IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA Nos. 391 & 392/Bang/2023
Assessment year : 2019-2020

M/s. Canara Bank, FM Wing, Head Office, 112, J C Road, Bangalore – 560 002. **PAN : AAACC6106G**	Vs.	The Deputy Commissioner of Income Tax, Circle – 2(1)(1), Bangalore.
APPELLANT		**RESPONDENT**

Appellant by	:	Shri Ananthan S & Smt. Lalitha Rameswaran, Advocates
Respondent by	:	Ms. Neera Malhotra, CIT-DR

&
ITA No. 663/Bang/2023
Assessment Year : 2019 – 2020
(By Revenue)

Date of hearing	:	16.11.2023
Date of Pronouncement	:	22.12.2023

O R D E R

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals are filed by assessee and revenue against order dated 21.3.2023 and 29.3.2023 passed by CIT(Appeals), NFAC for the assessment year 2019-20.

2. The Ld. AR at the outset submitted that the issues in these appeals are identical. He submitted that ITA 391/Bang/2023

pertains to erstwhile Syndicate Bank and the order passed by Ld. AO u/s. 143(3) is on protective basis in case of assessee. It is submitted by the Ld. AR that the Bank has accepted the order passed by the Ld. AO in case of present assessee, that includes the income of erstwhile Syndicate Bank on substantive basis. He thus submitted that, appeal in ITA 391/B/2-23 therefore becomes infructuous at this stage. However, he sought liberty to revive the appeal if circumstances do warrant in future.

2.1. The Ld. DR did not object to prayer of assessee.

3. We have perused submissions from both the sides in the light of records placed before us. The Ld. AR has filed the submission which is reproduced below in ITA 391/B/2023:-

BEFORE THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, BANGALORE

Name of the Appellant	Canara Bank (Erstwhile Syndicate Bank)
Appeal No.	ITA No. 391/Bang/2023
Assessment year	2019-20

SUBMISSIONS

The learned Assessing Officer passed the order u/s 143(3) on protective basis in the name of the Appellant. The Bank has accepted the order passed by the learned Assessing Officer in the case of Canara Bank by including the income of erstwhile Syndicate Bank on substantive basis. Therefore, this appeal is infructuous. It may be dismissed as such with liberty to the Appellant Bank to revive it if the circumstances do warrant.

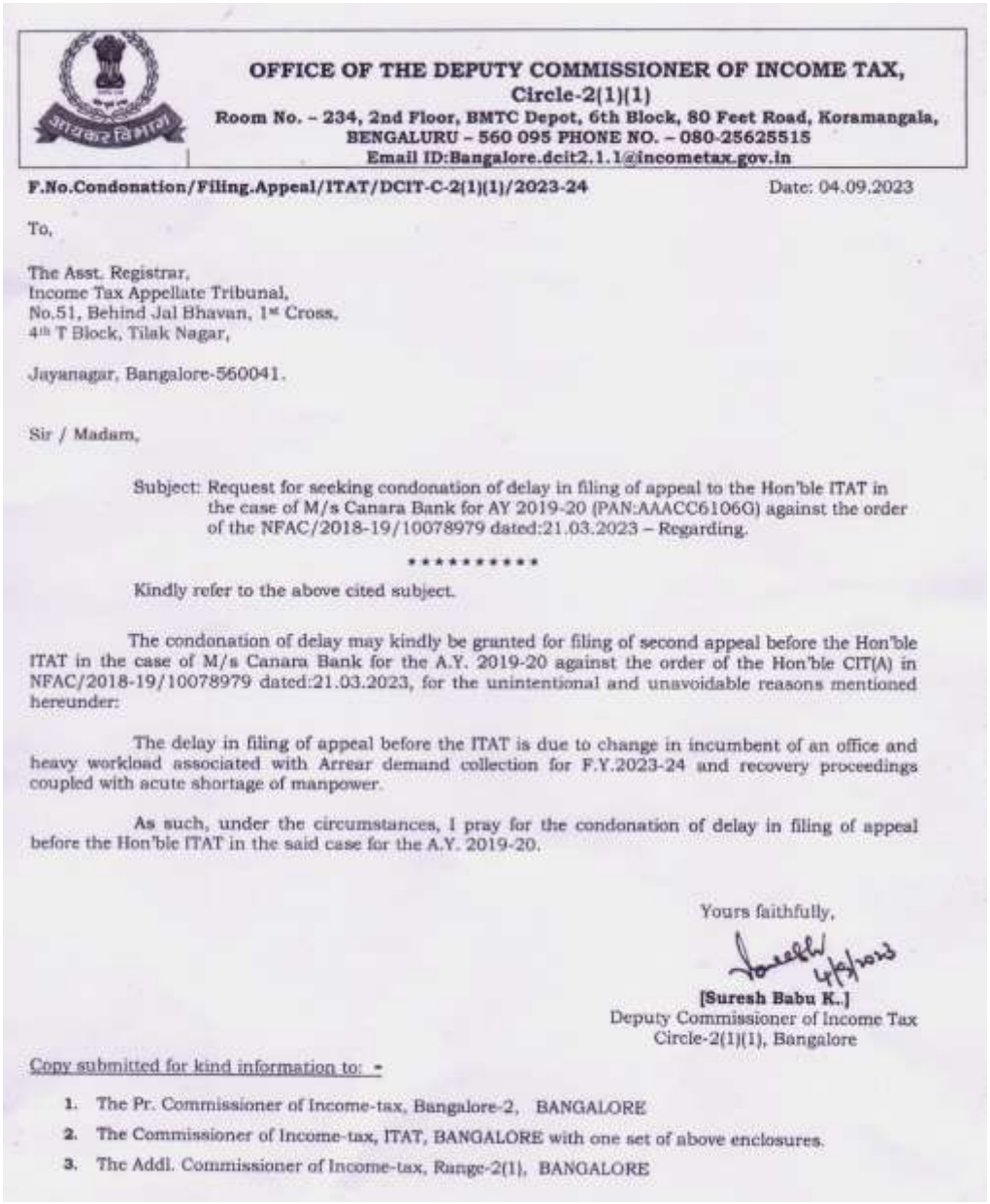
3.1. Based on the above submission by the assessee, it is not necessary to analyse the issues raised by the assessee in ITA

No.391 as the appeal has become infructuous. However, liberty is granted to assessee to take necessary steps to revive he appeal in the circumstances do warrant in future.
Accordingly appeal filed by the assessee in ITA 391 stands dismissed as infructuous.

