IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 4596/Mum/2019 (A.Y.2016-17)

IDBI Bank Ltd.
22nd floor, IDBI Tower,
WTC Complex, Cuffe
Parade, Mumbai- 400 005.
PAN: AABCI8842G ..... Appellant

Vs.

ACIT LTU (2)
World Trade Centre,
Cuffe Parade,
Mumbai ..... Respondent

&

ITA No. 4572/Mum/2019 (A.Y.2016-17)

ACIT LTU (2)
World Trade Centre,
Cuffe Parade,
Mumbai ..... Appellant

Vs.

IDBI Bank Ltd.
22nd floor, IDBI Tower,
WTC Complex, Cuffe
Parade, Mumbai- 400 005.
PAN: AABCI8842G ..... Respondent

Appellant by	:	None
Respondent by	:	None
Date of hearing	:	27/07/2023
Date of pronouncement	:	28/09/2023

O R D E R

PER GAGAN GOYAL, A.M:

These cross appeals by Assessee and Revenue are directed against the order of Ld. CIT (A) – 1, Mumbai dated 02/04/2019 u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2016-17. The assessee has raised the following grounds of appeal:-

1. The Ld. CIT(A) erred in not granting relief on disallowance under Rule 8D(iii) based on decision of Hon'ble Gujarat High Court in case of Sintex Industries Ltd. (82 taxmann.com 171) by wrongly distinguishing the case even when the facts of the case are applicable to appellant.

2 The CIT (A) erred in confirming the disallowance of bad debts written off by misconstruing the claim as provision for bad and doubtful debts being claimed as bad debts written off and holding that conditions of section 36(2) (v) were not satisfied, whereas the claim was in respect of actual write off of bad debts by debit to provision for bad and doubtful debts account and accordingly the same ought to have been allowed as deduction based on specific provisions of section 36(1) (vii)

3. the CIT (A) failed to appreciate that in accounts where there was uncertainty of recovery of amounts, the interest not recognized as income cannot be taxed. The CIT(A) erred in relying on rule 6EA without appreciating that the chargeability to tax will arise only when there is certainty of recovery.

4. The CIT (A) erred in not deciding on the specific ground raised by appellant on disallowance of provision made for expenses in computing book profits u/s. 115JB even when the same was allowed in computing income under normal provisions of the Act.

Your appellant craves leave to add, to amend and or vary the grounds of appeal before or during the time of hearing.

Additional grounds:-

The amount of Education Cess and Higher and Secondary Education Cess not being in the nature of tax is not covered by the provisions of section 40(a) (ii) and accordingly ought to be allowed as deduction in computing income from business or profession as held by Hon'ble Jurisdictional Bombay High Court in case of Sesa Goa Ltd (423 ITR 426) and other decisions.

2. The brief facts of the case are that assessee is a Public Sector Bank filed its return of income declaring total loss at Rs. 669,27,65,004/- and claiming a refund of Rs. 1019,80,90,340/-. Return of the assessee was processed u/s. 143(1) of the Act, thereafter case of the assessee was selected for scrutiny. Further, the case of the assessee was assessed at Rs. 6307, 03, 96,160/- after various disallowances/additions made. Being aggrieved with this order of AO assessee preferred an appeal before the Ld. CIT (A)-1, Mumbai, who in turn passed an order u/s. 250 of the Act, allowing assessee's appeal in part. Against this order of Ld. CIT (A), assessee as well Revenue both are in appeal before us.

3. We have gone through the order of AO, order of Ld. CIT (A) and submissions of both the sides. First, we are taking assessee's appeal for adjudication and then Revenue's appeal. Assessee raised total as many as 4 grounds and additional ground of appeal and ground wise adjudication of matter is as under:

4. The first issue to be decided in this appeal of the assessee is with regard to disallowance u/s. 14A R.W. Rule 8D (iii). It is observed that the AO had not accepted the contention of the assessee that no expenses were incurred to earn tax free income. Only for the reason that, mixed funds were involved in assessee's case, there was no objective satisfaction recorded by the AO as to why the computation mechanism provided in rule 8D(2) of the rules would come into operation, having regard to the accounts of the assessee. Accordingly, disallowance made by AO and to the extent confirmed by Ld. CIT (A) is not sustainable. Reliance was placed on the decision of Coordinate Bench of ITAT Mumbai in assessee's own case for AY 2015-16 in ITA 3394 and 3894/Mum/2019 and decision of Hon'ble Supreme court in case of Godrej & Boyce Manufacturing Company Ltd (394 ITR 49). The operative portion of the order of Coordinate Bench of ITAT is as under:-

