA No. 158/Mum/2023**

Ground of appeal in the cross objection of the assessee:

1. *Erroneous re-opening of Assessment under section 147*

*On the facts and the circumstances of the case and in law, the Assessing Officer erred in initiating proceedings under section 147 of the Act.*

*The Assessing Officer failed to appreciate that*

- a. *all material facts regarding the claim of exemption under section 10(33), deduction under section 36(1)(viii) and exemption under section 10(236) was on record at the time of original assessment and the assessment order under section 143(3) of the Act was framed after considering the same.*
- b. *section 147 of the Act does not postulate conferment of power upon the Assessing Officer to initiate reassessment proceedings upon a mere change of opinion as has been held by the Supreme Court in the case of CIT v. Kelvinator of India Ltd. (320 ITR 561)*

1. The Assessee has filed cross objection mainly on the issue of reopening the assessment. There was delay of 14 years and 30 days [5218 days] in filing the cross objection. Assessee has filed affidavit dated 08.01.2023 for condonation of delay of 5218 days in filing the cross objection. In the affidavit, the assessee submitted that while discussing the upcoming hearing of January 09<sup>th</sup> 2023 with the banks legal counsel, the bank was advised to consider the challenging of validity of reopening proceedings.
2. After considering the submission of the assessee and hearing both the sides, we find that, there was inordinate delay of about 14 years 30 in days filing of this cross objection by the assessee.
3. In its submissions the assessee has referred the decision of Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs M/s Katiji and other on 09.02.1987 and the decision of Hon'ble Supreme Court in the case of N. Balkrishnan v/s M Krishanmurthy dated 03.09.1988. The Hon'ble Jurisdictional High Court of Bombay after considering the decision of Hon'ble Supreme Court in the case of Mst. Katiji in the case of Perfect Circle India Ltd. Vs. ACIT (2020) 120 taxmann.com 262(Bombay) held that the matter was arising out of land acquisition there was delay of 4 days only it is in such circumstances that the Hon'ble Supreme Court expressed the view that each days delay is not required to be explained and a pragmatic approach is required to be taken. The Hon'ble Jurisdictional High in the case of Perfect Circle India Ltd. held that since no sufficient cause was shown

by the assessee to explain huge delay therefore the appeal of the assessee to condone the delay was dismissed.

4. In the case of M. Balkrishnan Vs M. Krishnamurthy the Hon'ble Supreme Court held that sometimes delay of shortest range may be un-condonable due to want of acceptable explanation whereas in certain other cases delay of vary range can be condone as explanation thereof is satisfactory -In that case explanation was found satisfactory to the trial court in the exercise of its discretion and the High Court went wrong in upsetting the findings. Therefore, the Hon'ble supreme court has restored the order passed by the trial court but on a condition that appellant shall pay a sum of Rs. Ten thousand to the respondent. However
5. However, on facts and circumstances the case of the assessee is distinguishable. After perused of the material on the record it is observed that there was inordinate delay of about 14 years 30 days filing of this cross objection by the assessee. The reasoning given that while discussing the upcoming hearing of January 09<sup>th</sup> 2023 with the banks legal counsel, the bank was advised to consider the challenging the validity of reopening proceedings was not sufficient to justify inordinate delay of about 14 years30 days. The assessee bank has been professionally equipped with legal and accounting professional. The assessee is well-aware about the process of filing cross objection. The assessee failed to demonstrate that there was valid reason for inordinate delay of nearly 15 years in filing this cross objection. As per section 5 of the limitation act 1963 an appeal may be accepted after the limitation period for the same is over if the assessee had a

sufficient cause for not being able to file the appeal during the limitation period. We find that the appellate has not given plausible explanation for delay. There is a no genuine hardship or reasonable cause demonstrated for inordinate huge delay in filing this cross objection. The assessee could not bring on record any plausible cause to demonstrate that it was prevented by inevitable circumstances for huge delay in filing this cross objection. Therefore, in the fact and circumstances of case we are considered view that there is failure on the part of the assessee without any valid reason for inordinate delay in filing this cross objection. Therefore, request of the assessee in condoning the delay is devoid on merits and same is dismissed. Therefore, the appeal of the assessee is dismissed of being time barred.

6. In the result both appeals of the assessee and revenue are dismissed.

Order Pronounced in Open Court on .06.2023

(AMIT SHUKLA)  
JUDICIAL MEMBER

(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Place: Mumbai

Date .06.2023

*ANIKET SINGH RAJPUT/STENO*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

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1	Draft dictated on			Sr.PS/PS
2	Draft Placed before author			Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6	Kept for pronouncement on			Sr.PS/PS
7	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date on which file goes to the AR			
10	Date of Dispatch of order			