4. The Ld. AR submitted that ITA 392 & 663 in case of Canara Bank filed by the assessee and revenue, the issues are largely covered by assessee's own case. He has filed a chart wherein the issues raised by the assessee has been summarized. For the sake of convenience, the same is reproduced as under:-

Gr.No.	ISSUES	Contested in
3 & 7	Disallowance u/s.14A	Assessee appeal
4 & 9-10	Applicability of section 115JB	Assessee appeal
5	Addition to book profits	Assessee appeal
'6.	Deduction u/s. 36(1)(vii)	Assessee appeal
8.	RBI Penalty	Assessee appeal
i & ii	Deduction u/s. 36(1)(vii)	Revenue appeal
iii-iv	CSR Expenditure	Revenue appeal
vii-viii	RBI penalty	Revenue appeal
ix	Club Expenses	Revenue appeal

5. At the outset, the Ld. DR submitted that there is a delay of 109 days in filing the revenue's appeal before this *Tribunal*. The revenue has filed condonation petition dated 04.09.2023 seeking the delay to be condoned. It is submitted as under:



OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX,
Circle-2(1)(1)
Room No. – 234, 2nd Floor, BMTC Depot, 6th Block, 80 Feet Road, Koramangala,
BENGALURU – 560 095 PHONE NO. – 080-25625515
Email ID:Bangalore.dcit2.1.1@incometax.gov.in

F.No.Condonation/Filing.Appeal/ITAT/DCIT-C-2(1)(1)/2023-24 Date: 04.09.2023

To,

The Asst. Registrar,
Income Tax Appellate Tribunal,
No.51, Behind Jal Bhavan, 1st Cross,
4th T Block, Tilak Nagar,

Jayanagar, Bangalore-560041.

Sir / Madam,

Subject: Request for seeking condonation of delay in filing of appeal to the Hon'ble ITAT in the case of M/s Canara Bank for AY 2019-20 (PAN:AAACC6106G) against the order of the NFAC/2018-19/10078979 dated:21.03.2023 – Regarding.

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Kindly refer to the above cited subject.

The condonation of delay may kindly be granted for filing of second appeal before the Hon'ble ITAT in the case of M/s Canara Bank for the A.Y. 2019-20 against the order of the Hon'ble CIT(A) in NFAC/2018-19/10078979 dated:21.03.2023, for the unintentional and unavoidable reasons mentioned hereunder:

The delay in filing of appeal before the ITAT is due to change in incumbent of an office and heavy workload associated with Arrear demand collection for F.Y.2023-24 and recovery proceedings coupled with acute shortage of manpower.

As such, under the circumstances, I pray for the condonation of delay in filing of appeal before the Hon'ble ITAT in the said case for the A.Y. 2019-20.

Yours faithfully,

4/9/2023

[Suresh Babu K..]
Deputy Commissioner of Income Tax
Circle-2(1)(1), Bangalore

Copy submitted for kind information to: -

1. The Pr. Commissioner of Income-tax, Bangalore-2, BANGALORE
2. The Commissioner of Income-tax, ITAT, BANGALORE with one set of above enclosures.
3. The Addl. Commissioner of Income-tax, Range-2(1), BANGALORE

In view of the above, it is submitted that the revenue could not file the appeals before this *Tribunal* well in time and by the time the appeal papers were prepared for filing, there arose delay of about 109 days in filing these present appeals before this *Tribunal.* The reason for the delay in filing the present appeals was due to reason beyond the control of the assessee. He thus prayed for the delay to be condoned.

The Ld.AR though objected however could not controvert the reasoning given by the Ld.DR for the delay that was caused in filing the present appeal.

We have perused the submissions advanced by both sides in the light of records placed before us.

In our opinion there is a sufficient cause for condoning the delay as observed by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.,* reported in *(1987) 167 ITR 471* in support of his contentions.

It is also submitted by the Ld.DR that there is no malafide intention on behalf of assessee in not filing the present appeal within time.

The Ld.AR on the contrary opposed the delay to be condoned.

Considering the circumstances under which the delay was caused in filing the present appeal before this *Tribunal* and that nothing contrary could be established by the revenue before us.

We place reliance on following observations by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.,* reported in *(1987) 167 ITR 471* wherein, *Hon'ble Court* observed as under:-

> *"The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits ". The expression "sufficient cause" employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.*
> *And such a liberal approach is adopted on principle as it is realized that :*

> *1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.*
> *2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.*
> *.....1.Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."*

Considering the submissions by both sides and respectfully following the observation by *Hon'ble Supreme Court*, we find it fit to condone the delay caused in filing the present appeals as it is not attributable to the assessee.

Accordingly, the delay in filing the present appeal by the revenue stands condoned.

Assessee's appeal (ITA 392)

6. The Ld. AR submitted that Ground No.1 is general in nature and does not require adjudication.

7. He submitted that Ground No.2 is challenging validity of assessment order as it was not served on the assessee within time limits specified in section 153 of the Act. The Ld. AR further submitted that the same may be kept open in order to consider the issue in appropriate circumstances.

We have considered the prayed of the Ld.AR and grant liberty to the assessee to contest this issue in an appropriate circumstances and accordingly the same is not adjudicated in the present appeal.

Accordingly Ground No.2 raised by the assessee stands dismissed as infructuous.

8. Ground No.3 relates to disallowance u/s. 14A of the Act.

The Ld.AR submitted that the assessee had earned tax free income of RS.78,55,05,895/-. And the assessee had *suo moto* disallowed sum of Rs.1,57,10,118 u/s. 14A of the Act. He submitted that the Ld.AO invoked provisions of Rule 8D and further disallowed sum of Rs.15,08,42,750 and after adjusting *suo motu* disallowance made by the assessee.

On an appeal the Ld.CIT(A) confirmed addition of 13,51,32,362 u/s. 14A of the Act.