> *7. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.*
>
> *The assessment u/s. 143(3) was passed by the AO on 26.12.2017. The reasons recorded by the AO before making disallowance u/s. 14A r.w. Rule 8D is contained in para 3.2 of the said order and the same is produced below :*
>
> *"3.2 on further perusal of the details furnished by the assessee company, it is also seen that the assessee company has suo-moto disallowed an amount of Rs. 2, 22, 63,226/- as expenses been incurred towards the exempt income and reduced the same in the computation of income. However, the basis of disallowance of Rs. 2, 22, 63,226/- for earning the exempt income during is not submitted by the assessee company. Hence, I am not satisfied with regard to correctness of the claim of expenditure made by the assessee. Therefore the provisions of Rule 8D of Income Tax Rules are being invoked. The assessee vide order sheet noting dated 22.11.2017 was asked to furnish details of dividend income*

earned and expenses incurred as per provisions of section 14A and Rule 8D on earning this income.

3.5 The submissions made by the assessee as well as reliance placed have been carefully considered. Similar issue was also adjudicated and decided against the assessee in the assessment order for earlier Assessment Years. Since there is no change in the facts in the year under consideration, following the reasoning given in the order u/s. 143(3) for the earlier years, the same is not acceptable and it is held that the income has to be exempted after allowing expenditure incurred to earn such income. Consequently exemption u/s. 10 has to be allowed only on the net dividend/interest income. Further, the assessee's contention that the investments were made out of own fund is also not correct."

The AO has passed a rectification order u/s 154 of the Act dated 29.03.2018, stating the following:

"9. Disallowance u/s. 14A of the Act: As per Para 3.2 of Order u/s. 143(3) dated 26.12.2017, mentioned that "the assessee company has suo-moto disallowed an amount of Rs. 2,22,63,226/- as expenses has been incurred towards the exempt income and reduced the same in the computation of income. However, assessee has not disallowed the said amount as expenses towards the exempt income. The Tax Auditor also mentioned in Tax Audit report "As informed by the management and based on our verifications, the own funds of the Bank comprising of share capital, share premium and reserves exceed the amount invested in the investments yielding tax free income. Hence, amount inadmissible in terms of section 14A in respect of the expenditure incurred in relation to income which does not form part of the total income is NIL for F.Y.: 2014-15. The Bank has been disallowing 1% of the tax free income based on the past decisions in the Bank's own case till last year." The amount of Rs. 2, 22, 63,226/-, is actually added back as Income from Venture Capital Funds Offered to tax on accrual basis as per Form 64. Further, in Para 3.10 of the said order, it is mentioned that "Assessee vide letter dated 07.11.2017 submitted that computation as per rule 8D is given in Annexure 9B of Tax Audit Report." In this regard, the submission date was made on 07.12.2017 and 11.12.2017. Regarding Rule 8D, Tax auditor confirmed that amount inadmissible in terms of section 14A in respect of the expenditure incurred in relation to income which does not form part of the total income is NIL for F. Y.: 2014-15 in Tax Audit Report. Hence, the computation as per rule 8D is not given in the annexure of Tax Audit Report. Since this is a mistake apparent from record, it is humbly requested to delete the observations as the assessee is suo-moto

making a disallowance of Rs. 2,22,63,226/-. As also submission by assessee itself, computation as per Rule 8D.

9.1 On perusal of the submission of the assessee, it is found that the submission of the assessee is correct. Accordingly, Para no. 3 to 3.11 of the assessment order is rectified and replaced with the following paras:-

3. Disallowance u/s 14A of the Act:

3.1 On perusal of the return of income, it is observed that the assessee company has received an amount of Rs. 131,15,55,304/- as dividend from shares of financial institutions, companies, subscription to Venture/Mutual Funds and on investment in shares in secondary market. The assessee has claimed this income as exempt u/s 10(34) of the Act. During the year, the assessee also received interest income of Rs. 84,68,39,275/- from investment in tax free bonds, which has been claimed as exempt under section 10(15) of the Act.

3.2 On further perusal of the details furnished by the assessee company, it is seen that the assessee company has not disallowed any expenses u/s. 14A of the Act in respect of exempt income earned during the year. Hence, I am not satisfied with regard to correctness of the non-disallowance of any expenditure by the assessee and hence provisions of Rule 8D of Income Tax Rules are being invoked. The assessee vide order sheet noting dated 22.11.2017 was asked to furnish details of dividend Income earned and expenses incurred as per provisions of section 14A and Rule 8D on earning this income."