Before this *Tribunal*, the Ld.AR submitted that, this issue is squarely covered in the case of *South Indian Bank* by *Hon'ble Supreme Court reported in (2021) (9) TMI 566 that was followed* by *Hon'ble Karnataka High Court* in assessee's own case reported in *[2023] 1 TMI 243*. The Ld.AR submitted that coordinate Bench of *Tribunal* for AY 2016-17 & 2017-18 has considered this issue in ITA 501& 390/Bang/2023 in order dated 25.10.2023 by observing as under:-

> *"5.1 During the course of arguments, the Ld. AR of the assessee submitted that this issue has been settled by the jurisdictional High Court in assessee's own case in favour of the assessee for AYs 2005-06 to 2012-13 and has observed that no disallowance u/s. 14A can be made to the assessee. The has provided the list of judgement of the Hion'ble jurisdictional High Court which is placed on record.*
> *5.2 On the other hand, the Ld. DR relied on the order of lower authorities and further submitted that the CIT(A) after relying on various judgments observed that " In view of the above, I am not inclined to concur with this plea of the appellant that it had held the securities as stock-in-trade, not*

with the intention to dividend income. The various judicial precedents relied upon by the appellant, on the above issue, are of no avail as the facts of the instant case are distinguished, as elaborated in preceding paragraphs". The Ld. DR further submitted that the department has not accepted the judgment of the jurisdictional High Court and has filed appeal before the Hon'ble Supreme Court and SLP for the AY 2009-10 to 2011-12 is accepted. Therefore, he requested that the issue should be decided in favour of revenue.

6. Considering rival submissions, we note that this issue has been settled by the Hon'ble jurisdictional High Court in assessee's own case for AY 2011-12 & 2012-13 in ITA No.258/2020 dated 8.2.2021 observing as under:-

" 4. Even though four substantial questions of law are raised in the appeal Memorandum cited supra, among them, substantial question of law Nos.2 & 4 are covered by the judgment and are answered by the co-ordinate bench of this court vide judgment dated 31..01.2020 in ITA No.481/2014. Paras 8 to 10 of the said judgment dated 31.01.2020 passed in the aforesaid case, reads as under:

"8. We have considered the submissions made by learned counsel for the parties and have perused the record. Before proceeding further, it is apposite to take note of Section 14A of the Act:

Section 14A (1) For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.

(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assesee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-Section (2) shall also apply in relation to a case where an assesee claims that no expenditure has been incurred by him in rei-3tion to income which does not form part of the total income under this Act.

Provided that nothing contained in this Section shall empower the Assessing Officer either to reassess under Section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the

assessee under Section 154, for any assessment year beginning on or before the 1st day of April 2001.

9. From perusal of Section 14A of the Act, it is evident that for the purposes of computing the total income under this chapter, no deduction shall be allowed in respect of the expenditure incurred by the assessee in relation of the income which does not form part of his total income under the Act. The expenditure, the return of investment and cost of requisition are distinct concepts. Therefore the word 'incurred' in Section 14A of the Act have to be read in the context of the scheme of the Act and if so read, it is clear that it disallows certain expenditures incurred to earn exempt income from being deducted from other incomes which is includable in the total income for the purposes of chargeability to the Lax. It i4 equally well settled that expenditure is a pay out. In order to attract applicability of section 14,4 of the Act, there has to be a pay out and return of investment or a pay back is not such a debit item. [See: WALFORT SHARE AND STOCK BROKERS (P) LTD SUPRA as well as M.4XOP INVESTMENTS LTD SUPRA]. In the instant case, the assessee has admittedly not incurred any expenditure. This case pertains to income on dividend, which by no stretch of imagination can be treated to be an expenditure to attract the provisions of Section 14A of the Act. In view of aforesaid enunciation of law by the Supreme Court, the first substantial question of law framed by this court is answered in favour of the assessee and against the revenue.

10. Learned counsel for parties, have fairly admitted that in case this court frames a substantial question of law that whether provisions of Section 115JA apply to the Banking Companies are not the remaining substantial questions of lay,/ would be reduced otiose. This court has already framed a substantial question of law in this regard today. This court by an order passed on 16.01.2020 passed in ITA No.13/2014 has already held that the provisions of Section 11514 do not apply to the banking companies. Therefore, the substantial questions of law Nos_3, 4 and 5 and substantial question of law framed in ITA 99/2010 are rendered academic and need not be answered. So far as substantial; question of law No.2 in ITA No.97/2010 is concerned, the same is squarely covered by the decision of the Supreme Court in 'CIT VS. ESSAR TELEHOLOINGS LTD.',(2018) 401 ITR 445, wherein it has been held that provisions of Section 114A read with rule 8D of the Income Tax Rules are prospective in nature and can not be applied to any assessment year prior to Assessment Year 2008-09. Accordingly, the aforesaid substantial question of

law is answered against the revenue and in favour of the assessee."
5. In this regard, a memo is also filed by the learned counsel for the appellant, which reads as under:
"MEMO ON BEHALF OF THE APPELLANT
The appellant respectfully submits that in view of the substantial questions of law 2 and 4 having been covered in favour of the assessee in the earlier orders in assessee's own case, it is submitted that substantial questions of law 1 and 3 become academic and need not be answered by this Hon'ble Court.
Therefore, it is most humbly prayed that this Hon'ble Court may be pleased to take the memo on record and pass appropriate orders in the interests of justice and equity."
6. As per the Memo, question Nos.1 & 3 would only be treated as academic and hence, not answered. in view of the same, in terms of the order dated 31.01.2020, the substantial questions of law Nos.2 & 4 are answered in favour of the assessee and in terms of the aforesaid judgment."
6.1 Respectfully following the above judgment, we decide the issue in the above terms of the judgment. The Ld. DR has submitted that the Hon'ble Apex court has admitted the SLP filed by the revenue but the status of the same could not be furnished by the Ld. DR, accordingly, we are bound by the order of the Jurisdictional High Court."

9. The Ld.DR though could not controvert the above observation by coordinate Bench of this *Tribunal* in assessee's case, placed reliance on the decision of Ld.CIT(A).

10. We have perused the submissions advanced by both sides in light of records placed before us.

We note that the issue of disallowance u/s. 14A has been considered in assessee's own case which has been upheld by *Hon'ble Karnataka High Court (supra).* It is also noted that the decision of Hon'ble Karnataka High Court has been followed by coordinate bench AY 2016-17 & 2017-18 has considered this

issue in ITA 501& 390/Bang/2023 in order dated 25.10.2023 reproduced herein above.

Respectfully following above view, we allow Ground No.3 of assessee in terms of the decision hereinabove.

11. Ground No.4 raised by assessee is on applicability of provisions of section 115JB of the Act.

The Ld.AR submitted that, the assessee does not fall within definition of banking company as defined under Companies Act, 1956 and therefore it is not covered by proviso to section 211(2) of the Companies Act. The Ld. AR thus submitted that provisions of s. 115JB are not applicable to assessee. In support of this submission, he placed reliance on decision of *Hon'ble Delhi High Court* in the case of *CIT v Punjab National Bank Ltd. (successor of erstwhile Oriental Bank of Commerce)* in *ITA 594/2023* by *order dated 20/10/2023*, wherein the question of law considered by the court is proposed in question (e) has been dismissed. The said order of *Hon'ble Delhi High Court* in the case of *CIT v Punjab National Bank Ltd. (successor of erstwhile Oriental Bank of Commerce) (supra)* is placed at page 35-37 of the PB.

The Ld.AR further relied on decision of *Hon'ble Delhi Tribunal* in the case of *Oriental Bank of Commerce v. ACIT* reported in *[2022] TIOL 331 ITAT-DEL*. The Ld.AR submitted that, the provisions of section 115JB, as it stood prior to its amendment by virtue of Finance Act, 2012, would not be applicable to a banking company. He submitted that coordinate Bench of *Delhi Tribunal* considered this issue by observing as under:-

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

- *Canara Bank vs JCIT, LTU in ITA No. 530/Bng/2010 & other dtd. 30.03.2016 = 2016-TIOL-1120-HC-P&H-IT*
- *M/s. Canara Bank vs CIT(LTU) In ITA No. 305/Bang/2011 dtd. 18.06.2012*
- *Krung Thai Bank PCI vs Joint Director of Income Tax (ITAT) (Mumbai) in ITA No.3390/Mum/09 dtd. 30.09.2010 reported in (2010) 45 DTR 218*
- *Union Bank of India vs ACIT, LTU (ITAT) (Mumbai) in ITA Nos.4702 to 4706/Mum/2010 dtd. 30.06.2011*
- *Indian Bank vs Addl. CIT (ITAT) (Chennai) in ITA No.469/Mds/2010 dtd. 03.08.2011*
- *Union Bank of India (ITAT Mumbai) in ITA Nos. 4155 to4161 of 2011 dtd. 27.03.2012*

- *Oriental Insurance Co. Ltd. vs. DCIT I ITA No.447/2015 dtd 30.08.2017 = 2017-TIOL-1714-HC-DEL-IT*
- *CIT vs Union Bank of India (2019) 308 CTR 797 (Bom) HC*

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

"This legal dichotomy emerging from the provisions of sub-section (2) of Section 115JB particularly having regard to the first proviso contained therein in case of banking company, would convince us that machinery provision provided in sub-section (2) of section 115JB of the Act, would be rendered wholly unworkable in such a situation. In a well known judgment the Supreme Court in case of Commissioner of Income-Tax, Bangalore vs B.C. Shrinivasa Setty, Vo. 128 ITR 294 = 2002-TIOL-587-SC-IT-LB, had observed that in the Income Tax Act, a charging section and the computing provisions together constitute an integrated code. In a case where the computation provision cannot apply, it would be evident that such a case was not intended to fall within the charging section. It was a case of charging a partnership firm for transfer of a capital asset in the nature of goodwill. The Supreme Court was of the opinion that it would not be possible to envisage a cost of acquisition of goodwill. Since computation of capital gain cannot be done without ascertaining the cost of acquisition, it was held that no capital gain tax can be levied. "

53. Concluded at page 12 para 21 as under:

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

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

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

"115JB. (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, [2012], is less than [eighteen and one-half per cent] of its book profit, [such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of [eighteen and one-half per cent]].

(2) [Every assessee,-

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

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

Provided that while preparing the annual accounts including profit and loss account,-

(i) the accounting policies;

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

(iii) the method and rates adopted for calculating the depreciation,
shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956):
Provided further that where the company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under this Act,-
(i) the accounting policies;
(ii) the accounting standards adopted for preparing such accounts including profit and loss account;
(iii) the method and rates adopted for calculating the depreciation,
shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant previous year. "
56. Thus, the understanding of the above amendment to section 115JB is where a company which are not required u/s 211 (129) of the Companies Act to prepare their P&L account in accordance with Schedule - VI of the Companies Act, 1956 profit & loss account prepared in accordance with the provisions of their Regulatory Acts shall be taken as a basis for computing the book profit u/s 115JB.
57. The assessee's contentions for non-applicability of 115JB provisions are:
"(i) It is a case of Nationalized Bank, under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980.

(ii) Assessee is not a company incorporated under the Companies Act, 1956, nor recognized under section 3 of the Companies Act.
(iii) The second proviso to sub-section (1) of section 129 (earlier provision 211) of the Companies Act, 2013 is not applicable to the assessee.
(iv) Under section 11 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980 provides that "for the purposes of the Income-tax Act, 1961, every corresponding

new bank shall be deemed to be Indian company and a company in which public is substantially interested".
(v) It is settled principle of law where deeming fiction is created by the legislature it has to be confined to the purpose for which it is created. CIT, Panji vs Dempo Company Limited reported in (2016) 74 TAXMAN.com 15 (SC) = 2016-TIOL-164-SC-IT. Therefore, the Income-tax Act must recognize such banking company for the purpose section 115JB in order to make the provisions applicable.
(vi) When the charging section and the computing provision together would constitute an integrated code. In case charging section does not apply then the computation section fails. CIT vs B C Shrinivas Setty 128 ITR 294 = 2002-TIOL-587-SC-IT-LB."
58. However, the plea of the assessee with respect to non-applicability of section 115JB to the Banking Companies was rejected by the ITAT Mumbai "B" Bench in ITA No. 1767/Mum/2019 for the A.Y. 2015-16 in the case of Bank of India vs ACIT Mumbai vide order dated 11th December, 2020.
59. There is no jurisdictional High Court decision or for that matter any other High Court decision against the assessee. In view of the fact that two use are possible, the view that favour the assessee may kindly be considered, more so in the case of a Nationalized Bank as held by the Hon'ble Supreme Court in the case of CIT vs Vegetable Products Ltd. 88 ITR 192 = 2002-TIOL-574-SC-IT-LB."

12. The Ld. DR though could not controvert the above observation by *Hon'ble Delhi Tribunal* in the above own case, placed reliance on the decision of Ld.CIT(A).

13. We have perused submissions advanced by both sides in light of record placed before us. We note that decision of *Hon'ble Delhi Tribunal* in *Oriental Bank(supra)* has been upheld by *Hon'ble Delhi High Court* wherein *Hon'ble High Court* has categorically observed that the revenue in case of *Punjab National Bank* did not raise this issue which are identical to facts of the present assessee before us.