3.5 The submissions made by the assessee as well as reliance placed have been carefully considered. Similar issue was also adjudicated and decided against the assessee in the assessment order for earlier Assessment Years. Since there is no change in the facts in the year under consideration, following the reasoning given in the order u/s. 143(3) for the earlier years, the same is not acceptable and it is held that the income has to be exempted after allowing expenditure incurred to earn such income. Consequently exemption u/s 10 has to be allowed only on the net dividend/interest income, Further, the assessee's contention that the investments were made out of own fund is also not correct."

7.1 In Maxopp Investment Ltd. v. CIT (2018) 91 taxmann.com 154 (SC), it is held that:

"41. Having regard to the language of Section 14A(2) of the Act, r.w. Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to

record satisfaction that having regard to the kind of the assessee, suo-moto disallowance u/s. 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO."

In Godrej & Boyce Manufacturing Company Ltd. v. DCIT (2017) 81 taxmann.com 111 (SC), it is held that:

"37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A (2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable."

7.2 After the receipt of the reply dated 07.12.2017 and 11.12.2017 from the assessee , which is produced at para 3.3 and 3.4 of the assessment order dated 26.12.2017, the AO has recorded in para 3.5 that "The submissions made by the assessee as well as reliance placed have been carefully considered. Similar issue was also adjudicated and decided against the assessee in the assessment order for earlier Assessment Years. Since there is no change in the facts in the year under consideration, following the reasoning given in the order u/s 143(3) for the earlier years, the same is not acceptable and it is held that the income has to be exempted after allowing expenditure incurred to earn such income. Consequently exemption u/s 10 has to be allowed only on the net dividend/interest income. Further, the assessee's contention that the investments were made out of own fund is also not correct."

The present appeal is directed against the order of the Ld. CIT (A) and arises out of assessment passed by the AO u/s. 143(3), dated 26.12.2017. It does not arise from the

rectification order u/s. 154 dated 29.03.2018 passed by the AO. We need to examine the satisfaction recorded in the assessment order dated 26.12.2017 and not in the rectification order dated 29.03.2018.

Thus it is crystal clear that in the instant case, the AO has not recorded any objective satisfaction as to why the computation mechanism provided in Rule 8D(2) of the Rules would come into operation, having regard to the accounts of the assessee. To follow the reasons as recorded for earlier years, as done by the AO in the impugned assessment year, is definitely not an objective satisfaction. Therefore, following the ratio laid down in the above decisions of the Hon'ble Supreme Court, we set aside the order of the Ld. CIT(A) in respect of disallowance u/s. 14A r.w. Rule 8D(2)(iii) and allow the 1st ground of appeal.

5. Respectfully following the aforesaid decision of Coordinate Bench of ITAT in assessee's own case on similar ground and as there is no arguments adduced by the Ld. DR to controvert the facts applicable to the case; **we allow this ground of appeal raised by the assessee.**

6. Ground No. 2 is with regard to disallowance of actual bad debts written off by misconstruing the same as provision made for bad and doubtful debts. Assessee during the year has written off bad debts amounting to Rs. 5298.42 crore. The bank every year in accordance with RBI norms creates a provision for bad and doubtful debts. The said provision is created by debiting the profit and loss account under the head Provisions & Contingencies. The said provision made every year is added back and offered to tax. The provision so created is credited to provision for NPA in the Balance sheet and the total provision outstanding at the yearend is reduced from advances in Balance sheet as stipulated under RBI guidelines. When the debt is identified as bad and has to be written off the same is debited to provision for bad and doubtful debts and credited the borrower's

account. It may kindly be seen from the movement of provision for NPA (bad and doubtful debts) that the addition made therein represents further provision created by debiting P & L a/c and the reduction represents the amount actually written off. The addition and deduction of write back of excess provision represents provision created in one quarter and reversed in next quarter. From the above it is clear that when a debt is found to be bad and is to be written off, the same is debited to provision for bad and doubtful debts and not P & La/c..

7. In respect of provision created for bad and doubtful debts bank is eligible to claim deduction u/s. 36(1)(viia) of a sum not exceeding 7.5% of total income and 10% of aggregate average advances made by rural branches. The appellant had not claimed nor was allowed any deduction u/s. 36(1) (viia), in respect of any assessment year after 2013-14. The first proviso to section 36(1) (vii) restricts the deduction in respect of bad debts written off which reads as under:

> *"Provided that in the case of an assessee to which clause (viia) applies, the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under that clause:"*