In view of the same, Ground No.4 raised by the assessee deserves to be allowed.

14. Ground No.5 is in respect of additions to book profits u/s. 115JB.

As we have already non-applicability of 115JB in case of assessee in ground No.4, this ground becomes infructuous.

15. Ground No.6 is in respect of deduction disallowed by the Ld.CIT(A) the claim of assessee u/s.36(1)(viia).

The Ld.AR submitted that assessee had made provisions for bad and doubtful debts and claimed the same u/s. 36(1)(viia) of the act. He submitted that the Ld.AO disallowed the amount on two counts being:

(i) the Ld. AO held that only advances made during the year has to be considered for calculating aggregate average rural advances;

(ii) the Ld. AO treated some of the branches as non-rural and did not allow deduction with respect to such branches.

16. The Ld. AR submitted that the Ld. CIT(A) followed decision of *Hon'ble Karnataka High Court* in assessee's own case, wherein the view taken by this *Tribunal* was upheld.

17. On the contrary, the Ld. DR submitted that the decision of *Tribunal* in assessee's own case cannot be followed in present case and he submitted that the issue may be remanded to Ld. AO for necessary verification.

18. We have perused submissions advanced by both the sides based on the records placed before us.

We note that this issue stands squarely covered by the decision of this *Tribunal* in assessee's own case in *ITA 501 & 390/B/2023 by order dated 25.10.2023* and the decision of *Karnataka High Court* reported in *(2023) (1) TMI 243*. For the sake convenience, we reproduce the observations of coordinate Bench of *Tribunal* in assessee's own case for AY 2016-17 & 2017-18 as under:-

> *"7.1 The AO noted that the assessee claimed deduction of bad debts u/s. 36(1)(vii) without actually writing-off the debts as irrecoverable in the individual accounts of the debtors concerned. The assessee was asked to clarify the procedure followed while writing off at H O level and branch level. The assessee submitted reply. The AO from the submissions observed, majority of the write off is Prudential Write Off (PWO) done at the Head Office level actually with a view to write create provision for NPAs in the books of accounts as per RBI guidelines. The fact of write off of bad debt has not been allowed to be communicated to the branch level, where the individual loan accounts are outstanding, which implies that the debts have actually not been written off in the individual loan accounts. Further, the amounts have been debited to P&L account under the head 'Provisions & Contingencies' and claim of bad debt written off has been made only in the computation of income. Thus it indicates that the amounts have been charged to profit for creating provisions and not for actual write off of bad debts in the individual accounts. The AO further noted that the write off of bad debts has been made by way of executive decision, much after the finalization of books of accounts and AGM which indicates that claim of bad debt is only an afterthought for reducing tax liability. He further observed that assessee did not charge the amount of bad dets written off to the Provision for Bad & Doubtful debts account, even though there was sufficient credit balance available in the provisions created for this very purpose. The opening balance of brought forward provisions was Rs.7264,47,17,510 which was more than adequate to cover the entire claim of bad debts written off. AO relied on first proviso to section 36(1)(vii) which states that claim of bad debts written off shall be admissible, only to the extent the same exceeds the credit*

balance in provisions for bad and doubtful debts. As per Explanation 2 to section 36(1)(vii), there shall be only one account of provision for bad and doubtful debts, against which all claims of bad debts actually written off during the year shall be first set off, without any distinction between rural advances and other advances. The AO also relied on the judgements of Southern Technologies Vs. CIT reported in 352 ITR 577(SC), M/s Vijaya Bank vs CIT reported in 320 ITR 166 (SC) & CIT vs Hotel Ambassdor [2002] reported in 253 ITR 430 (Ker). Thus, only the excess amount of bad debts written off, remaining after such set off, is admissible for deduction u/s. 36(1)(vii).

7.2 On appeal, the assessee submitted before the CIT(Appeals) that it had written off total amount of Rs.1296,56,16,023 during the year. The entire sum of Rs.130,81,22,967 being bad debts written off by rural branches has been charged to provisions account made u/s. 36(1)(viia) and there was no excess amount left. Therefore, no deduction has been claimed towards bad debts written off by rural branches. It claimed a sum of Rs.1296,56,16,023 being bad debts written off by non-rural branches u/s. 36(1)(vii) as the same need not be charged to the provisions account u/s. 36(1)(viia). The assessee submitted a brief note on system followed for write off of bad debts as under:-

"A) Procedure followed for technical write off and branch level write off

The appellant bank identifies individual bad debts that are to be written off. The bad debts are written off by the branches and also at the HO level after obtaining the requisite permission from the respective authorities. The write off carried out at the branch level is called actual write off in which case the customer account is written off and closed forever. However, the write off under taken at HO level is called Technical/Prudential write-off in which case, the customer account still appears in the branch books, though the same is written off at HO level. In both cases, (write off at branch level) as well as at HO level, the actual amount written off is reduced from the loans and advances of the bank. The working in this regard is enclosed as Annexure-C.

It is also pertinent to mention that the recovery made in written off account is credited to Profit and Loss account as recovery from written off accounts and disclosed as Miscellaneous income in the audited Profit and Loss Account under Schedule No 14 — Other income. The fact can be ascertained from the breakup of other income enclosed as Annexure-D."

7.3 The assessee further submitted that the issue of actual write-off of debts in the loan account of the debtors, is covered in favour of the appellant Bank in the following cases,-

(i) Vijaya Bank Vs CIT (2010) (323 ITR 166) (SC)

(ii) UCO Bank Vs CIT (240) (ITR 355) (SC)

(iii) Southern Technologies Vs CIT (352 ITR 577) (SC)

(iv) Canara Bank Vs DCIT (2022 (1) TMI 124) (Trib.-Bangalore) (i.e Appellants own case)

7.4 The assessee further argued that the issue that the bad debt written off should be first adjusted against the credit balance in the Provisions account and only the excess can be claimed as deduction, is also covered in favour of the appellant Bank in the following cases,-

i. Catholic Syrian Bank Vs CIT (2012) (343 ITR 270) (SC)

ii. Vatika Township Pvt Ltd (2014)(367 ITR 466)(SC)

iii. State Bank of Hyderabad (2015) ((8) TMI 836) (Trib.-Hyderabad)

iv. IDBI Bank Ltd (2017) ((9) TMI 1289) (Trib.-Mumbai)

v. Oriental Bank of Commerce (2017)((11 TMI 1589)(Trib.-Delhi)

7.5 The assessee further submitted that any subsequent recovery made in the loan accounts, which have been written-off, either at the Head Office level or at the branch level, are credited to the Profit and Loss account and shown as other income. The amounts subsequently recovered are duly offered to tax under section 41(1) of the Act, in the year of recovery. It was pointed out that any recovery made in a loan account which is still live, i.e. not written off, is credited to that loan account only, and not to the Profit and Loss account.. However, recovery made in an account which has been written off, is credited to the profit and loss account. Thus, it was argued that the very fact that the recovery is credited to the Profit and Loss account, shows that the loan account has been written off and that the recovery of Rs. 387,05,52,549/- has been offered to tax under section 41(4) during the year under consideration.

8. The CIT(Appeals) noted that the AO has noted two important factual findings; (i) that the appellant bank has not actually written-off the debts in the individual loan accounts, & (ii) that the appellant did not charge the amount of bad debts written-off to the Provision for bad and doubtful debts account, even though there was sufficient credit balance available in the provisions created for this very purpose. Thus, the AO has made out a case that the deduction of bad debts was not admissible on both these grounds. The assessee has not been able to controvert these factual findings in his submission

made during the appellate proceedings, but relied on certain judicial precedents and stated that both the above issues are covered in favour of the assessee.

8.1 The CIT(A) observed that from the provisions of section 36(1)(vii), it is evident that clause (vii) of Section 36(1) allows deduction in respect of any bad debt or part thereof which is actually written off as irrecoverable in the accounts of the assessee during the year. The clause (viia) of section 36(1) allows deduction in respect of any provision for bad and doubtful debts made by certain banks and financial institutions up-to the limits specified therein. In order to prevent the possibility of double deduction, proviso to the clause (vii) was inserted by the Finance Act 1985 with effect from 1st April 1985, which provided that in case of an assessee to which clause (viia) applies, the deduction of bad debts written off would be limited to the amount by which such bad debt exceeds the provisions for bad and doubtful debts made under clause (viia). Further, clause (v) was inserted in section 36(2) which laid down that where the bad debt relates to advances made by an assessee to which clause (viia) applies, no deduction of bad debt shall be allowed unless the assessee has debited the amount of bad debt in that previous year to the provisions for bad and doubtful debts made under clause (viia).

8.2 He referred to the scope and effect of amendments made by the Finance Act 1985 to the provisions of section 36(1) and 36(2), explained in the CBDT Circular No. 421 dated 12.06.1985 and observed that the positing emerges is that the bad debts actually written off as irrecoverable in case of such assessee [to which clause (viia) applies] should be first charged to the provisions made for bad and doubtful debts, and the excess amount, if any, shall be charged to the profits for the year and such excess amount only shall be allowed deduction clause (vii). The Hon'ble Supreme Court in Catholic Syrian Bank (supra) held that deduction u/s. 36(1)(vii) is available to banks in respect of bad debts written off, other than rural advances, subject to s. 36(2)(v) and independent of s. 36(1)(viia). In other words, proviso to s. 36(1)(vii) applies only to provision made for bad and doubtful debts relating to rural branches.

8.3 The CIT(A) observed that in order to clarify the purport of said proviso, Explanation 2 was inserted to section 36(1)(vii) by Finance Act, 2013 w.e.f. 1.4.2014 which clarified that for the purposes of proviso to s. 36(1)(vii) and s. 36(2), the account referred to therein shall be only one account in respect of

provision for bad and doubtful debts and such account shall relate to all advances, including advances made by rural branches. Further, the scope and effect of this amendment has been explained in the CBDT Circular No.3 of 2014 dated 24.1.2014. He noted that from the Explanatory Memorandum that Explanation 2 to clause (vii) of section 36(1) was inserted by the Finance Act, 2013 only with a view to clarify the legislative intent of existing provisions which was clear from the words "for removal of doubts" and "it is hereby clarified" in Explanation 2 and hence the amendment was clarificatory in nature and can be applied retrospectively. He relied on the Hon'ble Supreme Court judgment in the case of CIT v. Gold Coin Health Food Pvt. Ltd. (2008) 304 ITR 308 (SC) wherein it was held that if a statute is curative or merely declaratory of the previous law, it has to be applied retrospectively. Thus, the CIT(A) observed that the import of Explanation 2 refer to only one account of provision for bad and doubtful debts, relating to all types of advances including advances made by rural branch. Thus, the amount of deduction of bad debts actually written off shall be subject to the amount by which such debts exceed the provisions for bad & doubtful debts, without making any distinction between rural advances and other advances. Therefore, the banks cannot claim double deduction, one on provisioning basis and again on actual write off basis for the same amount, separately and independently. Therefore, the contentions of the assessee were rejected.

8.4 He noted that the question whether the credit balance referred in the said proviso of the Act refers to opening or closing credit balance was answered by the CBDT Instruction No.17 of 2008 dated 26.11.2008 as the opening credit balance i.e., the balance brought forward as on 1st April of the relevant accounting year. Therefore, as noted by the AO, in the computation submitted by the assessee, the opening credit balance of brought forward provision for bad & doubtful debts is at Rs.7265 crores which far exceeds the claim of bad debts written off at Rs.1296 crores. Therefore the entire claim was not admissible and relied on the decision of Kerala High Court in South India Bank Ltd. v. CIT (2019) 410 ITR 50 (Ker). "

19. The *Hon'ble Karnataka High Court* while upholding the view of this *Tribunal* observed as under:-

"6. Insofar as question No. 4 is concerned, adverting to section 36(1)(viia) of the Income-tax Act, 1961, Shri Aravind submitted

that the word used in the statute is aggregate average advances "made" by the rural branches. To quote an example, he submitted that for A.Y. is 2013-14 (F.Y. 2012-13) if the bad debt as on 31-3-2012 is considered to be as Rs. 1 Crore by virtue of making provisions subsequently, the assessee will be entitled for double benefit because provisions in respect of 10% of the bad debt of provisions of Rs. 1 Crore towards bad debt was already made as on 31-3-2012. Therefore, if the same amount is carried forward for the next F.Y., the assessee will be entitled for the double benefit because it would be making a provision for Rs. 1 Crore in addition to the 10% to the bad debt made in the relevant F.Y.