8. Further as per section 36(2) (v) where any such debt or part thereof relates to advances made by bank to which section 36(1) (viia) applies, the deduction in respect of bad debts written off will not be allowed unless the amount of such debt or part thereof has been debited to provision for bad and doubtful debts

accounts made under 36(1) (viia). The AO and Ld. CIT (A) misconstrued the facts and held that appellant had not debited provision for bad and doubtful debts while writing off bad debts written off accordingly have not satisfied the provisions of section 36(2) (v) According to them since in assessee's case provisions of section 36(1) (viia) are applicable, and assessee had not satisfied the provisions of 36(2) (v) bad debts written off cannot be allowed as deduction. The assessee submits that as evident from the facts as given above, the appellant had only debited provision for bad and doubtful debts and written off bad debts. The assessee had not claimed any deduction u/s. 36(1)(viia) and hence the question of reducing any amount towards deduction allowed in respect of provision for bad and doubtful debts allowed as deduction does not arise and hence the entire bad debts written off has been correctly claimed as deduction. The same should have been allowed as deduction based on the provisions of section 36(1) (vii) read with proviso to section 36(1) (vii) and section 36(2) (v).

9. Without prejudice to above, it is submitted that where a provision is created by debiting profit and loss account and the amount is simultaneously reduced from loans and advances in Balance sheet so that at the end of the year, the amount of loans and advances is shown net of the impugned bad debts, it amounts to write off of the debt for which assessee is entitled to deduction u/s. 36(1)(viia) as held by Hon'ble Supreme Court in case of Vijaya Bank (323 ITR 166). As stated above, in assessee's case, the provision made and held in books is reduced from advances in Balance Sheet. This is evident from the significant accounting policy as disclosed in annual Report. In view of the above, it is

respectfully submitted that the amount of Rs. 5299 crore claimed by assessee should have been allowed as deduction. This issue in context of book profits was allowed by Hon'ble ITAT in appellants own case in A.Y. 2008-09 in ITA 3423/Mum/ 2018 where it was held that when provision is reduced from advances it amounts to write off of the debt for which Explanation (i) to 115JB(2) cannot be invoked.

10. **In view of the above facts, it is clearly established that assessee's bank is charging amount of back debts on actual basis without taking any undue advantage u/s. 36(1)(viia), hence we allow this ground of appeal raised by the assessee.**

11. In Ground No. 3, assessee has raised an issue with regard to taxation of unrealised income from NPA. It is observed that AO charged to tax the unrealised interest on non performing assets for a period between 90 to 180 days which was confirmed by Ld. CIT (A). Assessee submits that since the recovery of principal itself was doubtful in such cases interest cannot be charged to tax. Reliance is placed on the decision of the following decisions:

a. Jurisdictional ITAT Mumbai in case of State Bank of India (ITA 3644 and 4563/Mum/2016)

b. ITAT Kolkata in case of Royal Bank of Scotland (ITA Nos. 36 & 1885/Kol/2017)

3) ITAT Chennai in case of The Karur Vysya Bank Ltd (ITA Nos.2433 & 2649/Mds/2016)

d. ITAT Pune in case of Bank of Maharashtra (ITA No.634/PUN/2017 and others.)

(e) Decision of Supreme Court in the case of CIT v Vashist CHAY Vyapar Limited 410 ITR 244 and the Bombay High Court in the case of Deogiri Nagari Sahakari Bank Limited 379 ITR 24.

12. The operative portion of order of Coordinate Bench of ITAT in the case of State Bank of India in ITA No. 3644 & 4653/Mum/2016 is reproduced here under:-

"76. Brief facts are that the assessee, based on criteria as per the RBI guidelines (i.e. 90-day overdue norm), has classified its advances as NPA. The interest income on such NPAs is recognised on realisation basis, as per the RBI guidelines i.e. the interest income on NPAs is credited to the profit and loss account in the year in which it is received. During the year, the assessee, as per the RBI guidelines for non-recognition of interest on advances classified as NPA, did not credit interest amounting to Rs. 11,37,42,857/- on bad and doubtful debts in its profit and loss account. Consequently, the assessee did not offer the same to tax in terms of the consistent policy adopted by the assessee. Section 43D of the Act provides that in the case of a scheduled bank, income by way of interest in relation to prescribed categories of bad or doubtful debts, having regard to the guidelines issued by the RBI in relation to such debts, shall be chargeable to tax in the previous year:

a. in which it is credited by the scheduled bank to its profit and loss account; or

b. in which it is actually received by the bank; whichever is earlier.

77. Rule 6EA of the Rules inter alia provides the categories of advances that may be classified as bad and doubtful debts (i.e. 180 days norm). Clause (e) of rule 6EA also includes therein debts recoverability whereof has become doubtful on account of shortfalls in value of security, difficulty in enforcing and realising the securities, or inability or unwillingness of the borrower to repay the banks dues, partly or wholly.

78. We noted that the assessee does not offer to tax, the interest income on NPAs, classified in terms of RBI guidelines, on accrual basis. The same is offered to tax in the year in which the same is received and credited to the profit and loss account in terms of the RBI guidelines. Presently, the period to recognise an advance as a NPA as per RBI guidelines is where interest and/ or instalment of principal remained overdue for 90 days whereas as per Rule 6EA, the same is 180 days. The AO has brought to tax the notional interest on sticky advances having irregularities for the period between 90 days to 180 days on accrual basis, relying on section 43D of the Act and rule 6EA of the Rules. The Ld.

CIT (A) has upheld the disallowance made by the Assessing Officer following the directions of the DRP for the assessment year 2012-13.

79. The Revenue before the Tribunal has emphasized on the applicability of the criteria prescribed as per rule 6EA and that the interest on NPAs cannot fall under the exception provided in clause (e) of rule 6EA. But, the assessee argued that the action of the lower authorities cannot be sustained due to the following three reasons viz.,

a. section 43D of the Act would not apply in cases where interest is neither received nor credited to the profit and loss account;

b. RBI guidelines are the primary criteria for determining whether a debt is bad or doubtful and the rule should be framed having regard to the guidelines;

c. without prejudice, a deduction should be allowed of such interest as bad debts.

80. In relation to the above, it was argued that the provisions of section 43D of the Act provide that the categories of bad or doubtful debts would be prescribed having regard to the guidelines issued by the RBI in relation to such debts. In other words, the Legislature envisages that the RBI guidelines are the primary criteria for determining whether a debt is bad or doubtful and the categories prescribed in rule 6EA necessarily have to follow the RBI guidelines. Accordingly, rule 6EA operates in a very narrow scope and has to be read in conjunction with RBI guidelines.

81. We have gone through the case law in American Express Bank Ltd. vs. Addl. CIT [2012] 25 taxmann.com 572 (Mumbai), wherein the Mumbai Tribunal was considering a case where the loans on which interest/principal remained unpaid for 90 days were classified as no-accrual loans. The unpaid interest in respect of such loans was reversed to an account called Reserve for Doubtful Interest (RFDI) account. All subsequent interest accruals of such loans were credited to RFDI account and not to the profit and loss account. The assessee offered to tax the net amount credited to the RFDI account i.e. the interest accruals in the RFDI account net of recoveries. However, it was argued that such tax treatment leads to offering interest on non-accrual loans to tax on accrual basis, even if the same is not credited to the profit and loss account. The Mumbai Tribunal held that where the AO has not contested that the policy adopted by the assessee is not in accordance with RBI guidelines, the incidence of taxation of interest on bad and doubtful debts will be either when the same is credited to the profit and loss account for the year or in the year in which it is actually received. Mere crediting of the interest to a reserve cannot be said to be an incidence by which the said interest could be charged to tax. The aforesaid decision has been affirmed by the Bombay High Court in the case of DIT vs. American Express Bank Ltd [2015] 235 Taxman 85 (Bombay). In the present case the assessee argued that there is no credit entry in the books of the account in respect of the

interest on such NPAs and, accordingly, the addition made cannot be sustained. Hence according to assessee the issue stood covered by the first proposition in terms of the Bombay High Court in assessee's favour and hence, no further submissions were made on other two propositions.

82. We noted that this issue is squarely covered by the decision of Hon'ble Bombay High Court in the case of American Express Bank Ltd (supra), wherein it is held that there is no credit entry in the books of the account in respect of the interest on such NPAs, no addition can be made. Further, even the Mumbai Tribunal in the case of American Express Bank Ltd. (supra) has considered this issue and held that where the AO has not contested that the policy adopted by the assessee is not in accordance with RBI guidelines, the incidence of taxation of interest on bad and doubtful debts will be either when the same is credited to the profit and loss account for the year or in the year in which it is actually received. Mere crediting of the interest to a reserve cannot be said to be an incidence by which the said interest could be charged to tax. Hence, we delete the addition of interest income and allow this issue of assessee's appeal."

13. The concept of prudence is a basic concept in recognition of revenue and booking of expenses. As per concept of prudence when the basic amount of loan given it-self is under doubt, consequently so called interest accrued cannot be recognized as revenue for the concerned financial year. In addition to this, respectfully following the order of the Tribunal and following the judicial precedents, **we deem it fit to allow the ground No. 3 in favour of assessee.**

14. Ground No. 4 relates to disallowance of provision for expenses in computing the book profits. It is observed that Ld. CIT (A), had while deciding the issue under normal computation held that the provision for expenses made by the assessee are not unascertained liability and allowed the same u/s. 37 in computing total income. The Ld. CIT (A) accordingly ought to have allowed the same while computing the book profits u/s. 115JB also based on the same reasoning. The

assessee further submits that since the assessee follows accrual basis of accounting, the provision made for the expenses which is debited to P & L a/c. should be allowed as a deduction even while computing book profits u/s. 115JB.

15. We have heard both the parties, perused the order of AO and Ld. CIT (A), we find that Ld. CIT (A) while deciding the issue under normal computation held that the provision for expenses made by the assessee are not unascertained liability and allowed the same u/s. 37 in computing total income. Therefore, we do not agree with the findings given by the Ld. CIT (A) as different treatment for same head of expense can be given, **hence the ground no. 4 raised by the assessee is allowed.**

16. The Additional Ground raised by the assessee was stated to be not pressed by the Ld. AR. **We accordingly dismiss the additional ground as not pressed.**

17. **In the result the appeal of the assessee is partly allowed.**

ITA No. 4572/Mum/2019 (Revenue's Appeal)

18. The revenue has raised the following ground of appeal:-

1. "Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT (A) is justified in deleting the disallowance of Broken Period Interest?"

2. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in Disallowances u/s 14A computing deleting r.w.r. the of expenses 8D income normal provision of Act?" while under

"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT (A) is justified in deleting the Disallowances u/s 14A r.w.r. of expenses 8D while computing book profit u/s 115JB of the Act?'

3. "Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT (A) is justified in deleting the Disallowances of amortization of premium amounting to Rs. 155, 78, 68,968/- in respect of securities in HTM category?"

4. "Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in Disallowance expenses deleting of of the interest Rs. 160,95,93,897/- incurred in respect of Innovative Perpetual Debt Instrument?"

5. "Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT (A) is justified in disallowance deleting of the penalty amounting to Rs. 10, 49,000?"

6. "Whether, on the facts and in the circumstances of the case and in law, the ld. CIT (A) erred in deleting the disallowance of Rs. 102, 49, 51,770/- year end towards provision for expenses on which TDS was not deducted while computing income under normal provision of the Act, when Section 40(a)(ia) of the Act clearly warrants the disallowance of such sum on which TDS is not deducted?"

"Whether, on the facts and in the circumstances of the case and in law, the ld. CIT (A) erred in deleting the disallowance of Rs. 102,49,51,770/- year end towards provision for expenses on which TDS was not deducted while computing book profit under section 115JB of the Act, when aforementioned provision for expenses is nothing but an adhoc, estimated provision, liability for which has either not accrued ascertained?"

7. "Whether, on the facts and in the circumstances of the case and in law, the ld. CIT (A) erred in deleting the addition of tax on non-monetary perquisites provided to the employees to the Book profit u/s 115JB of the Act?"

19. Ground no. 2 pertains to disallowance of expenses u/s. 14A alongwith impact of disallowance u/s. 14A on the calculation of book profit u/s. 115JB. This issue has already been discussed and decided in favour of assessee vide para 5 & 6 of the assessee's appeal (supra). In the light of above, no separate adjudication on this issue is required. Results of our findings in assessee's appeal are applicable mutatis mutandis here also. In the result, ground no. 2 raised by the revenue is dismissed.

20. Ground no. 1 pertains to Broken Period Interest. We find that this issue is covered by the decision of Hon'ble Jurisdictional Bombay High Court in the case of State Bank of India in ITA No. 254 of 2014 dated 1st August 2016, wherein the Hon'ble Court has decided this issue in favour of the assessee, therefore respectfully following the decision of Hon'ble Court, ground no. 1 raised by the revenue is dismissed.

21. Ground no. 3 pertains to amortisation of premium of HTM securities. We find that this issue is covered by the decision of Hon'ble Jurisdictional Bombay High Court in the case of HDFC Bank Ltd (366 ITR 505) wherein the Hon'ble Court has decided this issue in favour of the assessee. This issue was also decided by the Coordinate Bench of ITAT in the case of State Bank of India in ITA No. 3644 & 4563/Mum/2016 which are as under;-

135. Brief facts are that during the year the assessee has provided Rs.1020, 21, 51,476 being loss on account of amortisation of premium paid on investments held under HTM category. The above provision is made in accordance with the RBI guidelines, wherein it has been stated that investments in HTM category should be carried at acquisition cost. In case the purchase price is higher than the face value, the premium should be amortised over the remaining period of maturity of the security. The AO disallowed the aforesaid provision on the basis that RBI guidelines do not decide taxability. The CIT(A) deleted the disallowance made by the AO following the Tribunal order in assessee's own case for AYs 1995-96 to 1996-97 and the CIT(A) order for AYs 2002-03 to 2007-08. The Revenue before the Tribunal emphasised that there is no section under the Act that allows deduction for such amortisation of premium on securities.

136. It was contended that the issue is squarely covered in favour of the assessee by assessee's own case for assessment year 1995-96 by the order of Tribunal dated 17.09.2009, which was followed by the Tribunal in subsequent assessment year 1996-97 vide order dated 26.07.2013. Further, the Bombay High Court on the appeal by revenue in assessment year 1996- 97, has upheld the decision of Tribunal, vide its order dated 01.08.2016.

137. We noted that the facts in the year under consideration are same as the facts in the earlier years. In view of the above, this ground of appeal is covered in favour of the assessee vide the aforementioned orders of the Tribunal and Bombay High Court. This issue of Revenue's appeal is dismissed.

22. Respectfully following the order of the Tribunal and following the judicial precedents, **we deem it fit to dismiss the ground No. 3 raised by the revenue.**

23. Ground no. 4 relates to interest paid on IPDI bonds. It is observed that the IPD bonds issued by the banks are in nature of borrowings only as Interest on these bonds are paid at pre fixed rate which is evident from the disclosure document for issue of such bonds. The interest so paid is classified only under schedule -15- Interest expended in the financial statements. Further, the interest paid on these bonds is also subjected to TDS. Even though the bonds are stated to

be perpetual, the bank has an option of issuing call option after a period of 10 years. **Further these bonds are being repaid which is evident from the borrowings schedule as per the Annual Report for March 2020** which establishes the fact that these are only borrowings and not capital.

24. We have heard both the parties and find that the interest paid on these bonds are to be treated only as interest paid on borrowings and thereby is allowable as deduction while computing total income; hence ground no. 4 raised by the revenue is dismissed.

25. Ground no. 5 pertains to disallowance of payments made in nature of reimbursements and payments to RBI for non-compliance with customer service etc. It is observed that the amount levied was not in nature of any purpose which is an offence or which is prohibited by law but was for non compliance of internal guidelines.

26. We have heard both the parties and perused the material placed on record. We find that this issue is decided by the Coordinate Bench of ITAT in ITA No. 3394 & 3894/Mum/2019 in assessee's own case. For the sake of clarity, the relevant portion is reproduced below:-

> *12. We have heard the rival submissions and perused the relevant materials on record. In M/s Stock & Bond Trading Company (supra) one of the questions was whether the Tribunal was justified in deleting the additions made by the AO under provisions to section 37(1) being penalty imposed by the National Stock Exchange on the assessee. The Hon'ble High Court held that:*
>
> > *"3 As regards the second question is concerned, the finding of fact recorded by the CIT(A) and upheld by the ITAT is that the payments made by the Assessee to the Stock Exchange for violation of their regulation are not on account of an offence or*

which is prohibited by law. Hence, the invocation of explanation to section 37 of the Income Tax Act, 1961 is not justified. In our opinion, in the facts and circumstances of the present case, no fault can be found with the decision of the ITAT. Accordingly, the second question cannot be entertained."

In Bapunagar Mahila Co-operative Bank Ltd. (supra), the Tribunal held that:

"20. We come to the assessee's first substantive ground. The RBI imposed a penalty of Rs.5 lacs (supra) u/s. 47A (1)(b) of the Banking Regulation Act,1947 alleging violation of KYC norms. Both the authorities below hold that a penalty imposed does not give rise to any corresponding revenue expenditure being penal in nature.

21. It has come on record that this penalty arises from the assessee's action in opening 250 FDRs (supra) already dealt in Revenue's appeal. The question that arises for our consideration is as to whether the word 'penalty' results in a blanket disallowance or facts involved therein still need to be examined. The Hon'ble Kerala high court (2004) 265 ITR 177 CIT v/s. Catholic Syrian Bank holds that an important test in such a case is as to whether the penalty for non compliance entails compensatory or penal consequences. And also, that if any criminal liability or prosecution is provided, a levy is penal in nature. Section 46 r.w.s. 47A (1)(b) of the Banking Regulation law does not stipulate any such criminal liability. We follow the aforestated case law in these facts and direct the assessing authority to allow the assessee's claim of Rs.5 lacs as revenue expenditure."

In Mangal Keshav Securities Ltd. (supra), the assessee was engaged in the business of share/stock broking. It paid a sum of fine/penalty to stock exchange for non-maintenance of KYC forms etc. Said penalty was disallowed by the AO by invoking Explanation 1 to section 37. The Tribunal held that:

"The assessee-company is engaged into stock broking activities and also in financial services which involves substantial compliance requirements with various regulatory authorities, e.g., BSE, NSE, CDSL, NSDL and SEBI, etc. In the regular course of the business of the assessee-company, certain procedural non-compliance is not unusual, for which the assessee is required to pay some fines or penalties. These routine fines or penalties are 'compensatory' in nature; they are not punitive.

These fines are generally levied to ensure procedural compliances by the concerned persons. Only those payments, which have been made by the assessee for any purpose which is an 'offence' or which is 'prohibited by law', shall alone would be hit by the Explanation to section 37. Thus impugned amount of penalty was allowable as deduction."

12.1 In the instant case, as recorded by the AO the assessee has claimed expenses on account of penalty of Rs. 15,00,000/- imposed by the RBI u/s. 47A of the Banking Regulation Act, 1949 and Rs. 94,200/- for non-compliance of guidelines on customer service, guidelines in respect of exchange of coins and small de-nomination notes and mutilated notes. The ratio laid down in the decisions mentioned at para 12 is squarely applicable to the instant case instead of the decision in ANZ Grindlays Bank (supra) relied on by the Ld. DR. Therefore, following the decisions mentioned at para 12 above, we delete the disallowance of Rs. 15, 94,200/- levied by the AO. Accordingly, the 2nd ground of appeal is allowed.

27. Respectfully following the order of the Coordinate Bench of ITAT in assessee's own case, **we deem it fit to dismiss the ground No. 5 raised by the revenue.**

28. Ground no. 6 pertains to disallowance of provision for expenses i.e. (i) normal computation & (ii) book profit computation. It is observed that the provision for expenses made by the assessee are not unascertained liability and therefore, the Ld. CIT (A) had rightly allowed the same issue u/s. 37 in computing the total income under normal provisions. In respect of allowances on this issue under book profit computation was not adjudicated by Ld. CIT (A) in the impugned order. Moreover, similar issue has been dealt with and adjudicated in favour of assessee vide assessee's appeal (supra), Ground No. 4. **Resultantly, the ground no. 6 raised by the revenue is dismissed.**

29. Ground no. 7 pertains to disallowance of tax non-monetary perquisites in computing book profit. We have heard both the parties and perused the material placed on record. We find that this issue is decided by the Coordinate Bench of

ITAT in ITA No. 3423/Mum/2018 and ITA No. 3394 & 3894/Mum/2019 in assessee's own case. For the sake of clarity, the relevant portion is reproduced below:-

> *16. We have heard the rival submissions and perused the relevant materials on record. Similar issue arose before the Tribunal in Rashtriya Chemicals & Fertilizers Ltd. (supra). The Tribunal held that taxes borne by the assessee on non-monetary perquisites provided to employees forms part of Employee Benefit cost and akin to Fringe Benefit Tax since they are certainly not 'below the line' items, since the same are expressly disallowed u/s. 40(a)(v), the same do not constitute Income Tax for the assessee in terms of Explanation-2 to section 115JB ; therefore, without there being any corresponding amendment in the definition of Income Tax as provided in Explanation-2 to section 115JB, Fringe Benefit Tax was not required to be added back while arriving at Book Profits u/s. 115JB of the Act. Further, the Tribunal held that:*
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> > *"Computation of book profits under section 115JB has to be made in the manner as provided in Explanation-1 to section 115JB. The Minimum Alternate Tax [MAT] provisions as contained in section 115JB, as per well-settled law, are a complete code in itself and create a deeming fiction which is to be construed strictly and therefore, whatever computations/adjustments are to be made, they are to be made strictly in accordance with the provisions provided in the code itself. The clause (a) of Explanation-1 envisages add-back of the amount of Income Tax paid or payable and the provision there for while arriving at book profits. Further, in terms of Explanation-2 to section 115JB, the amount of Income Tax specifically includes the following components any tax on distributed profits under section 115-O or on distributed income under section 115R; any interest charged under this Act; surcharge, if any, as levied by the Central Acts from time to time; Education Cess on income-tax, if any, as levied by the Central Acts from time to time; and Secondary and Higher Education Cess on income-tax, if any, as levied by the Central Acts from time to time."*
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> *16.1 Facts being identical, following the above order of the Tribunal we set aside the order of the Ld. CIT(A) and delete the addition of Rs. 12,16,10,651/- made by the AO of tax on non-monetary perquisites provided to the employees to the book profit u/s. 115JB of the Act. Thus the 3rd ground of appeal is allowed.*

30. Respectfully following the order of the Coordinate Bench of ITAT in assessee's own case, **we deem it fit to dismiss the ground No. 7 raised by the revenue.**

31. **In the result, appeal of the revenue is dismissed.**

Order pronounced in the open court on 28th day of September, 2023.

Sd/-	Sd/-
(KULDIP SINGH)	(GAGAN GOYAL)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 28/09/2023
Dhananjay, Sr. PS

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar)
ITAT, Mumbai