7. Shri Suryanarayana, adverting to the Para 7 of the impugned order, submitted that in identical circumstances, in assessee's own case, the assessee had made provision in similar manner as made in A.Y. 2013-14. A co-ordinate bench of the Tribunal had accepted the provision made by the assessee benefit in CanaraBank v. Jt. CIT [2018] 99 taxmann.com 357/[2017] 60 ITR (Trib.) 1 (Bengaluru - Trib.). He further submitted that the said order has been followed by the Tribunal in Vijaya Bank v. Jt. CIT [IT Appeal Nos. 915 & 845 (Bang.) of 2017, dated 5-1-2018] and the said method of making provision has been approved by the Calcutta High Court in Uttarbanga Kshetriya Gramin Bank case.

8. We have carefully considered the rival contentions and perused the records.

9. In Para 7.2 of the impugned order, the Tribunal has recorded thus,

"7.2 Before us, the learned Authorised Representative for the assessee reiterated the submission that the language of Rule 6ABA is very clear and does not mandate that only incremental advances has to be considered and nothing can be read into it as has been done by the authorities below. It was submitted that this issue has been considered and decided in favour of the assessee by the co-ordinate bench of this Tribunal in the case of CanaraBank v. JCIT (2017) 60 ITR (Trib) 1 [ITAT (Bang)]"

10. It is further held that the said decision has been followed in Vijaya Bank case. The manner in which the computation has been made has been given in the case of Vijaya Bank Case. Order passed by the Tribunal in Canara Bank's case followed in Vijaya Bank case has attained finality and the Revenue has not challenged the said order. Further, the HighCourt of Calcutta, while considering an identical situation as recorded thus,

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

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

11. In view of the above, these appeals with regard to question No. 4 must fail and it is also answered in favour of the assessee and against the Revenue."

Based on the above observation we remand this issue to the Ld.AO for necessary verification and consideration of the issue in accordance with law.

Accordingly Ground no.6 raised by the assessee stands partly allowed for statistical purposes.

20. Ground No.7 becomes infructuous by virtue of view taken by us in ground No.3 in preceding paragraphs.

21. Ground No.8 is raised by the assessee in respect of the disallowance made of the RBI Penalty paid by the assessee.

21.1 It is submitted that the assessee had made payment of Rs.1,00,000/- as penalty to RBI for non compliance of RBI guidelines which are submitted to be general in nature. The

Ld.AO disallowed the same treating it to be in the nature of penal in nature.

On an appeal before the Ld.CIT(A) the disallowance was upheld.

Aggrieved by the order of the Ld.CIT(A) the assessee is in appeal before us now.

At the outset it is submitted that a similar disallowance was made in case of Union Bank of India vs. DCIT reported in (2022) (3) TMI 1131 by coordinate bench of this *Tribunal. The Ld.AR placed reliance of the observation of the this tribunal in that case of Union Bank of India(supra) and submitted that the matter may be remanded to the Ld.AO for necessary verification in light of the directions therein.*

The Ld.DR also did not object to the request of the Ld.AR in remanding the issue to the Ld.AO.

21.2 We note that this *Tribunal* in case of *Union Bank of India vs. DCIT (supra)* observed and held as under:

> *"16.4 We heard rival submissions and perused the materials on record. We notice that the Mumbai Tribunal in IDBI Bank Ltd., case (Supra) while considering a similar penalty payment to RBI has held that the amount paid by the assessee is not in the nature of penalty. The Hon'ble Mumbai Tribunal in this case has held that —*
>
> *12.1 In the instant case, as recorded by the AO the assessee has claimed expenses on account of penalty of 15,00,000/- imposed by the RBI u/s 47A of the Banking Regulation Act, 1949 and 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 15,94,200/- levied*

by the AO. Accordingly, the 2nd ground of appeal is allowed."

16.5. We notice that the Hon'ble Mumbai Tribunal in the above case has analysed the provisions of the Banking Regulation Act to understand the nature of fine / penalty paid before coming to the conclusion that the amount claimed are routine fines or penalties and that they are compensatory' in nature not punitive. We further notice as observed by the CIT(A) in the order, the assessee has not furnished the full details of the nature of payment made to RBI. We are of the considered view that the provisions under which these payments are done need to be looked into in detail and it will not be correct to conclude without analyzing the same. We therefore remand the case back to the AO to look into the details of payments made to RBI to see if these are routine payments for a procedural non-compliance or whether they are punitive. We allow the appeal of the assessee for statistical purposes."

Considering submissions of both sides, we remand this matter to file of AO to look into the details/nature of payments made by assessee to RBI in order to verify whether these are routine payments for procedural non-compliances or were punitive in nature. The Ld. AO is then directed to consider this issue in accordance with law.

Based on the above observation we remand this issue to the Ld.AO for necessary verification and consideration of the issue in accordance with law.

Accordingly Ground no.8 raised by the assessee stands partly allowed for statistical purposes.

22. Ground Nos.9 & 10 raised by assessee is also in respect of section 115JB of the Act. As we have already decided the issue in favour of assessee in ground No.4, the same becomes infructuous.

Revenue's appeal - ITA 663/Bang/2023

23. Ground No.1-2 raised by the revenue is in respect of the Ld.CIT(A) allowing the claim of assessee u/s. 36(1)(viia).

We have already remanded this issue in Ground no.6 while dealing with assessee's appeal hereinabove.

Accordingly ground raised by revenue stands partly allowed for statistical purposes.

24. Ground Nos. 3-4 is against allowing the claim of Rs.17,12,48,543/- by Ld.CIT(A) towards CSR expenditure. The Ld.AO disallowed the expenditure claimed by the assessee by holding that these expenditure were not for the purposes of business and were added back to the total income of assessee. The Ld.CIT(A) held as under:

> *"8.7 I have gone through the facts of the case and material available on record. Since the appellant is not a company, The Companies Act, 2013, is not applicable to him and explanation 2 to section 37(1) is out of picture. However, the allowability of business expenditure has to be decided based on business expediency. The appellant has submitted that these expenditure are incurred by the Assessee based on the CSR directions of the Government of India. Therefore the decision of jurisdictional ITAT in the case of Union Bank of India is directly applicable here. Accordingly, addition of Rs. 17,12,48,543/- made by the Assessing Officer is hereby deleted. Ground of appeal no. 7 is allowed.*
>
> *9. Ground of appeal no. 8 is related to disallowance of expenditure of Rs. 1,73,77,820/- made in order to comply with the guidelines on 'Rural Self Employment Training Institutes' (RSETIs) issued by Government of India. Ministry of Rural Development, the Appellant bank has contributed to 'Centenary Rural Development Trust' established under the above said guidelines and claimed the same as allowable expenditure u/s 37 of the Income Tax Act, 1961. As discussed above, the decision of jurisdictional ITAT in the case of Union Bank of India is*

directly applicable here also. Accordingly, addition of Rs. 1,73,77,820/- made by the Assessing Officer is hereby deleted. Ground of appeal no. 8 is allowed."

The Ld.DR relied on the orders passed by the assessing officer in support of the argument that the expenditure are not allowable as it cannot be related to any of the business activities carried on by the assessee.

On the contrary, the Ld.AR relied on the decision of *Coordinate Bench of this Tribunal* in case of *UCO Bank India Ltd.* reported in *(2023) 102 ITR (Trib) 235* and submitted that the view taken by Ld.CIT(A) deserves to be upheld.

We have perused the submissions advanced by both sides in the light of records placed before us.

We note that the Ld.CIT(A) while allowing the claim of the assessee has followed the decision of *Union Bank of India vs. DCIT (supra)* wherein the following observations have been made.

"11. The assessee is a public sector bank governed by the provisions of the Banking Regulation Act, 1949. Factually the contribution has been made by the assessee to Corporation Bank Economic Development Foundation which has its objects to set up training centre for educating and training people with a view to creating awareness, developing local leadership among the community, development through self help, utilization of local resources and talents. The Trust came into existence by virtue of a deed of declaration of trust dated 26.1.1992 with the object of taking up developmental activities particularly for the upliftment of the economically weaker sections of the society. The trust also played catalyst role in the process of social economic development. The Government of India, Ministry of Rural Development has instructed public sector banks to be lead institutions in managing and running such institutes. It is in this context that the assessee has contributed a sum of Rs.3,82,69,960/-. The Revenue authorities took the view that this was in the nature of donation which can be claimed as a deduction only under section 80G of the Act. The decision of the Hon'ble Karnataka High Court on this point is very clear and is to the effect that provisions of section 37(1) and 80G of the Act are not mutually exclusive if the contribution by the assessee in the form of donation of the category specified in section 80G of the Act but if it

could be termed as an expenditure of the category falling under section 37(1) of the Act, then the right of the assessee to claim the whole of it as allowance under section 37(1) of the Act cannot be denied but such money must be laid out wholly or exclusively for the purpose of business. The decision of the Hon'ble Calcutta High Court in the case of CIT Vs. Eastern Coalfields Ltd., (supra) where Government of India framed guidelines on corporate social responsibility for central public sector enterprises, such public sector is bound to formulate a policy in terms of the said guidelines and if an obligation springs from complying with the said guidelines, it has to be regarded as expenditure incurred on grounds of commercial expediency and allowed as a deduction. Therefore the expenditure in question, on the facts of the present case, satisfies the requirements of Sec.37(1) of the Act. In view of the facts and circumstances of the given case. we are of the view that the deduction claimed by the assessee should be allowed in full. We hold and direct accordingly and allow ground No.3 raised by the assessee."

Nothing contrary to the above has been filed by the revenue in order to deviate from the above view taken. Respectfully following the same, we do not find any reason to interfere with the decision of the Ld.CIT(A).

Accordingly, this ground raised by revenue stands dismissed.

25. Ground Nos.7-8 is in respect of relief granted to the assessee of Rs.2,00,000/- being RBI penalty. We have remitted this issue raised in Ground No. 8 in assessee's appeal herein above to Ld.AO to verify and consider the claim if the penalty levied by RBI was for violation of guidelines issued by RBI. Based on the decision of coordinate Bench of this *Tribunal* in case of *Union Bank of India (erstwhile Corporation Bank v. DCIT (supra).*

Accordingly this ground raised by assessee stands allowed for statistical purposes.

26. Ground No.9 is against the Ld.CIT(A) allowing Club expenses claimed by the assessee.

This ground has been raised by revenue challenging the deletion of Rs.30,39,820/- being the expenditure incurred at club towards entrance fee and subscription and Rs.24,979/- being expenditure incurred for club services and facilities. The Ld.DR submitted that the expenditure cannot be allowed as there is no requirement for the assessee to spend it for the purposes of business. The Ld.DR supported the view taken by the Ld.AO.

26.1 The Ld.AR submitted that the Ld.CIT(A) considered the claim of assessee by observing as under:

> *"29. Ground 30 of the appeal is related to disallowing a sum of Rs. 30,64,799/- being the club expenses. The appellant has made following submissions dated 15.12.2022:*
> *"30.2 Our Submissions:*
> *30.2.1 The Appellant bank has incurred these expenses for business purposes only. The learned Assessing Officer has not brought anything on record to prove that they are not for business purposes. The disallowance made by the learned Assessing Officer is based on surmises and conjunctures. Therefore. it is submitted that the groundof the appellant be allowed. Reliance in this regard is placed on the following decisions:*
> - *OTIS Elevator Co. (India) Ltd vs CIT [1992] 195 1TR 682 (Bom)*
> - *CIT vs Samtel Color Ltd [2010] 326 ITR 425 (Del)*
> - *PC1T vs Bayer Vapi Pvt Ltd [2019] 13 ITR-OL 639 (Guj)"*
>
> *29.1 Considering, above judgments, the issue is decided in favour of the appellant. Ground of appeal no. 30 is allowed."*

We have perused the submissions advanced by both sides in the light of records placed before us.

26.2 Admittedly, neither the Ld.AO nor the Ld.CIT(A) has verified the nature of expenditure based on the bills and vouchers. It is

not true to say that a bank cannot offer membership benefits in a club to its officials who are at high posts. The reasoning for disallowing the claim by the Ld.AO is without any basis. The Ld.CIT(A) while allowing the claim has not verified whether the expenditure has been incurred for such higher officials by the assessee towards their membership.

26.3 In the event, upon verification it is found that the expenditure has been incurred towards membership and subscription by the higher officials who are eligible to get such benefit from the assessee, no disallowance could be made. We direct the Ld.AO to verify the details in the line of the above directions and to consider the claim of assessee in accordance with law.

Accordingly, this ground raised by the revenue stands partly allowed for statistical purposes.

In the result, appeals filed by assessee and revenue stands partly allowed for statistical purposes.

Pronounced in the open court on this 22nd day of December, 2023.

Sd/-	Sd/-
(CHANDRA POOJARI)	(BEENA PILLAI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Bangalore,
Dated, the 22nd December, 2023.
/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. Guard file
6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore