

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

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

**ITA No. 3017/MUM/2019**  
**Assessment Year: 2015-16**

ACIT-2(2)(2),  
Room No. 545, 5<sup>th</sup> floor,  
Aayakar Bhavan,  
Mumbai-400020.

**Appellant**

**Vs.** M/s Yes Bank Ltd.,  
9<sup>th</sup> floor, Nehru Centre, Discovery  
of India, Dr. A.B. Road, Worli,  
Mumbai-400018.

**PAN NO. AAACY 2068 D**  
**Respondent**

**ITA No. 4278/MUM/2019**  
**Assessment Year: 2015-16**

Yes Bank Ltd.,  
15<sup>th</sup> floor, Yes Bank Tower, IFC  
2, Senapati Bapat Marg,  
Elphistone (West),  
Mumbai-400013.

**PAN NO. AAACY 2068 D**  
**Appellant**

**Vs.** Dy. CIT-2(2)(2),  
Room No. 545, 5<sup>th</sup> floor,  
Aayakar Bhavan,  
Mumbai-400020.

**Respondent**

**Assessee by** : Mr. Yogesh Thar, & Vidhi Salot  
**Revenue by** : Mr. Dr. Kishor Dhule, CIT-DR

Date of Hearing : 05/12/2023  
Date of pronouncement : 05/02/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

These cross appeals by the assessee and Revenue are directed against order dated 26/02/2019 passed by the Ld. Commissioner of Income-tax (Appeals)-5, Mumbai [in short 'he Ld. CIT(A)'] for



assessment year 2015-16. The grounds raised by the assessee reproduced as under:

*GROUND NO. I: DISALLOWANCE UNDER SECTION 14A OF THE ACT R.W.R 8D(2)(iii) of the INCOME TAX RULES, 1962 ("the Rules"):*

*1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the action of the AO of upholding the disallowance under Rule 8D(2)(iii) of the Rules.*

*2. The Appellant prays that the AO be deleted to the disallowance u/s. 14A r.w.r. 8D(2)(iii).*

*GROUND NO. II: SETTING ASIDE THE ISSUE TO THE FILE OF THE AO:*

*1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in directing the AO to verify the accounts of the Appellant to verify if the Appellant had interest free funds, which direction is beyond the powers conferred on CIT(A) under section 251 of the Act, even after Hon'ble CIT(A) has deleted the disallowance of interest.*

*WITHOUT PREJUDICE TO GROUNDS 1:*

*GROUND NO. III: RULE 8D IS NOT AUTOMATIC:*

*1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in holding that there is no substance in the claim of the Appellant that the AO has not passed a speaking order in recording his satisfaction.*

*2. He erred in upholding the action of the AO of computing the disallowance as per Rule*

*8D of the Rules when the AO has not recorded his satisfaction for rejecting the suo-moto disallowance computed by the Appellant.*

*3. The Appellant prays that the AO be directed to delete the disallowance u/s. 14A r.w.r. 8D.*

*WITHOUT PREJUDICE TO GROUNDS I & III:*

*GROUND NO. IV: NO DISALLOWANCE UNDER SECTION 14A OF THE ACT CAN BE MADE WHEN SECURITIES ARE HELD AS STOCK-IN-TRADE:*

*1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the disallowance us. 14A of the Act even when the securities are held as stock-in-trade.*



2. The Appellant prays that the AO be directed to delete the disallowance u/s. 14A of the Act, including the suo-moto disallowance.

WITHOUT PREJUDICE TO GROUNDS I, III & IV:

GROUND NO. V: ONLY SECURITIES YIELDING DIVIDEND INCOME SHOULD BE CONSIDERED FOR COMPUTING DISALLOWANCE U/S. 14A OF THE ACT:

1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in rejecting the plea of the Appellant that only securities yielding exempt income should be considered for computing disallowance under u/s. 14A of the Act.

2. The Appellant prays that only securities yielding exempt income should be considered for computing disallowance u/s. 14A of the Act.

WITHOUT PREJUDICE TO GROUNDS I, III, IV & V:

GROUND NO. VI: DISALLOWANCE U/S. 14A SHOULD BE RESTRICTED TO THE SUO-MOTO DISALLOWANCE MADE BY THE APPELLANT:

3. On the facts and circumstances of the case and in law, Hon'ble CIT(A) erred in not following the directions of the Hon'ble Income Tax Appellate Tribunal in Appellant's own case for AY 2008-09 and restricting the disallowance u/s. 8D(2)iii) to the suo moto disallowance made by the Appellant.

4. The Appellant prays that the AO be directed to restrict the disallowance u/s. 14A of the Act, to the suo-moto disallowance made by the Appellant.

GROUND NO. VII: ORDER MADE ON THE BASIS OF SURMISES AND ASSUMPTIONS WHILE CONFIRMING DISALLOWANCE U/S. 35D OF THE ACT:

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

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

WITHOUT PREJUDICE TO GROUND VII:

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

1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the disallowance of deduction of Rs.



3,44,94,634/- claimed us 35D in respect of expenses incurred in connection with the QIP on the alleged ground that the issue of shares to QIP does not tantamount to public subscription and such capital expenses are not eligible for deduction u/s. 35D of the Act.

2. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in holding that the facts in the year under consideration are same and thereby relying on the order of his predecessor for confirming the disallowance u/s. 35D without considering the facts in the captioned year.

3. The Appellant prays that the AO be directed to allow Rs. 3,44,94,634/- as a deduction u/s. 35D of the Act.

WITHOUT PREJUDICE TO GROUND NOS. VII AND VIII:

GROUND NO. VII: DISALLOWANCE OF QIP EXPENSES BY INVOKING SECTION 40(a) (i)/(ia) OF THE ACT:

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

2. The appellant prays that the AO be directed to allow the expenses in connection with QIP.

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

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

WITHOUT PREJUDICE TO GROUND NO. IX

GROUND NO. X: DISALLOWANCE OF BROKERAGE PAID ON ACQUISITION OF HTM INVESTMENTS:

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

The Appellant prays that the AO be directed to delete the disallowance of brokerage paid on HTM securities.

GROUND NO. XI: ASSESSING INTEREST INCOME ON HTM INVESTMENTS AS INCOME FROM OTHER SOURCES:

1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding the action of the AO of assessing the interest income on HTM investments as income from other sources and not as



*profits and gains of business and profession even though all the securities are held by the Appellant as stock-in-trade.*

*2. The Appellant prays that the interest income on HTM securities be held to be assessable under the head profits and gains of business and profession.*

**GROUND NO. XII: ADDITION OF COMMISSION ON BANK GUARANTEE:**

*1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in adding the amount of Rs. 28,31,72,647/-, being difference arising on account of change in the method of recognizing guarantee commission from anniversary date to a more scientific time proportionate basis, on the ground that there was there was no necessity for such a change.*

*2. He further erred in holding that there is neither any basis of change in accounting nor was such change required by any accounting standard.*

*3. The Appellant prays that the AO be directed to delete the addition of Rs. 28,31,72,647 / - of commission income on bank guarantee.*

**GROUND NO XIII: NOT ADMITTING CLAIM FOR DEDUCTION OF DISCOUNT ON ISSUE OF SHARES UNDER EMPLOYEE STOCK OPTION SCHEMES (ESOPs) MADE IN THE COURSE OF THE ASSESSMENT PROCEEDINGS:**

*1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in not admitting and allowing the claim of the Appellant by stating that the Appellant is making such claims only as an additional claim and not in the ROI without considering that the claim for ESOPs is a legal claim and that there are no restrictions provided in law for putting forth a legal claim at any stage of appellate proceedings.*

*The Appellant prays that the claim for discount on ESOP be admitted and allowed in accordance with the Act.*

**WITHOUT PREJUDICE TO GROUND NO. XIII:**

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

*1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in not allowing the claim for deduction in respect of discount on issue of shares under the ESOP made during the course of the assessment proceedings, amounting to Rs. 138,52,00,738/-*

*2. The Appellant prays that the AO be directed to allow the claim for deduction in respect of discount on issue of shares under ESOP.*



**GROUND NO. XV: ADDITION OF INTEREST INCOME ON NON PERFORMING ASSETS ("NPAs") U/S. 43D R.W.R 6EA OF THE RULES AMOUNTING TO RS. 1,62,47,886/-:**

1. *On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the action of the AO of adding the notional interest income purportedly u/s Rule 6EA, amounting to Rs. 1,62,47,886/- on NPAs on accrual basis of accounting ignoring the RBI Directives on Income Recognition.*

2. *On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in ignoring the settled legal position that it is only the real income that can be taxed under the Act.*

3. *He further erred in ignoring that rules, being subordinate legislature cannot override the provisions of the Act.*

4. *The Appellant prays that the AO be directed to delete the interest income on NPAs amounting to Rs. 1,62,47,886/-*

**GROUND NO. XVI: DISALLOWANCE ON ACCOUNT OF PROVISION OF RURAL ADVANCES CLAIMED U/S 36(1)(viii) OF THE ACT AMOUNTING TO RS. 24,91,43,645/-:**

1. *On the facts and the circumstances of the case and in law, the Hon'ble CIT(A) erred in disallowing 10% of aggregate average rural advances made by the Appellant on the ground that the Appellant has not made a separate provision in its books in respect of the rural advances.*

2. *The Appellant prays that the AO be directed to delete the disallowance on account of provision of rural advances.*

**GROUND NO. XVII: DISALLOWANCE OF INTEREST PAID ON INNOVATIVE PERPETUAL DEBT INSTRUMENTS ("IPDI") U/S. 36(1)(iii) OF THE ACT:**

1. *On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the action of the AO of disallowing the interest amounting to Rs. 17,53,20,737/- paid on the IPDIs issued by the Appellant, u/s. 36(1) iii) of the Act on the ground that these IPDIs are capital in nature.*

2. *He erred in considering the IPDIs as Tier I capital thereby treating them at par with paid up capital, statutory reserves, other free reserves, perpetual non - cumulative preference shares and capital reserves, when the IPDIs are classified as Additional Tier I capital which includes various debt instruments.*

3. *He further erred in equating the IPDIs with the preference share capital of a Company.*



4. The Appellant prays that the AO be directed to treat the IPDIs as debt instruments and allow the interest paid thereon u/s. 36(1)(iii) of the Act.

WITHOUT PREJUDICE TO GROUND NO XVII

GROUND NO XVIII: INTEREST DEDUCTIBLE U/S 37(1)/28 OF THE ACT:

1. On the facts and the circumstances of the case and in law, the CIT(A) erred in confirming the action of the AO of disallowing the interest amounting to Rs.

77,53,20,737/- paid on the IPDIs issued by the Appellant u/s 37(1)/28 of the Act.

2. The Appellant prays that the AO be directed to allow the interest of Rs. 77,53,20,737/- on IPDIs u/s. 37/28 of the Act in computing business income of the Appellant.

GROUND NO XIX: LEVY OF INTEREST U/S 234A OF THE ACT:

1. On the facts and the circumstances of the case and in law, the CIT(A) erred in directing the AO to verify the levy of interest u/s 234A of the Act when the details that the return was filed within the statutory time limit specified u/s 139 of the Act were on record.

2. The Appellant prays that the AO be directed to delete the interest charged u/s 234A of the Act.

GROUND XX: LEVY OF INTEREST U/S. 234D OF THE ACT:

1. On the facts and the circumstances of the case and in law, the Hon'ble CIT(A) erred in directing the AO to levy interest u/s 234D of the Act when the Appellant had not received any refund for the captioned year before the date of regular assessment.

2. The Appellant prays that the AO be directed to delete the interest levied u/s 234D of the Act.

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

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

2. "Whether on the facts and in the circumstances of the case and in law, Ld. CIT (A) was right in directing to delete the disallowances of brokerage paid on acquisition of investments without appreciating the



*fact that such expenditure is in the nature of capital expenditure and forms a part of cost of assets?"*

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

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

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

*6. "Whether on the facts and in the circumstances of the case and in law, Ld. CIT (A) was right in directing to delete the addition made on account of deferred payment guarantee commission without appreciating the fact that the right to received the commission and actual receipt of the same occur during the relevant accounting period as also no corresponding charges or expense will arise in the later years?"*

2.1 Before us, the assessee filed following additional ground as under:

*1. On the facts and circumstances of the case and in law, AO erred in considering the investments made by the Assessee in Pass-Through certificates ("PTCs") issued by securitization trust for the purposes of computing disallowance u/s 14A of the Income-Tax Act, 1961("the Act").*

*2. The Assessee submits and prays that since Income-Tax is paid on the income distributed by the trust to the PTC holders as per provisions of section 1151A of the Act, provisions of section 14A cannot apply to PTCs.*

3. We have heard rival submission of the parties on the issue of the admissibility of the additional ground. The additional ground



raised by the assessee being purely of the legal nature, without requiring investigation of the fresh facts, same is admitted for adjudication.

4. The briefly stated facts of the case are that the assessee bank filed return of income on 28/11/2015, which were subsequently revised at total income of ₹ 2790,15,01,072/-. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income-tax Act, 1961 ( in short the Act) were issued and complied with. The assessment under section 143(3) of the Act was completed on 31/12/2017. On further appeal, the Ld. CIT(A) allowed part relief to the assessee. Aggrieved, the assessee and the Revenue are in appeal before the Income-tax Appellate Tribunal (in short the 'Tribunal') by way of raising respective grounds.

5. Before us the learned counsel for the assessee filed a paper book containing pages 1 to 515. The learned counsel also filed a copy of the decisions relied upon.

6. The ground Nos. I to VII of the appeal of the assessee and ground No. 1(one) of the appeal of the Revenue relate to disallowance under section 14A of the Act, i.e. disallowance of expenditure in relation to earning of exempted income. The assessee has also raised additional ground in relation to disallowance under section 14A of the Act.



6.1 In the case in hand, the assessee bank has three types of instruments appearing in its balance sheet, the income earned from which has been claimed as exempted under the provisions of the Act. It has been claimed by the assessee that all instruments like securities, bonds etc. have been held as stock-in-trade and income received from sale of those securities etc. has been offered to tax as business income except incidental exempted income.

6.2 The first kind of instrument is '**equity/preference shares**' which amounted to ₹ 60,13,70,322/- as on balance sheet date i.e. 31/3/2015 and on which dividend income of ₹ 2,88,08,493/- has been earned during the year under consideration, which was claimed as exempt u/s 10(34) of the Act. The Assessing Officer has produced a detailed list of such investments in Para 3.2 of the assessment order. The assessee claimed that those securities were not purchased by the assessee but same had resulted due to converting of corporate debt into equity/preference shares under the corporate debt restructuring plan.

6.3 The second kind of instrument is '**interest free bonds**' which amounted to Rs.180,56,03,200/- as 31/3/2015 and on which interest earned of ₹23,39,96,110/- during the year under consideration has been claimed as exempt u/s 10(15) of the Act. A list of such instruments has been reproduced by the Assessing Officer on page 3 of the assessment order. The assessee claimed that those instruments/investments were only incidental to the



banking business of assessee, therefore, no expenses were incurred in relation to earning of such tax-free income.

6.4 Third kind of instrument is **Pass Through Certificates (PTC)** on which the assessee bank earned income of Rs.237,66,81,445/-, which has been distributed by the 'securitization trusts' and claimed that tax was paid by the respective securitization trust, thus the income distributed by said trust is exempted income in the hands of the assessee u/s 10(35A) of the Act, being received as investor of securitization trust. A pass through certificate (PTC) is a certificate that is given to an investor against certain mortgaged-backed securities that lie with the issuer. The certificate can be compared to securities (like bonds and debentures) that may be issued by banks and other companies to investors. The only difference being that they are issued against underlying securities. The interest that is paid to the issuer on these securities comes to the investor in the form of a fixed income. A list of such investments and income earned has been reproduced by the Assessing Officer on page 4 of the assessment order. The additional ground raised by the assessee is in respect of the investment made in PTCs.

6.5 Before the Assessing Officer, the assessee *suo-motu* submitted details of expenditure incurred for earning above exempted income of Rs 3, 03,13,068/- including disallowance of Rs. 2,96,81,323/- towards PTCs. The relevant part of the submission of the assessee



reproduced by the Assessing Officer on page 13 to 15 of the assessment order is extracted as under:

*“In this connection, Yes Bank submits that it has identified certain expenses actually incurred in connection with the activity of buying and selling of securities/ equities/ tax free instruments/ servicing of pass through certificates issued by securitisation trust and has offered the same for disallowance u/s. 14A of the Act. The details of such expenses are as under:*

*Certain direct expenditure which are incurred solely for the purpose of earning exempt income are fully disallowed. Such expenditure is fully disallowed us 14A of the Act. Details of such expenditure is as below:*

Expense head	Total Cost (Rs.)	Treasury Cost (Rs.)	% Distribution (See Note 1)	Cost considered u/s 14A (Rs.)
Custody charges	8,206	8,206	100%	8,206
Brokerage on Equity	9,105	9,105	100%	9,105
Sec transaction tax	12,135	12,135	100%	12,135
Total				29,446

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

Name	Total Cost	Treasury	% distribution	Cost Rs.
Salary	9,796,635,402	420,241,000	0.10%	440,783
Rent - India Bulls Finance Centre	1,940,486,074	89,023,968	0.10%	93,376
Electricity	329,440,644	12,053,394	0.10%	12,643
Telephone	36,696,467	1,639,717	0.10%	1,720
Other Operation expenses	5,964,872,642	51,272,326	0.10%	53,779
	17,498,673,623		Total	602,299

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

Note 1:



	Nos.
<i>Deals made in Financial Year 2014-15</i>	
<i>Deals in tax free instruments (including PCs where tax is paid by Secu trust) in FY 2014-15</i>	199
<i>Total No of Treasury Deals in FY 2014-15</i>	189,726
<i>% of tax free deals including PTC deals where tax is paid by Secu trust) to Total Deals</i>	0.10%

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

*Expenses incurred for Pass Through Certificates*

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

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

<i>Working for disallowance of administrative cost u/s 14A for the period Apr 14-Mar 15</i>
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Name	Corporate Finance/ Indian Financial Institution group	(Amt. in Rs.) Cost allocated	Rationale
Salary	9,796,635,402	20,982,220	Actual at 50% for Corporate Finance and 15% for IFI.
Rent - India Bulls Finance Centre	1,940,486,074	4,810,185	Actuals
Electricity - Branch	329,440,644	684,852	Actuals
Telephone	36,696,467	93,166	Actuals
Other Operating Expenses	5,964,864,436	3,110,901	No of employees
		29,681,323	

Employee database	IFI	CF
CF / IFI Empliyoes	15	6
Total no of Employees	10,354	10,354
Cost allocation % of the employees	0.14%	0.06%
	518,483	2,592,417
Total		3,110,901

Accordingly, Yes Bank calculated total sum of Rs. 29,681,323/- for the assessment year under consideration and disallowed the same under section 14A of the Act.”

6.6 Thus, the assessee itself identified direct cost of ₹ 29,446/-and indirect cost of ₹ 2,96,81,323/-towards earning of exempted income and disallowed the same for the purpose of section 14A of the Act, while computing its income for the purpose of filing return of income.

6.7 The Assessing Officer, however expressed his dissatisfaction on the claim of the assessee of *suo-motu* disallowance of expenses computed under section 14A of the Act and invoked Rule 8D of Income-tax Rules, 1962 (in short the ‘Rules’).The disallowance computed by the Assessing Officer is reproduced as under:



“3.4.6 Further, Rule 8D of the I.T. Rule is also applicable retrospectively. Therefore, disallowance of expenditure under Sec 14A is as follows:

Investment in shares / tax free bonds as on 31	55,254,608,626
Investment in shares / tax free bonds as on 31	35,045,395,311
Average Investment for FY 2014	45,150,001,968
Interest cost for FY 2014-15	80,841,692,265
Total Assets as on 31	1,090,157,899,000
Total Assets as on 31	1,361,704,098,000
Average total asset for FY 2014-15	1,225,930,998,500
Interest to be disallowed (A*B/C)	2,977,331,162
Add: 1/2 % of total investment	225,750,010
Total disallowance Rs.	320,30,81,172

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

investment made in shares, tax free bonds PTC etc, the income from which is not includible in the total works out to Rs 3,203,081,172/- is required to be made, however as the assessee has already made disallowance of Rs. 30,313,068 /- in computation balance amount of Rs. 317,27,68,104 /- is therefore added to the income of the assessee u/s 14A of the Act.”

6.8 We note that Assessing Officer has only computed disallowance of ₹ 320,30,81,172/- under Rule 8D(2)(ii) and 8D(2)(iii) of the ‘Rules’ and omitted to include *suo-motu* disallowance by the assessee for expenses incurred directly towards earning exempted income, which is an expense covered under rule 8D(2)(i) of the ‘Rules’. The Assessing Officer reduced *suo-motu* disallowance of ₹3,03,13,068/- and made net addition of ₹ 317,27,68,104/-in terms of section 14A of the Act.



6.9 On further appeal, the Ld. CIT(A) **firstly**, rejected the contention of the assessee that Assessing Officer has not passed a speaking order for recording his dissatisfaction on the claim of the assessee of disallowance under section 14A of the Act. **Secondly**, the Ld. CIT(A) rejected the assessee's contention that disallowance under section 14A cannot exceed exempted income. **Thirdly**, he rejected that for computation of disallowance under section 14A read with rule 8D, the only investment which have yielded exempted income during the year under consideration should be considered. But, as far as the disallowance under Rule 8D(2)(ii) of the Rules is concerned, the Ld. CIT(A) directed the Assessing Officer to verify the claim of the assessee of availability of sufficient 'interest-free funds' to cover the investment made, following the decision of the Hon'ble jurisdictional High Court in the case of CIT Vs Reliance Utilities and Power Ltd 313 ITR 340 and CIT vs HDFC bank Ltd 366 ITR 505 (bom).

6.10 Regarding disallowance in terms of Rule 8D(2)(iii) of Rules, the Ld. CIT(A) followed the finding of third member of the Tribunal bench in the case of **DH securities Private Limited reported in 41 taxmann.com 352** and upheld the disallowance of ₹ 22,57,50, 010/-being 0.5% of the average value of the investments. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“As discussed above, the Hon'ble ITAT in appellant's own case for AY 2008-09, which have been followed by my Ld. Predecessors in appellant's own case for AY 2014-15, while considering the disallowance under Rule 8D(2)i has held that there is no requirement to make any*



*disallowance during the year under consideration, since the assessee has not received any exempt income and also that the object of appellant is to hold the investment as stock in trade. As discussed above the Hon'ble Supreme Court in the above referred case of Maxopp Investments Ltd. has rejected the dominant purpose of making the investments and also has held that where the securities are held as stock in trade the applicability of section 14A would trigger. In view of above discussions and respectfully following above referred decisions of Hon'ble Supreme Court and that of Hon'ble ITAT Amritsar who has rendered the above referred decision after considering the said decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd., with due respect to the Hon'ble ITAT Mumbai, in the appellant own case for 2008-09, I am of the considered opinion that the propositions laid down there in cannot be applied in the present assessment year, as therein said decision of Hon'ble Supreme Court in the case of Maxopp Investment Lid has not been considered. In view of the above, no fault can be found with the action of the Ld. AO in making disallowance under Rule 8D (2) (iii). Hence, disallowance made under Rule 8D(2) (i) at Rs. 22,57,50,010/-, being 0.5% of the average value of investment is CONFIRMED. Accordingly, the Ground No. I raised in appeal is PARTLY ALLOWED, subject to above directions.”*

6.11 Before us, the assessee is aggrieved against confirmation of the disallowance under rule 8D(2)(iii), whereas the Revenue is aggrieved with the deletion of disallowance made by the AO in terms of rule 8D(2)(ii) of the Rules.

7. The ground No. I of the appeal is general in nature and no specific objection has been raised, therefore same shall be considered and covered while disposing the other grounds in relation to disallowance under section 14A of the Act and no specific adjudication is required.

8. In ground No. III, the assessee has challenged that no dissatisfaction as to the claim of the assessee for disallowance under section 14A has been recorded by the Assessing Officer and therefore disallowance made by the Assessing Officer cannot be sustained.



8.1 We have heard rival submissions of the parties on the issue in dispute and perused the relevant material on record. We find that Ld. CIT(A) has rejected arguments made by the assessee on this issue observing as under:

*“6.4.2 The appellant's first contention is that the application of Rule 8D is not automatic and the same cannot be invoked until and unless the Ld. AO records the cogent reasons for disregarding the claim of the appellant. It is an admitted fact that while framing the assessment the Ld. AO has taken into account the suo moto disallowance made by the appellant in relation to earning exempt income and had requested the appellant to furnish the details regarding the expenses attributable to earning exempt income. From the assessment order, it is observed that the Ld. AO has discussed the facts of the assessment order in the judicial precedence, as detailed therein. The Hon'ble Gujarat High Court in the case of Devarsons Industries P Ltd, reported in 84 taxmann.com 244 has held that mere fact that the Assessing Officer did not arrive at satisfaction in a particular manner while making disallowance would not per se destroy mandate of sec 14A of the Act. For the sake of convenience, the finding of the Hon'ble Gujarat High Court in the above referred case is reproduced as under:*

*“8. To give effect to the provision of Section 14A and in particular sub-section (2) thereof, Rule 8D of the Rules provides the method for determining the amount of expenditure in relation to the income not includable in the total income. Sub-rule (1) echoes the provision of sub-sections (2) and (3) of Section 14A where it provides that if the Assessing Officer having regard to the accounts of the assessee is not satisfied with the correctness of the claim of the expenditure or the claim made is that no expenditure has been incurred in relation to the income which does not form part of the total income, he would determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2). Sub-rule (2) of Rule 8D prior to its amendment with effect from 02.06.2016 provided a formula to apportion the expenditure in connection with the tax free income. Section 14A as well as Rule 8D require the Assessing Officer to arrive at a satisfaction that the claim of the expenditure made by the assessee is not correct. It is only then he can apply the formula under sub-rule (2) of Rule 8D. However, these statutory provisions do not require that such satisfaction must be arrived at in a particular manner. As long as there is sufficient material to enable the Assessing Officer to arrive at such a satisfaction and which is also recorded by him in the order of assessment, the requirements of the statute would be satisfied. In the present case, we have noted that the Assessing Officer has given detailed reasons for discarding the assessee's theory that to earn the assessable income the assessee incurred no expenditure*



*whatsoever. The Tribunal confirmed such view. Decision of the Assessing Officer to apply the formula under Rule 8D was therefore correct. Tax appeal is accordingly dismissed."*

*From the provisions of sec 14A wr8D, it is evident that it is sufficient if the Ld. AO comes to the conclusion that the claim of the assessee in this regard is not correct and it is not necessary for him to decide the extent or quantum of the incorrect claim. Under similar circumstances, the Hon'ble Punjab & Haryana High Court in the case of Punjab Tractors Ltd reported in 78 taxmann.com 65 has held as under.*

*"33. In our view it is sufficient if the Assessing Officer comes to the conclusion that the claim of the assessee in this regard is not correct. It is not necessary for him to decide the extent or the quantum of the incorrect claim. He must, however, correctly conclude that the claim of the assessee is incorrect. It is necessary for the Assessing Officer to rightly come to the conclusion that the claim of the assessee is incorrect. The language of Section 14(2) is "is not satisfied with the correctness of the claim" and not 'reasonably doubts it" or "has reasons to doubt the correctness of the claim".*

*34. Mrs. Suri's reliance upon the word "determine" in sub section (2) of Section 14A as regards the second part of her submission is misplaced. The term "determination" in Section 14(2) applies to the computation of the expenditure incurred in relation to exempt income by resorting to the method as may be prescribed. The method is prescribed by Rule 8D. Under section 14A(2) where the Assessing Officer is not satisfied with the correctness of the claim in respect of the expenditure in relation to exempt income or the assessee's claim that no expenditure has been incurred in relation to such income, 'he shall' determine the amount of such expenditure in accordance with the method prescribed, namely, Rule 8D. The word 'determine' in Section 14(2), therefore, is in respect of the exercise to be undertaken for the purpose of computing the expenditure in relation to exempt income in accordance with the method as may be prescribed. The Assessing Officer is not required to quantify the amount prior to the invocation of Rule 8D.*

*35. For an Assessing Officer not to be satisfied with the correctness of the claim of the assessee, it is not necessary for him to determine the expenditure incurred for earning the exempt income. Indeed, if that were so, Rule 8D would be redundant. It is sufficient for the Assessing Officer to come to the conclusion that the claim of the assessee is not correct. It is not necessary, however, for him to determine the extent to which it is incorrect in order to resort to Rule 8D*

*36. There would be several instances where an Assessing Officer can come to the conclusion that the claim is incorrect but would be unable to assess the extent of the inaccuracy. That is precisely the purpose of Rule 8D. For instance in the present case, the Assessing Officer was entitled to presume that a part of the expenses from the common fund are attributable to the expenditure incurred for earning the exempt income. He was entitled to resort to Rule 8D without determining the amount expended by the assessee towards earning the exempt income. Indeed if*



*he could have done so, it would not have been necessary for him to resort to Rule 8D at all.*

*37. It follows, therefore, that Mrs. Suri's submission that a determination means an actual quantification of the expenditure incurred for earning exempt income is erroneous. As Mr.Klar rightly pointed out an Assessing Officer can on the basis of inferences, adverse inferences and reasonable presumptions come to the conclusion that the claim of the assessee in relation to such expenditure is not correct.*

*38. In the case before us, the Assessing Officer cannot be faulted for not being satisfied with the claim of the assessee. As we noted earlier the Assessing Officer was entirely justified in presuming that the assessee had incurred expenditure exempt income. If the towards administrative activities necessary to earn the presumption or inference is correct, as we have held it is, the Assessing Officer is entitled to resort to Rule 8D.*

*39. We are, however, unable to agree with Mr.Klar that the assessee is estopped from challenging the Assessing Officer's application of Rule 8D, as the assessee had itself furnished its working under Rule 8D. The assessee furnished a calculation only to show that the Assessing Officer's calculation is in any event incorrect. That is not an admission by the assessee that Rule 8D was validly invoked. It was only an alternative case assuming that Rule 8D was validly invoked or ought to be invoked.*

*40. The Assessing Officer on not being satisfied with the correctness of the claim by the assessee in respect of the expenditure incurred to earn exempt income ought to have applied Rule 8D which he did not. Instead he made an estimate on the basis that he considered to be reasonable. This he was not entitled to do. Where an Assessing Officer is not satisfied with the correctness of the claim of the assessee, in this regard, he is bound by the provisions of sub section (2) of Section 14A to follow the prescribed method which at the relevant time was Rule 8D."*

*In view of the above discussions, there is no substance in the claim of the appellant that before invoking the provisions of sec 14A wr 8D, the Ld. AO has not passed a speaking order on the claim of the appellant and hence the same is herewith rejected."*

8.2 We further note that the Assessing Officer in para 3.4.1 and 3.4.2 of the assessment order has expressed his dissatisfaction as to the claim of the assessee regarding disallowance under section 14A of the Act towards earning of the exempted income. The contention of the assessee that Assessing Officer has invoked rule 8D of the rules without recording dissatisfaction to the accounts of



the assessee, is not tenable and accordingly the contention of the assessee are rejected. The Hon'ble Delhi high Court in the case of **India bulls Financial services Ltd vs CIT ( ITA 470/2016) in decision dated 21/11/2016** observed that *the AO made elaborate analysis indicating three important steps and in such a case it can't be held that AO did not expressly recorded dissatisfaction or did not record cogent reasons for dissatisfaction.* Accordingly, we don't find any infirmity in the finding of Ld CIT(A) on the issue in dispute and uphold the same. The ground No. III of the appeal of the assessee is accordingly dismissed.

9. The ground No. 1 of the appeal of the revenue is also related to the issue, similar to the ground No. III of the assessee. We find that Ld. CIT(A) has not deleted the disallowance under section 14A of the Act on the ground of non-applicability of Rule 8D of Income Tax Rules. Therefore the ground raised by the Revenue is infructuous, and same is dismissed.

10. In ground No. II, the assessee has challenged finding of the Ld. CIT(A) with regard to disallowance under rule 8D(2)(ii) of the Act for directing the Assessing Officer to verify the availability of interest-free funds with the assessee. According to the assessee this direction is beyond the power conferred on Ld. CIT(A) under section 251 of the Act. Further, the learned counsel for the assessee submitted that availability of own funds and interest free funds should be considered in the context of balance-sheet date. The



relevant submissions of the assessee for the proposition that no interest disallowance could be made to the extent of interest free funds available with the assessee, are reproduced as under:

*Proposition 1: No interest disallowance can be made to the extent of interest free funds available with the Assessee*

*The Assessee Bank submits that when own funds and interest free funds are more than tax free investments, no disallowance of interest u/s 14A r.w.r. 8D(i) be made. The said proposition is supported with the position of own funds and tax-free investments as on March 31, 2015, tabulated below for reference:*

<i>Details of Owned funds and other non-interest-bearing funds</i>	<i>Amount (Rs. in lacs) as on March 31, 2015</i>	<i>Amount (Rs. in lacs) as on March 31, 2014</i>
<i>Share Capital (a) (Pg. 8 of FPB)</i>	<i>41,773</i>	<i>36,063</i>
<i>Reserves and Surplus (b) (Pg. 8 of FPB)</i>	<i>11,26,224</i>	<i>6,76,110</i>
<i>Current Account Deposits</i>		
<i>- From Banks (c) (Pg. 9 of FPB)</i>	<i>37,561</i>	<i>23,469</i>
<i>- From Others (d) (Pg. 9 of FPB)</i>	<i>8,12,383</i>	<i>6,78,246</i>
<i>Total Current Account Deposits (e=c+d) (Pg. 9 of FPB)</i>	<i>8,49,944</i>	<i>7,01,715</i>
<i>Total non-interest bearing funds (a+b+e)</i>	<i>20,17,941</i>	<i>14,13,888</i>
<i>Tax free investments (Pg. 18 of AO order)</i>	<i>3,50,453</i>	<i>5,52,546</i>

*For this proposition, reliance is placed on various judicial precedents listed in the index of Legal Paper Book ("LPB") running from pg. no. 1-67 under proposition 1, including the decision of Hon'ble Tribunal in Assessee's own case for AY 2008-09 at LPB pg. no. 2, para 4.*

*Further, the availability of own funds and interest-free funds is to be considered in the context of the balance sheet date. Reliance in this regard is placed on the following decisions:*

- *HDFC Bank Limited v. ACIT (ITA no. 5672/Mum/2017) (Refer pg. no. 63 of LPB, para 16)*

16.....

*As regards the point of time on which the availability of own funds and interest free funds with the assessee for making of investments in exempt income yielding securities was to be looked into, we concur with the claim of the Id. A.R that as observed by the Hon'ble High Court of Bombay in the case of CIT Vs. Reliance Utility & Power Ltd. (2009) 313 ITR 340 (Bom), the same has to be considered in context of the date of the 'balance sheet', and not otherwise. We thus, finding no infirmity in the view taken by the CIT(A) who had after dislodging the claim of the revenue qua the drawing of presumption as regards utilization of the own funds and interest free funds out of the mixed*



*funds available with the assessee for making of investments in exempt income yielding securities had rightly vacated the disallowance of the interest expenditure made by the A.O us 14A muw Rule 8D(2)(ii), uphold the same. The Ground of appeal No. 4 raised by the revenue is dismissed.*

*(Underlined for emphasis)*

- *HDFC Bank Limited v. DCIT (ITA no. 374/Mum/2012) (Refer pg. no. 40-41 of LPB, para 32-33)*

*"32. One more contention raised by the learned counsel for the revenue is, all the decisions cited by the learned counsel for the assessee including the decision of the Hon'ble Supreme Court in case of South Indian Bank Ltd vs CIT (supra) were in respect of assessment years prior to assessment year 2008-09 wherein Rule 8D was introduced. We are of the view that even if the decisions are prior to introduction of Rule 8D; however, it will not make any difference as the legal principle laid down in the decisions discussed herein before would apply even to assessment years subsequent to introduction of Rule 8D. In fact, in case of PCIT vs Ashok Apparels P Ltd (supra), even in respect of assessment years 2008-09 and 2009-10, which are post introduction of Rule 8D, the Hon'ble jurisdictional High Court has reiterated the theory of presumption regarding availability of interest free funds being utilized for the purpose of investment in fact, in assessee's own case in assessment year 2011-12 in ITA No.6173/Mum/2016 dated 08-07-2020 and for assessment year 2012-13 in ITA No.5672/Mum/2017 dated 16-07-2021 the Tribunal has expressed identical view that if on the date of balance-sheet the assessee had sufficient interest free funds available with it, the presumption would be, the investments were made out of such interest free funds. The aforesaid decisions of the Hon'ble superior Courts as well as the co-ordinate benches are binding precedents qua the issue arising for consideration before us. That being the case, adhering to the norms of judicial discipline and decorum, we are bound to follow them.*

*33. In view of the aforesaid, having found that the assessee had sufficient interest free funds available to take care of the investment made, we hold that no disallowance of interest expenditure under rule 8D(2)(ii) can be made. Accordingly, we delete the disallowance made under rule 8D(2)(ii)."*

*(Underlined for emphasis)*

*The above two decisions of the Hon'ble Mumbai Tribunal were specifically referred to at the time of hearing to emphasize that the availability of own funds and interest-free funds has to be seen as on the balance sheet date and one need not go into a fishing expedition of finding out the position on which date the investment was made. As held by the Learned Assessing Officer ("the Ld. AO"), the first referred decision relies upon the decision of the Hon'ble*



*Bombay High Court in CIT v. Reliance Utilities & Power Limited (313 ITR 340). Indeed, a cursory look at the decision of Reliance Utility & Power Limited (supra) very clearly makes a reference to the position as on the balance sheet date. The second-mentioned decision refers to and follows the Hon'ble Supreme Court in South Indian Bank Ltd (438 ITR 1). The Hon'ble Supreme Court, in turn, has quoted with approval, inter alia, the decision of the Hon'ble Bombay High Court in the case of Bombay Dyeing & Mfg. Co. Ltd (ITA No. 2182 & 2140/Mum/ 2000) (see para 17 of the said decision on running pg. no. 11 of LPB). The Hon'ble Bombay HC in Bombay dyeing case (supra), in turn, has followed the decision of the Hon'ble Supreme Court in Reliance Utility & Power Limited (supra). Thus, the Hon'ble Supreme Court has impliedly approved the proposition that the position is to be seen on the balance sheet date. Besides, the Hon'ble Supreme Court in South Indian Bank's case (supra) has also cited with approval the decision of the Hon'ble Bombay High Court in case of HDFC Bank Ltd. (383 ITR 529) (see para 19 of the decision on running pg. no.11 of LPB).*

*The said HDFC bank's case also, in turn, relies on and has followed the earlier decision of the Hon'ble Bombay High Court in Reliance Utility & Power Limited's case (supra).*

*In view of the above, it is abundantly clear that the Hon'ble Supreme Court in South India Bank's case has impliedly approved the proposition that own funds and interest-free funds have to be seen on the balance sheet date.*

*Without prejudice to the above, it was also submitted that in the case of Appellant Assessee, the sum of Capital, Reserves and current account balance as on opening balance sheet as well as on closing balance sheet date are significantly higher than the investments in tax-free securities on these two dates. Indeed, therefore, even if an academic exercise is done to find out the position in the middle of the year to find out the investment balance, there is zero probability of the position being different at any time during the middle of the year.”*

10.1 On the contrary, the learned DR submitted that availability of the interest free funds should be considered on the date of the investment as held by the Hon'ble Supreme Court in the case of Maxopp investment ltd(supra). The relevant submission of learned DR is reproduced as under:

*“7.5 Further, it is submitted that while computing the disallowance under section 14 A of the Act, the date of investment on which the investment is made which is earned exempted income is important*



and not the balance sheet date. This principle has been affirmed by the Hon'ble Apex Court in the case of M/s Maxopp Investment as mentioned supra. For the sake of reference the same is reproduced as under-

"9. In our opinion, the mere fact that those shares were old ones and not acquired recently is immaterial. It is for the assessee to show the source of acquisition of those shares by production of materials that those were acquired from the funds available in the hands of the assessee at the relevant point of time without taking benefit of any loan. If those shares were purchased from the amount taken in loan, even for instance, five or ten years ago, it is for the assessee to show by the production of documentary evidence that such loaned amount had already been paid back and for the relevant assessment year, no interest is payable by the assessee for acquiring those old shares. In the absence of any such materials placed by the assessee, in our opinion, the authorities below rightly held that proportionate amount should be disallowed having regard to the total income and the income from the exempt source. In the absence of any material disclosing the source of acquisition of shares which is within the special knowledge of the assessee, the assessing authority took a most reasonable approach in assessment."

7.6 This view is also confirmed by the Hon'ble Tribunal, Mumbai Bench in the case of M/s HDFC Bank Ltd dated 12.11.2014 where; in it is held by the Hon'ble Tribunal that the assessee has to show with material available that on the date of investment the assessee has used its own fund for investment from which the exempted income is earned by the assessee and not as on the balance sheet date.

Also, it is noteworthy that the Hon'ble Bombay High Court has not reversed or stayed the said order of the Hon'ble Tribunal till today. Only, the Hon'ble Bombay High Court has stayed the order giving effect to the order of Hon'ble Tribunal and pursuant recovery of demand vide its order dated 26th April, 2018 in ITA No.340,342 and 746 of 2015.

7.7 Further, it may be appreciated that the reliance placed by the assessee on the decision of Hon'ble Bombay High Court in the case of CIT Vs M/s Reliance Utilities and Power Ltd. (303 ITR 340 Bom.) is devoid of any legal merit. In the case of M/s Reliance Utilities the Hon'ble Bombay High Court is given a clear cut finding that assessee M/s Reliance Utilities generated its own funds while investing and therefore come to the conclusion that the assessee has used its own funds. There is no such finding, in the case of the assessee that it has generated and used its own funds.



*For the sake of ready reference the relevant paragraphs from the decision of Hon'ble Bombay High Court in the case of M/s Reliance Utilities is reproduced as under -*

*"8. We have heard learned counsel for both the parties. In our opinion the very basis on which the revenue had sought to contend or argue their case that the shareholder funds to the tune of over Rs. 172 crores was utilised for the purpose of fixed assets in terms of the balance sheet as on 31st March, 1999, is fallacious. Firstly, we are not concerned with the balance sheet as of 31-3-1999. What would be relevant would be balance sheet as on 31-3-2000. Apart from that, the learned counsel has been unable to point out to us from the balance sheet that the balance sheet as on 31-3-1999 showed that the shareholders funds were utilized for the purpose of fixed assets. To our mind the profit and loss account and the balance sheet would not show whether shareholders funds have been utilised for investments. The argument has to be rejected on this count also.*

*9. Apart from that we have noted earlier that both in the order of the CIT (Appeals) as also the Appellate Tribunal, a clear finding is recorded that the assessee had interest-free funds of its own which had been generated in the course of the year commencing from 1-4-1999. Apart from that in terms of the balance sheet there was a further availability of Rs. 398.19 crores including Rs. 180 crores of share capital. In this context, in our opinion, the finding of fact recorded by CIT (Appeals) and ITAT as to availability of interest-free funds really cannot be faulted"*

*7.8 It may be appreciated that the assessee is a bank and receiving money in the form of deposits or otherwise from the regular customers. The assessee is not owner of these funds. The assessee is only a custodian of such amount. The assessee pays interest to the depositors. Therefore, the funds constantly raised from depositors are interest-bearing funds for the assessee. Therefore, wherever such funds are invested by the assessee to earn exempted income, the interest paid or payable to the depositors or otherwise qualifies for applicability of section 14-A.*

*7.9 Further, it may be appreciated that the above views are also confirm by the Hon'ble Tribunal in assessee's own case in ITA No. 3249/2018 and 3501 of 2018. For the sake of ready reference the decision of Hon'ble Tribunal in assessee's own case is reproduced as under-*

*" 10. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. It is evident that the Ld. CIT(A) has not adjudicated the issue in dispute in support of disallowance of expenses related to exempted income u/s 14A r.w.r. 8D of the Rules and directed the Assessing Officer for re-examination/re-verification of the disallowance of interest component related to investment in assets yielding exempted income. In our opinion, under the*



provisions of section 251 of the Act the power of the Ld. CIT(A) for restoring the matter back has been withdrawn and issuing direction for re-examination or re-verification of the facts and then decide the issue, is beyond the power of the Ld. CIT(A). In the facts and circumstances of the case, the finding of the Ld. CIT(A) being beyond his authority, therefore, the matter need to be restored back to the file of the Ld. CIT(A) for deciding afresh. Further, as far as the contention of the assessee that funds and interest free funds are more than the investment in tax free assets, the Ld. Counsel of the assessee was asked to provide the position of the availability of the own funds and interest free funds at the time of investment in those funds rather than availability of the funds in the year under consideration. However, no such details could be made available during the course of the hearing. In the circumstances, the proposition by the Ld. Counsel of the assessee cannot be adjudicated. Accordingly, we restore this issue of disallowance u/s 14A of the Act to the file of the Ld. CIT(A) for deciding afresh after taking into consideration submissions of the assessee. The ground Nos. 1 to 3 of the appeal of assessee and ground No. 1 of the appeal of the Revenue, are accordingly allowed for statistical purposes".

*Therefore, considering the facts and circumstances of the case, judicial precedence on this issue, the addition made by Assessing Officer may be sustained."*

10.2 In the rejoinder, the learned counsel for the assessee has submitted that observation of the Tribunal (supra) referred by the ld DR, is merely *orbiter dicta* and not the ratio of the said decision. The relevant submission of the ld counsel is reproduced as under:

**2. As regards Para 7.5 to 7.9 of the Department's reply:**

*In para 7.5 to 7.9, the Ld. DR has made submissions on the Assessee' s proposition that position of own funds should be considered on the Balance Sheet date and not on the date of investment. In doing so, we find that the Ld. DR has got nothing to say on the elaborate discussion made at Page no. 4-5 of the Limited Written Submissions considering decision of Hon'ble Supreme Court in case of South India Bank (438 ITR 1), decision of Hon'ble Bombay High Court in case of CIT v. Reliance Utilities & Power Limited (313 ITR 340) and the decision of the Hon'ble Bombay High Court in the case of Bombay Dyeing & Mfg. Co. Ltd (ITA No. 2182 & 2140/ Mum/ 2000). In para 7.7, it seems that the Ld. DR has completely lost sight of the following factual aspects discussed in Reliance Utility & Power Limited (supra):*



5.....

*It was also pointed out that considering the balance sheet for the year ending 31st January, 2000 the availability of interest-free fund was as under :*

<i>Share capital</i>	<i>180.00</i>
<i>Reserves &amp; Surplus</i>	<i>120.80</i>
<i>Depreciation reserves</i>	<i>95.39</i>
<i>Total interest-free fund</i>	<i>398.19</i>

*It was, therefore, submitted that from the analysis of balance sheet as on 31-3-2000 the respondent had enough interest-free funds at its disposal for making investment. In the light of the above material the CIT (Appeals) held that it agreed with the contention advanced by the assessee that they had enough interest-free fund at its disposal for investment and accordingly deleted the addition of Rs. 4,40,00,000 made by the Assessing Officer and directed him to allow the same under section 36(1)(iti) of the Income-tax Act."*

*In Para 7.9, the Ld. DR has made reference to para 10 of Hon'ble Tribunal's order in ITA no. 3249/2018 and 3501/2018. The following portion in the para 10 of Hon'ble Tribunal's order is highlighted by the Ld. DR:*

*"Further, as far as the contention of the Assessee that funds and interest free funds are more than the investment in tax free assets, the Ld. Counsel of the Assessee was asked to provide the position of the availability of the own funds and interest free funds at the time of investment in those funds rather than availability of the funds in the year under consideration. However, no such details could be made available during the course of the hearing. "*

*In this behalf the Assessee most humbly submits that these are mere observations of the Hon'ble Tribunal not emanating at all from the orders of the lower authorities because in those years, the question whether the figures as on 'Balance Sheet date' or 'investment date' should be taken, was not before the Hon'ble Tribunal at all. These observations are mere obiter dicta and not the ratio of the said decision and therefore cannot be followed in the year under consideration especially when the issue is settled by the Hon'ble Supreme Court in South Indian Bank (supra) as elaborately explained in our Limited Written Submissions."*

10.3 We have heard rival submission of the parties on the issue in dispute. We agree with the contention of the learned counsel for the



assessee that Ld. CIT(A) is not authorised for restoring the matter back to the Assessing Officer as per the provisions of the Act. We note that in identical circumstances the Tribunal in ITA No. 3249/2018 and 3501/2018 for AY 2014-15, where the Ld. CIT(A) directed the Assessing Officer for verification of the availability of the interest free funds , has set-aside the finding of ld CIT(A) and restored the matter back to the file of the Ld. CIT(A) for deciding afresh . Therefore, respectfully following the finding of the Tribunal (supra), we feel it appropriate to restore this issue back to the file of the Ld. CIT(A) for verifying availability of the interest-free funds in the light of the decisions of the Hon'ble jurisdiction High Court in the case of CIT Vs Reliance Utilities and Power Ltd 313 ITR 340 and CIT vs HDFC bank Ltd 366 ITR 505 (bom) and decision of the Hon'ble Supreme Court in the case of Maxopp investment Ltd (supra) and other decisions of the Hon'ble Supreme Court. The ground No. II of the appeal of the assessee is allowed for statistical purposes.

11. In ground no. IV, the assessee has raised the issue that no disallowance under section 14A could be made in respect of the securities held as stock-in-trade.

11.1 The submissions of the assessee in relation to above propositions are reproduced as under:

*"The Appellant Assessee being in the business of banking, holds all its investments as stock-in-trade. Any income/loss from sale of such investments is charged to tax by the Ld. AO under the head "Profits*



and gains from Business or Profession". Kindly note that no portion of profits is charged to tax under the head 'Capital Gains'.

Reliance is placed on various case laws filed in LPB at Pg. no. 1-217 under Proposition 3 including the decision of Hon'ble Tribunal in Assessee's own case for AY 2008-09 (LPB Pg.

No. 3, Para 6). Out of the above decisions, special attention of the Hon'ble Bench was drawn at the time of hearing to the following judicial precedents, which after considering the decision of Hon'ble SC in *Maxopp Investments Ltd. v. CIT* (402 ITR 640), have held that no 14A disallowance is warranted with respect to investments held as stock-in-trade:

*HDFC Bank Ltd vs. ACIT* (ITA No. 6173/Mum/16) (Decision of AY 2011-12) (Mum T) (Pg. 194 of LPB, Para 3.6)

*Punjab National Bank vs. ACIT* [ITA No. 1519/Del/2016 & ITA No. 7106/Del/2017] (Delhi-Trib.) (Pg 212 of LPB, Para 8)

It will not be out of place to also point out other decisions cited in the ground-wise chart or mentioned during the hearing wherein a similar view has been taken by the co-ordinate bench of the Hon'ble Tribunal.

*HDFC Bank Limited v. ACIT* (ITA No.5672/MUM/2017 & 5660/MUM/2017) (Pg 45-67 of LPB)

"8..... At the same time, we find substantial force in the claim of the ld. A.R that as the assessee is a bank, therefore, investments that are held as stock-in-trade cannot be subjected to disallowance u/s 14A of the Act. Our aforesaid view is fortified by the judgment of the Hon'ble Supreme Court in the case of *Maxopp Investments Ltd. Vs. CIT* (2018) 402 ITR 640 (SC). In its said order, it was observed by the Hon'ble Apex Court that in case of a bank the investments that are held as stock-in-trade cannot be a subject matter of disallowance u/s 14A of the Act. As pointed out by the Id. A.R, and rightly so, the Tribunal in the assessee's own case for A.Y. 2011-12 in ITA No. 6173/Mum/2016, dated 08.07.2020 after relying on the judgment of the Hon'ble Supreme Court in the case of *Maxopp Investments Limited* (supra), had observed that as the assessee was a bank, therefore, investments held as stock in- trade were not to be considered for the purpose of working of disallowance us 14A of the Act, irrespective of the fact that any exempt income was derived from such investments or not. For the sake clarity the observations of the Tribunal are culled out as under:

"3.7 To sum up, we direct the ld. A. O as under:

a. Since, assessee being a bank, investments held as , stock in trade" could not be considered for the purpose of working of disallowance u/s 14A of the Act irrespective of the fact whether exempt income was derived from such investments or not."



*Accordingly, on the same terms we herein direct that the investments that were held by the assessee bank as stock-in-trade shall not be considered by the A.O for the purpose of working of disallowance us 14A of the Act, irrespective of the fact whether exempt income was derived from such investments or not."*

*ACIT v. UCO Bank (ITA No. 1615/Kol/2016) (Kolkata Trib.)*

*"13.... The Revenue's appeal against the judgment of Hon'ble Punjab & Haryana High Court was dismissed by the Hon'ble Supreme Court. We therefore find that qua the assessee engaged in the banking business, the Hon'ble Supreme Court upheld the judgment of the Hon'ble Punjab & Haryana High Court in the case of Pr. CIT Vs State Bank of Patiala (supra) as per which no disallowance u/s 14A is permissible in terms of Rule 8D in case of assessee engaged in banking business. Respectfully following the judgment of the Supreme Court in case of State Bank of Patiala (supra), we direct the Ld. AO to delete the disallowance of Rs.2,90,37,490/- made under Rule 8D(2) (iii). Ground No. 2 of the Revenue's appeal is therefore dismissed and the grounds of assessee's CO are allowed."*

*> Bank of Maharashtra v. DCIT (ITA No. 1370/Pun/2014)*

*"8.3 Both sides heard. The first contention of the assessee is that the investments were held by the assessee as stock in trade, therefore, no disallowance u/s. 14A was required to be made in respect of exempt income earned on shares held as*

*"Stock in trade". The Hon "ble Punjab and Haryana High Court in the case of Pr. Commissioner of Income Tax Vs. State Bank of Patiala (supra) has decided the issue of disallowance us. 14A in respect of expenditure in earning exempt income from shares held as stock in trade.*

*The Hon "ble High Court after placing reliance on the decision of Hon"ble Apex Court in the case of Commissioner of Income Tax Vs. Walfort Share & Stock Brokers (P) Ltd. reported as 326 ITR 1 held that that no disallowance u/s. 14A is to be made where the shares are held as stock in trade. For the sake of completeness relevant extract of the judgment is reproduced here-in-below :*

*"26. What is of vital importance in the above judgment are the observations emphasised by us. Each of them expressly states that what is disallowed is expenditure incurred to "earn" exempt income. The words "in relation to" in section 14A must be construed accordingly. Thus, the words "in relation to" apply to earning exempt income. The importance of the observation is this. We have held that the securities in question constituted the assessee's stockin- trade and the income that arises on account of the purchase and sale of the securities is its business income and is brought to tax as such. That income is not exempt from tax and, therefore, the expenditure incurred in relation thereto does not fall within the ambit of section 14A. Now, the dividend and interest are income. The question then is whether the*



assessee can be said to have incurred any expenditure at all or any part of the said expenditure in respect of the exempt income viz. dividend and interest that arose out of the securities that constituted the assessee's stock-in-trade. The answer must be in the negative. The purpose of the purchase of the said securities was not to earn income arising therefrom, namely, dividend and interest, but to earn profits from trading in i.e. purchasing and selling the same. It is axiomatic, therefore, that the entire expenditure including administrative costs was incurred for the purchase and sale of the stock-in-trade and, therefore, towards earning the business income from the trading activity of purchasing and selling the securities. Irrespective of whether the securities yielded any income arising therefrom, such as, dividend or interest, no expenditure was incurred in relation to the same."

8.4 The Hon'ble Apex Court in the case of *Maxopp Investment Ltd. Vs. Commissioner of Income Tax (supra)* has approved the judgment rendered in the case of *Pr. Commissioner of Income Tax Is. State Bank of Patiala (supra)*. Therefore, in view of the law settled by the Hon'ble Ape Court, no disallowance w/s. 144 is warranted in respect of shares held by the assessee as stock in trade."

*M/s. The Karur Vysya Bank Ltd. v. ACIT (ITA No. 902, 903, 905 & 907/Chny/2010 and ITA No. 930 & 931/Chny/2011)*

"5. The Ld.DR, Mr. AR.V.Sreenivasan, Addl. CIT, referring to the decision of the Hon'ble Supreme Court in the case of *Maxopp Investment Ltd. v. CIT*; reported in [2018/ 91 taxman.com 154 (SC), more particularly, Para Nos. 38-41 of the said judgment, submitted that the Hon'ble Supreme Court clearly held that even if in a case of investments held as stock in trade, the moment assessee earns exempt income proportionate expenses relatable to exempt income and taxable income needs to be apportioned. Although, the Hon'ble Supreme Court in the above case held that proportionate expenses need to be disallowed, in a case, dividend income earned from investments, which are held as stock in trade in the case of latest judgment of the Hon'ble Supreme Court in the case of *South Indian Bank Ltd. v. CIT (supra)*, this issue has not been considered, and thus, argued that even in case of banking companies, provisions of Sec. 144 of the Act, are applicable and accordingly, expenses relatable to exempt income needs to be disallowed.

6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The solitary issue that came up for our consideration from all these appeals filed by the assessee relates to disallowance of expenditure relatable to exempt income us. 144 of the Act. We find that the issue is squarely covered in favour of the assessee by the decision of ITAT, Chennai Benches in the assessee's own case for AY 2013-14, where the Tribunal by following the decision of the Hon'ble Supreme Court in the case of *South Indian Bank Ltd. v. CIT (supra)* held that shares & securities held by the bank or guarantor and income received for such shares & securities must be considered as business income, and



*consequently, provisions of Sec. 144 of the Act, would not be attracted to such income. "*

*In view of the above, it is most humbly submitted that, the view of the Learned Commissioner of Income-tax (Appeal) [(\*the Ld. CIT(A)] is contrary to the above well-settled law. All the above Tribunal Benches have decided the issue after duly considering the decision of the Hon'ble Supreme Court in Maxopp Investment Ltd (402 ITR 640), South Indian Bank Ltd. (438 ITR 1), Nawanshahar Central Co-op Bank Ltd (289 ITR 6) and Hon'ble Punjab and Haryana High Court in case of State Bank of Patiala (391 ITR 218), and other relevant case laws.*

*The Appellant Assessee, therefore, submits that disallowance u/s 14A of the Act be deleted in its entirety as the Appellant Assessee is a Bank that holds all securities as stock-in-trade."*

11.2 The learned DR however has opposed the submission of the assessee and stated that in view of the decision of the Hon'ble Supreme Court in the case of Maxopp investment ltd (supra), the dominant purpose theory has been rejected and where both taxable and non-taxable income has been earned from securities including stock-in-trade, expenses have to be apportioned toward taxable and non taxable income earned from such securities in proportion of the taxable and non-taxable income earned. The relevant submission of the learned DR reproduced as under:

*7.3 It may be appreciated that the reliance placed by the assessee on the decision of Hon'ble apex court in the case of M/s Maxopp Investment as mentioned supra is completely misplaced.*

*In such decision, the Hon'ble apex Court as made it clear that" the dominant intention" of assessee to hold the investment whether business asset or otherwise is not definite factor for applicability of section 14-A. For the sake of reference the inference drawn by the Hon'ble apex court in the case of M/s Maxopp Investment as mentioned supra is reproduced as under-*

*"34. Having clarified the aforesaid position, the first and foremost issue that falls for consideration is as to whether the dominant purpose test, which is pressed into service by the assessee would apply while interpreting Section 14A of the Act or we have to go by the theory of apportionment. We are of the opinion that the dominant purpose for which the investment into shares is made by an assessee*



may not be relevant. No doubt, the assessee like Maxopp Investment Limited may have made the investment in order to gain control of the investee company. However, that does not appear to be a relevant factor in determining the issue at hand. Fact remains that such dividend income is non-taxable. In this scenario, if expenditure is incurred on earning the dividend income, that much of the expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business expenditure. Keeping this objective behind Section 14A of the Act in mind, the said provision has to be interpreted, particularly, the word 'in relation to the income' that does not form part of total income. Considered in this hue, the principle of apportionment of expenses comes into play as that is the principle which is engrained in Section 14A of the Act. This is so held in *Walfort Share & Stock Brokers (P.) Ltd.*, relevant passage whereof is already reproduced above, for the sake of continuity of discussion, we would like to quote the following few lines therefrom.

"The next phrase is, "in relation to income which does not form part of total income under the Act". It means that if an income does not form part of total income, then the related expenditure is outside the ambit of the applicability of section 14A..

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*The theory of apportionment of expenditure between taxable and non-taxable has, in principle, been now widened under section 14A."*

35. The Delhi High Court, therefore, correctly observed that prior to introduction of Section 14A of the Act, the law was that when an assessee had a composite and indivisible business which had elements of both taxable and non-taxable income, the entire expenditure in respect of said business elements of both taxable and non-taxable, the principle of apportionment of the expenditure relating to the non-taxable income did not apply. The principle of apportionment was made applicable where the business was divisible. It is to find a cure to the aforesaid problem that the Legislature has not only inserted Section 14A by the Finance (Amendment) Act, 2001 but also made it retrospective, i.e., 1962 when the Income Tax Act itself came into force. The aforesaid intent was expressed loudly and clearly in the Memorandum explaining the provisions of the Finance Bill, 2001. We, thus, agree with the view taken by the Delhi High Court, and are not inclined to accept the opinion of Punjab & Haryana High Court which went by dominant purpose theory. The aforesaid reasoning would be applicable in cases where shares are held as investment in the investee company, may be for the purpose of having controlling interest therein. On that reasoning, appeals of Maxopp Investment Limited as well as similar cases where shares were purchased by the assesseees to have controlling interest in the investee companies have to fail and are, therefore, dismissed.

36. There is yet another aspect which still needs to be looked into. What happens when the shares are held as 'stock-in-trade' and not as



'investment', particularly, by the banks? On this specific aspect, CBDT has issued circular No. 18/2015 dated November 02, 2015.

37. This Circular has already been reproduced in Para 19 above. This Circular takes note of the judgment of this Court in Nawanshahar case wherein it is held that investments made by a banking concern are part of the business or banking. Therefore, the income arises from such investments is attributable to business of banking falling under the head 'profits and gains of business and profession'. On that basis, the Circular contains the decision of the Board that no appeal would be filed on this ground by the officers of the Department and if the appeals are already filed, they should be withdrawn. A reading of this circular would make it clear that the issue was as to whether income by way of interest on securities shall be chargeable to income tax under the head 'income from other sources' or it is to fall under the head 'profits and gains of business and profession'. The Board, going by the decision of this Court in Nawanshahar case, clarified that it has to be treated as income falling under the head 'profits and gains of business and profession'. The Board also went to the extent of saying that this would not be limited only to co-operative societies/Banks claiming deduction under Section 80P(2)(a)(i) of the Act but would also be applicable to all banks/commercial banks, to which Banking Regulation Act, 1949 applies.

38. From this, Punjab and Haryana High Court pointed out that this circular carves out a distinction between 'stock-in-trade' and 'investment' and provides that if the motive behind purchase and sale of shares is to earn profit, then the same would be treated as trading profit and if the object is to derive income by way of dividend then the profit would be said to have accrued from investment. To this extent, the High Court may be correct. At the same time, we do not agree with the test of dominant intention applied by the Punjab and Haryana High Court, which we have already discarded. In that event, the question is as to on what basis those cases are to be decided where the shares of other companies are purchased by the assesseees as 'stock-in-trade' and not as 'investment'. We proceed to discuss this aspect hereinafter.

39. In those cases, where shares are held as stock-in-trade, the main purpose is to trade in those shares and earn profits therefrom. However, we are not concerned with those profits which would naturally be treated as 'income' under the head 'profits and gains from business and profession'. What happens is that, in the process, when the shares are held as 'stock-in-trade', certain dividend is also earned, though incidentally, which is also an income. However, by virtue of Section 10 (34) of the Act, this dividend income is not to be included in the total income and is exempt from tax. This triggers the applicability of Section 14A of the Act which is based on the theory of apportionment of expenditure between taxable and non-taxable income as held in Walfort Share & Stock Brokers (P.) Ltd. case. Therefore, to that extent, depending upon the facts of each case, the



*expenditure incurred in acquiring those shares will have to be apportioned.*

*40. We note from the facts in the State Bank of Patiala cases that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8D of the Rules and holding that section 14A of the Act would be applicable. In spite of this exercise of apportionment of expenditure carried out by the AO, CIT(A) disallowed the entire deduction of expenditure. That view of the CIT(A) was clearly untenable and rightly set aside by the ITAT. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of the ITAT, though we are not subscribing to the theory of dominant intention applied by the High Court. It is to be kept in mind that in those cases where shares are held as 'stock-in-trade', it becomes a business activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits. The situation here is, therefore, different from the case like Maxopp Investment Ltd. where the assessee would continue to hold those shares as it wants to retain control over the investee company. In that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee. In contrast, where the shares are held as stock-in-trade, this may not be necessarily a situation. The main purpose is to liquidate those shares whenever the share price goes up in order to earn profits. In the result, the appeals filed by the Revenue challenging the judgment of the Punjab and Haryana High Court in State Bank of Patiala also fail, though law in this respect has been clarified hereinabove"*

*7.4 It may be appreciated that in the case of M/s Maxopp Investment as mentioned supra, the Hon'ble Apex Court has made it very clear in an ambiguous terms that the actual expenditure incurred by the assessee which is debited to the profit and loss account and related to the exempted income earned, qualifies for disallowance under section 14-A. Also, it is inferred by the Hon'ble Supreme Court that even if the expenditure actually incurred by the assessee has a casual connection with respect to the exempted income earned, the same qualifies for disallowance under section 14-A. For the sake of reference the relevant paragraphs from the order of the Hon'ble Supreme Court are reproduced as under-*

*"17. Likewise, explaining the meaning of 'expenditure incurred', the High Court agreed that this expression would mean incurring of actual expenditure and not to some imagined expenditure. At the same time, observed the High Court, the 'actual' expenditure that is in*



contemplation under section 14A(1) of the said Act is the 'actual' expenditure in relation to or in connection with or pertaining to exempt income. The corollary to this is that if no expenditure is incurred in relation to the exempt income, no disallowance can be made under section 14A of the said Act. On the basis of the aforesaid discussion, the High Court answered the question formulated by it in the affirmative.

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32. In the first instance, it needs to be recognised that as per section 14A(1) of the Act, deduction of that expenditure is not to be allowed which has been incurred by the assessee "in relation to income which does not form part of the total income under this Act". Axiomatically, it is that expenditure alone which has been incurred in relation to the income which is includible in total income that has to be disallowed. If an expenditure incurred has no causal connection with the exempted income, then such an expenditure would obviously be treated as not related to the income that is exempted from tax, and such expenditure would be allowed as business expenditure. To put it differently, such expenditure would then be considered as incurred in respect of other income which is to be treated as part of the total income."

11.3 In the rejoinder, the learned counsel for the assessee submitted as under:

"1. As regards Para 7.2 to 7.4 of the Department's reply:

In Para 7.2 to 7.4, the Ld. DR has objected to the Assessee' s Proposition no. 3 - 'No disallowance u/s. 14A of the Act when securities are held as stock-in-trade of the business'. While this issue has been extensively argued, without repeating the arguments, suffice to say that Ld. DR has nothing to say on the decisions cited by the Assessee, which have held that section 14A does not apply to Stock-in-trade, and that too after considering the decision of Hon'ble Supreme Court in case of Maxopp Investments Ltd. v. CIT (402 ITR 640). Kindly refer submissions on Proposition no. 3 on pg. no. 5 of the Limited Written submissions made by the Assessee. In addition to the said submissions, reliance is also placed on the following judicial precedents:

- Central Bank of India Vs AO (NFAC) (ITA No. 235/Mum./2023 dated 25/08/2023) (Mumbai Tribunal)
- PCIT v. Punjab National Bank [2022] 140 taxmann.com 131 (Delhi High Court)

Therefore, if for any reason, Hon'ble Tribunal decides to take a contrary view despite the Tribunal having taken favorable view in Assessee\* s own case, the issue will have to be referred to the Special Bench."



11.4 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The Hon'ble Supreme Court in the case of Maxopp Investment Ltd(supra) has specifically decided the applicability of the provisions of section 14A in case of securities held as stock in trade. The Hon'ble Supreme Court rejected the dominant purpose theory and held that expenses incurred in relation to securities held in stock in trade, have to be apportioned in the ratio of the taxable and non-taxable income earned. The relevant finding of Hon'ble Supreme Court (supra) is reproduced as under:

*“36) There is yet another aspect which still needs to be looked into. What happens when the shares are held as ‘stock-in-trade’ and not as ‘investment’, particularly, by the banks? On this specific aspect, CBDT has issued circular No. 18/2015 dated November 02, 2015.*

*37) This Circular has already been reproduced in Para 19 above. This Circular takes note of the judgment of this Court in Nawanshahar case wherein it is held that investments made by a banking concern are part of the business or banking. Therefore, the income arises from such investments is attributable to business of banking falling under the head ‘profits and gains of business and profession’. On that basis, the Circular contains the decision of the Board that no appeal would be filed on this ground by the officers of the Department and if the appeals are already filed, they should be withdrawn. A reading of this circular would make it clear that the issue was as to whether income by way of interest on securities shall be chargeable to income tax under the head ‘income from other sources’ or it is to fall under the head ‘profits and gains of <http://www.itatonline.org> 37 business and profession’. The Board, going by the decision of this Court in Nawanshahar case, clarified that it has to be treated as income falling under the head ‘profits and gains of business and profession’. The Board also went to the extent of saying that this would not be limited only to co-operative societies/Banks claiming deduction under Section 80P(2)(a)(i) of the Act but would also be applicable to all banks/commercial banks, to which Banking Regulation Act, 1949 applies.*

*38) From this, Punjab and Haryana High Court pointed out that this circular carves out a distinction between ‘stock-in-trade’ and ‘investment’ and provides that if the motive behind purchase and sale of shares is to earn profit, then the same would be treated as trading profit and if the*



object is to derive income by way of dividend then the profit would be said to have accrued from investment. To this extent, the High Court may be correct. At the same time, we do not agree with the test of dominant intention applied by the Punjab and Haryana High Court, which we have already discarded. In that event, the question is as to on what basis those cases are to be decided where the shares of other companies are purchased by the assessee as 'stock-in-trade' and not as 'investment'. We proceed to discuss this aspect hereinafter.

**39) In those cases, where shares are held as stock-in-trade, the main purpose is to trade in those shares and earn profits therefrom. However, we are not concerned with those profits which would naturally be treated as 'income' under the head 'profits and gains from business and profession'. What happens is that, in the process, when the shares are held as 'stock-in-trade', certain dividend is also earned, though incidentally, which is also an income. However, by virtue of Section 10 (34) of the Act, this dividend income is not to be included in the total income and is exempt from tax. This triggers the applicability of Section 14A of the Act which is based on the theory of apportionment of expenditure between taxable and non-taxable income as held in Walfort Share and Stock Brokers P Ltd. case. Therefore, to that extent, depending upon the facts of each case, the expenditure incurred in acquiring those shares will have to be apportioned.**

40) We note from the facts in the State Bank of Patiala cases that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8D of the Rules and holding that section 14A of the Act would be applicable. **In spite of this exercise of apportionment of expenditure carried out by the AO, CIT(A) disallowed the entire deduction of expenditure.** That view of the CIT(A) was clearly untenable and rightly set aside by the ITAT. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of the ITAT, though we are not subscribing to the theory of dominant intention applied by the High Court. It is to be kept in mind that in those cases where shares are held as 'stock-in-trade', it becomes a business activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits. The situation here is, therefore, different from the case like Maxopp Investment Ltd. where the assessee would continue to hold those shares as it wants to retain control over the investee company. In that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee. In contrast, where the shares are held as stock-in-trade, this may not be necessarily a situation. The main purpose is to liquidate those



*shares whenever the share price goes up in order to earn profits. In the result, the appeals filed by the Revenue challenging the judgment of the Punjab and Haryana High Court in State Bank of Patiala also fail, though law in this respect has been clarified hereinabove.”*

11.5 However, according to the assessee, the Coordinate bench of Tribunal in the case of HDFC Bank Ltd Vs ACIT (ITA No. 6173/Mum/2016) and Punjab National Bank Vs ACIT ( ITA No. 1519/Del/2016) has concluded that investment that are held as a stock-in-trade cannot be subjected to disallowance under section 14A of the Act in view of the decision of the Hon’ble Supreme Court in the case of Maxopp Investment Ltd(supra). The ld Counsel contended that conclusion of the Tribunal (supra) is that disallowance in respect of the stock-in-trade is not applicable in case of the banks. The learned counsel before us therefore submitted that in case the Bench is not agreed with his proposal, than matter might be referred to the Special Bench. However, we do not agree with the above proposition of the learned counsel for the assessee as the theory of the dominant purpose for which the securities were held has been rejected by the Hon’ble Supreme Court the case of Maxopp investment Ltd (supra) in unambiguous terms and clearly laid down that in case of securities held as stock-in-trade, theory of apportionment of expenses has to be applied and according to which the expenses for incurring non-taxable income from such securities are only to be subjected to disallowance under section 14A of the Act and not the expenses incurred for earning taxable business income. The Coordinate bench of the Tribunal in the case of **Gajanand Enterprises in ITA No.5599/Mum/2018** for



Assessment Year: 2014-15 has following the decision of the Hon'ble Supreme Court in the case of Maxopp investment Ltd (supra) has held that

*"7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial Page | 4 ITA No.5599/Mum/2018 A.Y. 2014-15 Gajanan Enterprises Vs. ACIT, Circle 17(1) pronouncements relied upon by them. Admittedly, the exempt income yielding shares were held by the assessee as „stock-in-trade“. Although, the opening stock of inventories as on 01.04.2013 was reflected at Rs. 21,46,64,955/-, however, the same as on 31.03.2014 stood reduced to nil. In sum and substance, the stock of shares which were held by the assessee as on 01.04.2013 were liquidated during the year under consideration, and no part of the same was reflected in its „closing stock“ as on 31.03.2014. However, in our considered view, the aforesaid factual position would principally have no bearing on the computing of the disallowance under Sec. 14A r.w. Rule 8D. We find that it is the claim of the Ld. A.R that as the exempt dividend income yielding shares were held by the assessee company as „stock-in-trade“, therefore, no disallowance under Sec. 14A r.w. Rule 8D was called for in its case. In our considered view, the aforesaid contention of the Ld. A.R is absolutely misconceived and cannot be accepted. On a perusal of judgment of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT, New Delhi, we find, that the Hon'ble Apex Court had disapproved the dominant purpose test that was pressed into service by the assessee for the purpose of interpreting the scope and gamut of Sec. 14A of the Act. Infact, the Hon'ble Court had subscribed to the theory of the apportionment which was made available by the legislature by inserting Sec. 14A vide the Finance (Amendment) Act, 2001 with retrospective affect from 01.04.1962. In the aforesaid judgment, the Hon'ble Apex Court had inter alia observed that where shares are held by an assessee as stock-in-trade, the earning of exempt dividend income on the same would trigger the applicability of Sec. 14A of the Act. Accordingly, the Hon'ble Apex Court had „set aside“ the dominant purpose test which was relied upon by the High Court. For the sake of clarity, the observations of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. (supra) are reproduced as under :*

*"39. In those cases, where shares are held as stock-in-trade, the main purpose is to trade in those shares and earn profits therefrom. However, we are not concerned with those profits which would naturally be treated as „income“ under the head „profits and gains from business and profession“. What happens is that, in the process, when the shares are held as „stock-in-trade“, certain dividend is also earned, though incidentally, which is also an income. However by virtue of Section 10(34) of the Act, this dividend income is not to be included in the total income and is exempt from tax. This triggers the applicability of Section 14A of the Act which is based on the theory of apportionment of expenditure between taxable and non-taxable income as held in Walfort Share and Stock*



*Brokers P Ltd. case. Therefore, to that extent, depending upon the facts of each case, the expenditure incurred in acquiring those shares will have to be apportioned."*

*Accordingly, in terms of our aforesaid observations, we are of the considered view that no infirmity emerges from the order the CIT(A) who after relying on the judgment of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT, New Delhi (2018) 402 ITR 640(SC), had rightly concluded that the shares which were held by the assessee as stock-in-trade were to be considered for the purpose of computing the disallowance under Sec. 14A of the Act. As regards the reliance placed by the Ld. A.R on the order of a coordinate bench of the ITAT, Delhi in the case of Nice Bombay Transport (P) Ltd. Vs. ACIT(OSD), New Delhi (2019) 175 ITD 684 (Del), the same in our considered view, not being consistent with the view taken by the Hon'ble Apex Court in the case of Maxopp Investment Ltd. (supra), would thus not be binding as a judicial precedent. Insofar the reliance placed by the Ld. A.R on the judgment of the Hon'ble High Court of Delhi in the case of CIT Vs. Alpha G. Corp. Development Ltd. (ITA No. 599/2018, dated 25.04.2019), the same being distinguishable on facts would not assist the case of the assessee before us. Also, the order of the ITAT "F" Bench, Mumbai in the case of M/s Vora Financial Services P. Ltd. Vs. ACIT-2(3)(1), Mumbai, wherein an adhoc disallowance had been preferred as against that worked out under Sec. 14A r.w. Rule 8D(2), having been rendered without considering the aforesaid judgment of the Hon'ble Apex Court in the case of Maxopp Investment Ltd. (supra) would also not be binding. We thus finding no infirmity in the order of the CIT(A) who had rightly sustained the disallowance computed by the A.O under Sec. 14A r.w. Rule 8D(2)(iii), therein uphold the same.*

*8. Resultantly, the appeal filed by the assessee is dismissed."*

11.6 The Coordinate bench (supra) in the above case has rejected the decision of the other benches of Tribunal, which are inconsistent with the ratio of Hon'ble Supreme Court in the case of Maxopp investment Ltd(supra). The decision cited by the learned counsel for the assessee before us also being inconsistent with the ratio of the Hon'ble Supreme Court in the case of Maxopp investment Ltd(supra), same are *per-incuriam* to that extent and therefore, we are not required to follow the same as precedent. Accordingly, the prayer of the learned counsel for the assessee to refer the matter to the special bench is rejected.



11.7 In view of the above, the assessee has to provide details of taxable and non-taxable income earned from the securities held as stock-in-trade and thereafter apportion the expenses incurred in relation to such securities in the ratio of taxable and non-taxable income earned from those securities and thereafter to consider the proportion of the expenses related to non-taxable or exempted income for disallowance under section 14A of the Act. Therefore, we feel it appropriate to restore this issue back to the file of the Assessing Officer for necessary verification and deciding afresh. The ground No. IV of the appeal of the assessee is accordingly allowed for statistical purposes.

12. In ground No. V, the assessee has raised the issue that only securities yielding dividend income should be considered for computing disallowance under section 14A of the Act.

12.1 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. It is undisputed that securities which are eligible for earning exempted income has only to be considered for the purpose of disallowance under section 14A of the Act. The Hon'ble Delhi High Court in the case of **ACB India Ltd. vs. ACIT 374 ITR 108 (Del.)** held that investment which do not give tax exempt income have to be excluded for computing the disallowance u/s 14A of the Act. Accordingly, we restore this issue also to the file of the Assessing Officer for deciding in accordance with law after verifying various



securities appearing in the balance sheet of the assessee. The ground no. V of the appeal of the assessee is accordingly, allowed for statistical purposes.

13. In ground No. VI, the assessee is praying for restricting the disallowance to the extent of *suo-motu* disallowance made by the assessee.

13.1 We have heard rival submission of the parties on the issue in dispute. We are of the opinion that with effect from assessment year 2008-09, once the Assessing Officer is dissatisfied with the computation of claim of disallowance of expenses in terms of section 14A of the Act, the Assessing Officer is required to invoke rule 8D of 'Rules'. Since in the case, Assessing Officer after recording dissatisfaction to the claim of the assessee, has invoked rule 8D of the 'Rules', , therefore we do not find any infirmity in the same and the prayer of the assessee for restricting the disallowance to the extent of *suo-motu* disallowance is rejected. The ground No. VI of the assessee is accordingly dismissed.

14. In Additional ground, the assessee has raised contention that Income-tax has already been paid by the securitisation trust on the income from PTC, which has been distributed to the assessee as per the provisions of section 115TA of the Act, therefore provisions of section 14A cannot apply to PTC.



14.1 The written submissions filed by the learned counsel for the assessee on the issue in dispute are reproduced as under:

*“The Assessee has received income of Rs. 237,66,81,445/- on the PTCs where tax on the same was paid by the securitization trust u/s 115TA and hence no tax liability arises in the hands of the Appellant Assessee as per section 10(35A) of the Act.*

*A Securitization trust is a trust that is set up for the purposes of acquiring receivables from banks/financial institutions. The money required for the acquisition of such receivables is collected from various investors by the trustee by way of issuance of a security known as Pass-Through certificate (PTC). These investors are themselves the beneficiaries of the trust in as much as all income received by the trust is for the benefit of these investors in the ratio in which they have made investments in the PTCs.*

*The Appellant Assessee, in the course of its normal banking business, acquires PCs from such securitization trust. A PTC is essentially a securitized debt instrument whereby the investor in PTC gets an undivided interest in the underlying receivable acquired by the trust from a bank/financial instrument.*

*During the captioned year, the Appellant Assessee has received certain income by way of distribution of its share of income by the securitization trust. Under the scheme of the Act, the income of the securitization trust is taxed in the hands of the trustee u/s 115TA of the Act and is not taxed in the hands of the beneficiary.*

*The Ld. AO has considered PTC as an investment yielding exempt income and thereby included the same in computing disallowance u/s 14A r.w.r 8D of the Act.*

*It is the Appellant Assessee's submission that PTC is an instrument which signifies the undivided interest of the investor in the underlying receivable acquired by the securitization trust and that the income from such receivable is duly taxed in the hands of the trustee and only the net amount is distributed to the investor (beneficiary). Since the underlying income has suffered tax, the Appellant Assessee submits that PTC cannot be regarded as an investment yielding exempt income and therefore the same cannot be included as an exempt investment for the purpose of section 14A r.w.r 8D of the Act. The basis on which Appellant Assessee contends as above is as follows:*

- *Section 115TA of the Act provides that any income distributed to an investor by a securitization trust shall be liable to levy of additional income tax in the hands of the securitization trust at the rate of 25% of the distributed income if such income is paid to a person being an individual or Hindu undivided family. The additional income tax shall be levied at the rate of 30%, if such distributed income is paid to a person other than an individual or Hindu*



undivided family. However, no additional income tax shall be levied if the distributed income is paid to any person who is exempt under the Act.

- Assessee being a Bank, the additional income tax shall be levied at the rate of 30%. It can be seen that the Section 115TA of the Act provides for different rates for different Assesseees, which substantiates that the tax paid by trust u/s 115TA of the Act is the tax paid on behalf of the Assessee. The taxability in the hands of the Securitisation trust.
- Thus, the interest income of the Assessee, though not taxed in the hands of the Assessee (investor) directly, is taxed in the hands of the Trust. Since the income has suffered tax, the same cannot be termed as exempt income, rendering the provisions of section 14A inapplicable.
- Further, the Assessee is aware of the argument that when a company pays Dividend Distribution Tax, it pays tax as a company and not on behalf of the shareholder. Since, a company and shareholder are different entities, a shareholder cannot claim that dividend has suffered tax. It has been held by Hon'ble SC in case of *Bacha F. Guzdar* (104 of 1954) that shareholder does not have interest in any of the assets of the company. That being the legal position, a shareholder cannot claim tax payable on dividend as his tax triggering the provisions of section 14A of the Act.
- Assessee's case being that of Trust, the above argument does not apply. A Trustee is a mere Representative Assessee of a Trust as per the provisions of section, 160(iv) of the Act. A Trustee pays tax as a Representative Assessee of the beneficiary. However, a Company is not a representative Assessee of a shareholder. Therefore, the argument that where dividend which is exempt in the hands of the shareholder has already suffered DDT was not accepted and applicability of section 14A was rightly upheld. However, the said argument cannot be applied in case of the Assessee where trustee pays tax as a Representative Assessee.
- It is true that section 10(35A) of the Act apparently provides an exemption on income distributed by the trust and therefore, at first blush, the income distributed by the securitization trust to a beneficiary, is an exempt income. However, as mentioned above, a trustee is a mere representative assessee of the beneficiary and therefore any tax paid by the trustee is a tax paid on behalf of the beneficiary as submitted above. It is a settled law that the same income can never be taxed twice. Once an income is taxed in the hand of the trustee it can never be taxed again in the hands of the beneficiary. This has been made clear in the law itself by a statutory enactment u/s 166 of the Act. It is also held in several decisions that if an income is taxed in the hands of the trustee, the income distributed to the beneficiary can never be taxed once again. This is against the rule which prohibits double taxation of the same income. See for e.g. the following decisions:
  - *Trustees of Chaturbuj Raghavji Trust v. CIT* (50 ITR 693) (Bom. HC)
  - *CIT v. Smt. Indramma* (25 taxmann.com 259) (Kar. HC)
  - *CIT v. Alfred Herbert (India) (P.) Ltd.* (159 ITR 583) (Cal. HC)



- *Barium Chemicals Ltd. v. ITO (100 ITR 637) (Andhra. HC)*
- *CIT v. Dr. David Joseph (214 ITR 658) (Ker: HC)*

*In view of the above-mentioned legal position, the provision of section 10(35A) of the Act can be regarded as merely clarificatory in nature and it is submitted that even in absence of section 10(35A) of the Act, the position would have been the same, namely that the income is taxed in the hands of the trustee u/s 115TA of the Act, therefore the beneficiary should not have been taxed in law. It is not unknown in the Indian tax history that certain tax provisions are held to be made out of abundant caution to allay fears in the minds of taxpayers as regards taxability of certain income. See for example one of the early decisions was that of as held in Madurai Mills Co. Ltd (89 ITR 45) (SC) wherein the provision of section 12B of the Act was held to be merely clarificatory and enacted by the legislature only to allay fears as regards to taxability of income.*

*In view of the foregoing, income on PTs is not be considered for the purpose of section 14A of the Act since the same has already suffered tax in the hands of the Trustee on behalf of the beneficiary and hence cannot be said to be exempt in the hands of the Assessee.”*

#### 14.2 The learned departmental representative on the other hand submitted as under:

*“In this regard, it is submitted that the provisions of section 14-A mandate that any expenditure incurred by the assessee relating to the income not forming part of total income shall be disallowed. There is no distinction between business income or otherwise. There is also no distinction with respect of the incidence of taxes by the payer to the payee. Only one condition is prescribed by the Income tax Act viz., the expenditure incurred by the assessee shall be related to or attributable to the 'income not forming part of total income.*

*Also, it is admitted that the impugned income claimed by the assessee from passthrough certificates is 'income not forming part of total income' under section 10(35 A) and such factual matrix is not disputed. Therefore, it is not material whether such income is earned by the assessee during the course of normal banking business or from the investments.*

*Further, it is an admitted fact that the securitization trust is a distinct entity, it has its own, PAN and it is also legally bound to file its return of income.*

*Therefore, the Appellant assessee is not related to the income of the trust directly and if the trust has distributed the income accrued to assessee on its investment. It is admitted fact that the trust has distributed income to the assessee on investment made by the assessee in the respective trust. Therefore, the income received by the assessee is exempted in the hands of the assessee. As such, the expenditure incurred by the assessee in relation to the*



*investment made in the securitisation trust attracts provisions of section 14 -A of the act.”*

14.3 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The PTCs are securities issued to investors against mortgaged backed loans of non-banking finance companies and banks. These loans are securitized and sold to an investment entity, such as a mutual fund etc, thereby transferring the future cash flows to the buyer of the security for a price.

14.4 Prior to 01/06/2016, income distributed by a securitisation trust was taxable in the hands of the trust in terms of section 115 TA of the Act, however, w.e.f 1/4/2017, it has been made taxable only in the hand of the investor in terms of section 115 TCA of the Act. For ready reference, said sections are reproduced as under:

*“115TA. Tax on distributed income to investors.—(1) Notwithstanding anything contained in any other provisions of the Act, any amount of income distributed by the securitisation trust to its investors shall be chargeable to tax and such securitisation trust shall be liable to pay additional income-tax on such distributed income at the rate of—*

- (i) twenty-five per cent on income distributed to any person being an individual or a Hindu undivided family;*
- (ii) thirty per cent on income distributed to any other person:*

*Provided that nothing contained in this sub-section shall apply in respect of any income distributed by the securitisation trust to any person in whose case income, irrespective of its nature and source, is not chargeable to tax under the Act.*

*(2) The person responsible for making payment of the income distributed by the securitisation trust shall be liable to pay tax to the credit of the Central Government within fourteen days from the date of distribution or payment of such income, whichever is earlier.*

*(3) The person responsible for making payment of the income distributed by the securitisation trust shall, on or before the 15th day of September in each year, furnish to the prescribed income-tax*



authority, a statement in the prescribed form and verified in the prescribed manner, giving the details of the amount of income distributed to investors during the previous year, the tax paid thereon and such other relevant details, as may be prescribed.

(4) No deduction under any other provisions of this Act shall be allowed to the securitisation trust in respect of the income which has been charged to tax under sub-section (1).

(5) Nothing contained in this section shall apply in respect of any income distributed by a securitization to its investors on or after the 1<sup>st</sup> day of June, 2016.”

“115TCA. Tax on income from securitisation trusts.—(1) Notwithstanding anything contained in this Act, any income accruing or arising to, or received by, a person, being an investor of a securitisation trust, out of investments made in the securitisation trust, shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to, or received by, such person, had the investments by the securitisation trust been made directly by him.

(2) The income paid or credited by the securitisation trust shall be deemed to be of the same nature and in the same proportion in the hands of the person referred to in sub-section (1), as if it had been received by, or had accrued or arisen to, the securitisation trust during the previous year.

(3) The income accruing or arising to, or received by, the securitisation trust, during a previous year, if not paid or credited to the person referred to in sub-section (1), shall be deemed to have been credited to the account of the said person on the last day of the previous year in the same proportion in which such person would have been entitled to receive the income had it been paid in the previous year.

(4) The person responsible for crediting or making payment of the income on behalf of securitisation trust and the securitisation trust shall furnish, within such period, as may be prescribed, to the person who is liable to tax in respect of such income and to the prescribed income-tax authority, a statement in such form and verified in such manner, giving details of the nature of the income paid or credited during the previous year and such other relevant details, as may be prescribed.

(5) Any income which has been included in the total income of the person referred to in sub-section (1), in a previous year, on account of it having accrued or arisen in the said previous year, shall not be included in the total income of such person in the previous year in which such income is actually paid to him by the securitisation trust.”.

14.5 In the year under consideration, the income distributed under the provision of section 115TA was exempted in the hands of



recipient as per the provisions of section 10(35A) of the Act. For ready reference, said provision is reproduced as under:

*“(35A) any income by way of distributed income referred to in section 115TA received from a securitisation trust by any person being an investor of the said trust :*

*[Provided that nothing contained in this clause shall apply to any income by way of distributed income referred to in the said section, received on or after the 1st day of June, 2016.]*

*Explanation.-For the purposes of this clause, the expressions "inves-tor" and "securitisation trust" shall have the meanings respectively assigned to them in the Explanation below "[section 115 TCA];”*

14.6 Before us, the learned counsel for the assessee is seeking exclusion of the investment under the PTC for the purpose of the disallowance under section 14A of the Act, for various reasons. **Firstly**, according to him, tax at the rate of 30% on income from such PTCs has been taxed in the hands of the securitisation trust and therefore PTCs are tax exempted investment. Since the income has already suffered tax same in the hand of securitisation trust, same cannot be termed as exempted income for the purpose of section 14A of the Act. **Secondly**, he has distinguished the status of a trust with that of a company and submitted that in the case of the company, the company and the shareholder are different entities, therefore the shareholder cannot claim that the dividend has suffered tax, whereas in the case of the trust, the trustee pays tax, as representative assessee of the beneficiary i.e. assessee. **Thirdly**, he submits that section 10(35A) is only clarificatory in nature and it is settled law that same income can never be taxed twice.



14.7 The above contentions of the learned counsel are not acceptable for the reason that in case of normal trust, it is the settler of the trust , who contribute the trust property for the benefit of beneficiary and trustee(s) are manager of the trust. In the securitisation trust, the investors are making investment in the securitisation trust, and in turn they are receiving the returns in proportion to their investment and thus it is the investment of the investor which is earning them income. For avoiding the same income from taxing twice, the Hon'ble Parliament, has specifically treated the same income as exempted from tax in the hands of the investor under the provisions of section 10(35A) of the Act. The identical situation in case of partnership firms, where as the profit earned by the partnership firm is taxable, but the share of said profit is exempted in the hands of partner under the provisions of section 10(2A) of the Act. The learned counsel submits same income cannot be taxed twice. We may like to clear that for the purpose of disallowance under section 14A of the Act, the expenses which are incurred by the assessee for earning such income are disallowed being the said income exempted in and of the assessee and said income is not taxed twice in the hands of the assessee. The expenses incurred towards receiving share of distribution from securitisation trust i.e. income from PTC are embedded in total expenses debited in profit and loss account of the assessee, which are therefore not eligible for deduction against the taxable income of the assessee, and therefore need to be excluded as per the formula



provided under rule 8D of the rules. In view of the aforesaid discussion, we reject the contention of the assessee for not considering the investment in PTC for the purpose of disallowance under section 14A of the Act. The additional ground raised by the assessee is accordingly dismissed.

15. The ground no. VII and VIII of the appeal relate to disallowance under section 35D of the Act by the Assessing Officer.

15.1 We have heard rival submissions of the parties on the issue in dispute and perused the relevant material on record. During the financial year 2014-15, the assessee bank raised Rs.2,942 crores through a qualified institutional placement (QIP), in which it allotted equity shares to qualified institutional buyers(QIB). The assessee incurred expenses aggregating to ₹17,24,73,171/- on account of payments to lead managers of the issue and payments to legal consultants and auditors etc. The assessee claimed one fifth of the above amount of ₹17,24,73,171/- as deduction under section 35D of the Act. The assessee relied on the decision in the case of **DCIT Vs Daccan Chronicle Holdings Ltd (ITA No. 1247/Hyd/2014)** to support that shares issued to QIB shall be regarded as public issue, however the Assessing Officer rejected the contention of the assessee for deduction under section 35D and disallowed expenses holding the same being in the nature of capital expenditure. The Ld. CIT(A) also following his predecessor in assessment year 2014-15, upheld the finding of the Assessing



Officer. We find that identical issue has been decided by the Tribunal in assessment year 2014-15 in ITA No. 3239 and 3501/mum/2018, observing as under:

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

*“09. However, claim of the assessee is that the decision of the coordinate bench in A.Y. 2010-11 has categorically decided that assessee is entitled to deduction under Section 35D of the Act and therefore, the decision cannot be revisited and the Tribunal has to follow the same. Coordinate bench has decided this issue as under :-*

*“031. We have carefully considered rival contentions and perused the orders of the lower authorities. According to provisions of section 35D (2) (c) (iv) of the act companies are allowable following deduction:- c) Where the assessee is a company, also expenditure (iv) in connection with the issue, for public subscription, of shares in or debentures of the company, being underwriting commission, brokerage, and charges for drafting, typing, printing, and advertisement of the prospectus;*

*032. So the only issue is whether the issue of shares made by assessee to QIB is “Public subscription of shares” or not. Allotment of shares to QIB can be permitted on “Private Placement basis “or also in “Public Issue”. 033. We find that issue is decided in favour of the assessee in assessee’s own case for Assessment Year 2010-11 in ITA NO. 3497/Mum/2018 dated 14 July 2020 so far the issue was whether QIB is “Public” or not . The co-ordinate Bench in that case considered whether the allottees Qualified Institutional Buyers is “ public” or not. The coordinate Bench following the decision of ITAT in Deccan Chronicle Holdings Ltd. (supra) hold that QIB is “ Public” so deduction under Section 35D of the Act is allowable. It held as under:-*

*“6. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below. The appellant is a banking company. It filed its revised return of*



income for the AY 2010-11 on March 30, 2012 declaring total income at ₹ 7,90,10,18,157/-.

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

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

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

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

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



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

7. We find that during the year 2007-08, the company incurred debenture expenses of ₹ 2.07 crores and QIB issue expenditure of ₹ 8.28 crores, both totalling to ₹ 10.35 crores. The expenditure referred to above of ₹ 10.35 crores was adjusted against the share premium account as per the provision of the Companies Act. However, the expenditure being deferred revenue expenditure falls within the ambit of section 35D read with section 37 of the Income-tax Act which is eligible to be charged to profit and loss account. Accordingly as per the provisions of section 35D of the Income-tax Act, one-fifth of the QIB issue expenditure i.e., ₹ 207 lakhs was written off. Qualified Institutional Buyers (QIBs) are a class of investors as a part of the large investor community and the companies sought for QIB issues because the funds can be raised within a short span. This is an extremely important investment for larger investors and since the buyers are only a class of investors, the issue of shares to QIB have been considered as public issue. The expenses in connection with public issue of shares or debentures of the company are allowable. Reliance is placed on CIT v. Shree Synthetics Ltd. [1986] 162 ITR 819 (MP). Hence on the merits of the issue, the QIB expenditure can be treated as revenue expenditure and eligible for deduction under section 35D of the Income-tax Act is confirmed. Hence on merits of the issue as well as the fact that the same issue has been allowed in the earlier



*years and the Department cannot come upon in appeals in the subsequent years would be the reason to dismiss the Departmental appeal. We confirm the order of the Commissioner of Income-tax (Appeals) with respect to qualified institutional buyers expenses and dismiss the Departmental appeal on this issue. In the result, the Departmental appeal for the assessment years 2007-08 and 2008-09 are dismissed.”*

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

*6.2 Further, we find that the appellant being a listed company is bound by “Listing Agreement”, which provides for the disclosure requirements for the share holding pattern of a listed company. As can be seen therefrom, there are only two categories of shareholders- “promoter/promoter group” and “public”. For the definition of these terms in Clause 35, reference is made to Clause 40A of the Listing Agreement. As can be seen therefrom, Mutual Funds/Financial Institutions which are QIBs are classified under “public shareholding”. The terms are defined in Clause 40A of the SEBI Listing Agreement. Further, the listing agreement takes us to Securities Contracts (Regulation) Rules, 1957 (in short “SCRR”). Also Rule 19(2)(b) and Rule 19A of the SCRR provide that companies are required to maintain minimum public shareholding of 25% in case of first time listing and in case of continuous listing agreement respectively. In this context, we may refer to section 2(d) of SCRR defining the term “public”. It (public) is defined to mean any person other than the promoter, promoter group, subsidiaries and associates of the company. Thus any person other than these four qualify to be considered as public. As can be seen from the list of QIBs to whom shares are issued, the shares are not issued to any of the aforesaid category. Thus QIBs, not being promoters, promoter group, subsidiaries and associates of the company would qualify as “public”.*

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



for QIP, provides that the same must be in compliance with the requirements of public shareholding.

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

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

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

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

010. Coordinate bench while deciding the issue has clearly considered the decision in case of assessee in first year. We do not find there is any finding in the order in the coordinate bench for earlier year whether it was an issue of public subscription or not. This is the basic requirement of that section. **As no evidence was put forth, the issue was set aside for verification whether the expenses were in connection with the issue for ' Public Subscription' or not. The coordinate bench in earlier year allowed claim of the assessee holding that whether QIP is public or not. It did not decide whether it is a 'public subscription' or not.**

011. Any way in these proceedings, we cannot go in to the merits of the case as held by Hon Sc in case of CIT V Reliance Telecom



*Limited 2021] 133 taxmann.com 41 (SC). Further, as we have restored the issue to the file of the LD AO, our observation on the merits, even otherwise, may influence the order of the LD AO in set aside proceedings. Therefore, these grounds of all these MA are dismissed, as on this issue there is no mistake in the order.”*

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

15.2 Thus, respectfully following the finding of the Tribunal the issue in dispute is restored to the file of the Assessing Officer to be decided as per the direction of the Tribunal in assessment year 2014-15 as reproduced above. The ground Nos. VII and VIII of the appeal of the assessee are accordingly allowed for statistical purposes.

16. In ground No. VIIIA (sick), the assessee is aggrieved with the observation of the Ld. CIT(A) with reference to disallowance under section 35D of the Act that those expenses in connection with QIP might not be allowable in view of section 40(a)(i)/(ia) of the Act.

16.1 Before us the learned counsel for the assessee submitted that the Ld. CIT(A) has not decided this issue in dispute and therefore same might be sent back to the Assessing Officer for deciding a fresh. However, we find that the Assessing Officer made no disallowance of QIP expenses on account of non-deduction of tax at source and therefore there was no occasion for the Ld. CIT(A) to adjudicate on the issue. Accordingly, this ground of the appeal of the assessee being infructuous, it is dismissed.



17. The ground No. IX and X of the appeal relate to issue of disallowance of brokerage paid on acquisition of investment which remained unsold at the end of the year.

17.1 In the ground No. IX, the assessee has challenged the finding of the Ld. CIT(A) in restoring the matter back to the Assessing Officer. In ground No. X, the assessee has submitted that investments of the assessee are in the nature of the stock-in-trade and therefore expenditure incurred on brokerage is revenue in nature and allowable under section 37 of the Act. We find that learned CIT(A) restored the matter to the learned Assessing Officer with the direction that if the brokerage relates to securities 'available for sale'(AFS) or 'held for trading' (HFT), then same should be allowed as revenue expenditure, however if the brokerage relates to securities 'held to maturity'(HTM), then same should be disallowed. We find that under the provisions of the Act, the Ld. CIT(A) is not authorised to restore the matter back to the file of the Assessing Officer, therefore, we feel it appropriate to restore this matter back to the file of the Ld. Assessing Officer for deciding a fresh in the light of the direction of the Tribunal in assessment year 2014-15. Thus, if the securities have been treated by the assessee as stock-in-trade then the expenses incurred at the time of acquisition of such securities is allowable at the time of acquisition being revenue expenditure, but if the securities are held as investment and income from sale of those securities has been



offered under the head capital gain, then brokerage for acquisition of those securities, would be allowable at the time of sale of those securities and not at the time of purchase of those securities. Thus, whether the HTM securities have been treated by the assessee as investment or stock-in-trade, is a subject matter of verification from the books of accounts and financial statements of the assessee, matter is restored back to the file of the Assessing Officer. The ground Nos. IX and X of the appeal of assessee are accordingly allowed for statistical purposes.

18. The ground No. 2 of appeal of Revenue is related to the ground No. IX and X of the appeal of assessee. Since we have already restored the ground No. IX and X of the appeal of the assessee to the file of Assessing Officer, the ground No. 2 of the appeal of the revenue being connected, same is also restored to the file of the Assessing Officer for deciding afresh. The ground No. 2 of the Revenue is accordingly allowed for statistical purposes.

19. The ground XI of the appeal of the assessee relate to assessing interest income on HTM investment as income from other sources.

19.1 We have heard rival submission of the parties on the issue in dispute. The contention of the assessee is that the HTM investment have been held by the assessee as a stock-in-trade and therefore interest earned thereon is part of the business income, whereas the Assessing Officer has held the HTM securities as capital investment and therefore the interest earned thereon has been assessed by him



under the head 'income from other sources'. We find that Ld. CIT(A) has followed finding of his predecessor in assessment year 2014-15, wherein he observed that the Assessing Officer himself treated the interest income under the head 'business' and therefore the ground of the assessee was dismissed as infructuous. In the year under consideration also the Ld. CIT(A) has dismissed the ground of the assessee followed finding of the Ld. CIT(A) in assessment year 2014-15, therefore, we are of the opinion that the Ld. CIT(A) has not upheld the finding of the Assessing Officer that interest income from HTM securities is assessable under the head income from other sources. However, for removing any doubt on the issue in dispute, we restore this matter back to the file of the Assessing Officer for verification, whether in the year under consideration the income from interest on HTM securities has treated under the head 'income from other sources' and if the answer is yes, then he may decide the issue in dispute, otherwise if the answer is no, then decision will be in favour of the assessee and no adjudication will be required on the issue in dispute. The ground of the appeal of the assessee is accordingly allowed for statistical purposes.

20. The ground No. XII of the appeal is in relation to addition of commission on bank Guarantee.

20.1 The facts qua the issue in dispute are that during the year under consideration, the assessee changed the method of recognizing 'guaranty commission' from 'anniversary date' to the



‘specific period of guaranty’ during the year under consideration and therefore part of the guaranty commission received was deferred for tax purposes. According to the assessee apportionment of the basis of the No. of days for which Guaranty was given in the year of the issue of such guaranty, is based on scientific method for computation of guaranty commission accrued to the assessee for the year under consideration. The Assessing Officer however rejected the said contention. According to the Assessing Officer, the commission has been received by the bank upfront during the year under consideration which is received or deemed to be received as assessable to tax and there is nothing in the Act, which permits the assessee to distribute revenue across the years, when the expenditure related to that revenue has not been deferred. On further appeal, the Ld. CIT(A), though in principle agreed that bank guaranty commission cannot be taxed in entirety in the year in which the guaranty agreements entered and same should spread over the period to which the guaranty commission relates and should be taxed proportionately. However, observed that the assessee did not provided any valid reason for change in method of the accounting of guaranty commission from ‘anniversary’ basis to ‘actual on No. of days’ and therefore, the Ld. CIT(A) directed the Assessing Officer to verify the records and amount of guaranty commission according to the earlier method of recognising guaranty commission on anniversary date, which according to the assessee was of ₹28,31,72,647/-.



20.2 We have heard rival submission of the parties and perused the relevant material on record. The issue in dispute in the case is whether the guaranty commission received by the assessee for guaranty agreement spreading over for more than the year under consideration, accrue to the assessee or not and whether the corresponding expenses have also been the spread by the assessee for the period of guaranty or not. We find that assessee is following mercantile system of method and therefore any income which is accrued or deemed to accrue is liable for assessing in the year under consideration in the hands of the assessee. In the case the Ld. CIT(A) has referred to decision of his predecessor in the case of State Bank of India for assessment year 2014-15, wherein the learned 'first appellate authority' in that case has held that bank guaranty commission cannot be taxed in entirety in the year in which guaranty agreements entered and same should be spread over the period to which the guaranty commission relates and should be taxed proportionately. In our opinion, the issue need examination whether the assessee was required to render services in relation to guarantee only at the time of entering into guaranty agreement or it was required to render services over the period of the guaranty, therefore it needs to be seen whether the entire expenses in relation to income from guaranty commission have been claimed by the assessee in the year of entering into guaranty agreement or same have been spread over the period of the guaranty to the customers. We find that Ld. CIT(A) restored this



issue in dispute back to the learner Assessing Officer for verification of the facts. We are of the opinion that under the provisions of the Act Ld. CIT(A) is not empowered to restore the matter back to the file of the Assessing Officer, and therefore we set aside the direction of the Ld. CIT(A) and restore the matter back to him for deciding afresh keeping in view our observations above and in accordance with law. The ground of the appeal of the assessee is accordingly allowed for statistical purposes.

21. The ground No. 6 (six) of the appeal of the Revenue also relate to the issue of guaranty commission. Since the issue of the guaranty commission raised in the appeal of the assessee in ground No. XII has been restored back to the file of the Assessing Officer for deciding afresh, this ground of the appeal of the Revenue is also allowed for statistical purposes.

23. The ground No. XIII and XIV relate to not admitting of the claim for deduction of discount on shares under employee stock option scheme by the Ld CIT(A).

23.1 We have heard the rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that identical additional claim of the assessee was rejected by the Ld. CIT(A) in assessment year 2014-15, but the Tribunal (supra) in assessment year 2014-15 admitted said claim and restored the matter back to the Ld. CIT(A) for deciding in the light of the direction of the Tribunal in assessment year 2011-12 to 2013-14.



The relevant finding of the Tribunal in assessment year 2014-15 is reproduced as under:

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

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

*20.1 Respectfully following the finding of the Tribunal (supra) the additional ground in the year under consideration is also admitted and restored back to the file of the Assessing Officer to be decided in accordance with the direction given by the Tribunal in AY 2011-12 to 2013-14. The ground of appeal is accordingly allowed for statistical purposes.”*

23.2 Issue in dispute being identical to assessment year 2014-15, respectfully following the finding of the Tribunal(supra), the issue in dispute is restored back to the file of the Assessing Officer for deciding in accordance with the direction given by the Tribunal in assessment year 2011-12 to AY 2013-14. The ground Nos. XIII and XIV of the appeal are accordingly allowed for statistical purposes.



24. The ground No. XV of the appeal of the assessee relates to addition of interest on non-performing assets under section 43D read with Rule 6EA of Rules, amounting to ₹1,62,47,886/-, which has been upheld by the Ld. CIT(A).

24.1 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The dispute is regarding considering recognition of interest income on non-performing assets. According to the Reserve Bank of India guidelines interest on non-performing assets beyond the period of 90 days need not to be offered on accrual basis, whereas according to Income-tax rule 6EA read with section 43D of the Act, this period should be beyond 180 days. The Ld. CIT(A) following the decision of Tribunal in the case of state Bank of India (supra), upheld the addition made by the Assessing Officer. The relevant finding of the Ld. CIT(A) is reproduced as under:

*"15.4 Decision-*

*15.4.11 have considered the submissions made by the appellant and have perused the materials available on records. The appellant has requested to delete the impugned addition of Rs. 1,62,47,886/-, being interest income assessed as per provisions of section 43D r.w. Rule 6EA. The appellant has made detailed submissions, as above and the same have been considered carefully. The appellant has submitted that the Ld. AO has erred in taxing said interest income on NPA which have been recognized as per RBI guidelines.*

*From perusal of record it is observed that similar issue had come up for consideration in the case of State Bank of India for AY 2014-15, wherein my Ld. Predecessor, vide his order dated 28.02.2018 in Appeal No. CIT(A) -5/ACIT-2(2) (1)/IT-113/16-17 has held as under.*

*"15.3 Decision:*



*I have considered the appellant's submissions. Similar issue was decided against the Bank by the DRP for AY 2012-13. The key observations of the DRP are reproduced as under:*

*"6.12.3 We have carefully considered this issue. It is noted that section 43D was introduced by Finance Act 1991 with a view to improve the viability of the banks, public financial institutions; and as per that section the interest on sticky loans has to be charged only in the year in which interest is actually received or charged to profit and loss account, whichever is earlier. As per that section the category of bad or doubtful debts sticky loans were to be prescribed in the IT Rules having regard to the guidelines issued by the RBI in relation to such debts. In 1992, the Rule 6EA was framed wherein the norms for six months was provided. In that year as per the RBI guidelines, the norms for categorizing NPA were more than 6 months. In 1993 the specified period was two years. In 1994 it was 1.5 years; from 1995 till 31.03.2004 it remained 6 months. Thus it is very clear the norms of 6 months provided in Rule 6EA was not equal to the period provided in RBI guidelines from when the rule was framed till 2004. The section 43D provided from the norms by framing the rules in view the RBI guidelines but does not mean that the norms were to be adopted. Admittedly, the norms as per RBI guidelines have been further reduced to ninety days. But the Rule 6EA still continues with the norms of 6 months. Thus the benefit of section 43D would be available to the assessee bank only in those cases in which interest or principal remained unpaid for the period of 6 months or more. The assessee bank had not recognized the interest in respect of the default acceding ninety days and therefore the AO has rightly added the interest on that category of loans where default period was between ninety days to six months. After having considered the facts of the case, the addition made by the AO is confirmed."*

*15.4 The above decision of the DRP is considered. It is seen that the above facts are similar in this year also. Therefore, the above decision is followed and the claim of the appellant is rejected. This ground of appeal is dismissed."*

*The facts and circumstance of the issue under consideration are similar as that of decided by my Ld. Predecessor in the case of State Bank of India for AY 2014-15. It is also an admitted fact that the appellant has explained that Rule 6EA of the Rules provides for recognition of non viable or sticky advances which are outstanding for more than six months on receipt basis whereas the RBI guidelines considers advances outstanding for more than 90 days as NP As on which interest is recognized on receipt basis. It is settled law that the RBI guidelines would not override the provisions of the Act, as held by the Hon'ble Supreme Court in the case of*



*Southern Technologies Lid reported in 187 Taxman 346. Similar law has been laid down by the Hon'ble Karnataka High Court in the case of Karnataka Bank Ltd, reported in 59 taxmann.com 93, wherein the Hon'ble Court has held as under.*

*"13. When the legislature has expressly used the words "income by way of interest" in Section 43D of the Act, if we had to include in that Section the unrealized rentals from equipment leasing activity, it would amount to the Court rewriting the Section, which is impermissible in law. In fact, the authorities have not carefully read the aforesaid statutory provision. It is a case of misreading the provision. A liability under the Income Tax Act cannot - be foisted on the basis of analogy. Unless the statute provides, no tax to be levied. Similarly, when the statute expressly provides how the income received is to be taxed and in which year, strictly in accordance with the statutory provision, the tax has to be levied. The language employed in the aforesaid Section is simple. There is no ambiguity. We have to follow the words used in that Section. There is no scope for interpretation at all. Hence, the impugned order passed by the Appellate Authorities cannot be sustained. Accordingly, the fifth substantial question of law is answered in favour of the Revenue and against the assessee. To that extent, the appeals succeed and the impugned order on that aspect only is hereby set aside."*

*Further, the Hon'ble Delhi High Court, while adjudicating similar issue, in the case of Housing & Urban Development Corporation Ltd reported in 83 taxmann.com 292 has held as under.*

*"23. Section 43D of the Act read with Rule 6EB is a complete Code in itself. There is an element of discretion for the rule making authority to follow or not to follow the NHB guidelines as and when they are revised. The purpose of classification of debts as NPA by the NHB and the purpose for non-recognition of income for the purposes of the Act are different. Given the wording of the relevant provisions of the Act and the NHB Act, it is not possible to agree to HUDCO's proposition that with every change in the NHB guidelines there would be a corresponding automatic change in Rule 6EB."*

*In view of above discussions, I am of the considered opinion that the appellant's contentions in this respect are devoid of any merits and hence herewith rejected. Hence, the impugned addition of Rs. 1,62,47,886/- is CONFIRMED. Accordingly, the Ground No. X raised in appeal is DISMISSED."*



24.2 Before us, the learned counsel for the assessee however has relied on the decision of the Tribunal coordinate bench in the case of ICICI Bank Ltd in IT No. 3215/Mum/2019 and ITA No. 3864/Mum/2019 for assessment year 2010-11. The relevant finding of the Tribunal is reproduced as under:

*6. Heard both the sides and perused the material on record. The assessee has recognized the amount of interest attributable on sticky advances as NPA for a period of 90 days or more as per the guidelines issued by the RBI in accordance with Sec. 43D of the Act. However, the A.O was of the view that as per Rule 6E, interest is not to be offered for taxation with respect to advances which become Non Performing Assets for a period of 180 days or more. With the assistance of ld. representative we have perused the decision of ITAT, Mumbai in the case of Union Bank of India VS. ACIT, 16 taxman.com 304 wherein on identical issue and similar facts held that bank had no option but follow the RBI guidelines to make a provision for unrealized interest on the NPA by debiting profit and loss account. In the case of DCIT Vs. Karur Vysya Bank ITA No. 2433 & 2467 of ITAT Chennai dated 29.03.2017 held that it becomes necessary to read down such rules so that it is in consonance with the RBI regulation or prudential norms for recognizing income.*

*In Royal Bank of Scotland Vs. DCIT vide ITA No. 477/Kal/2015 ITAT Kolkata held as under:*

*“2.6 We have heard the rival submissions and perused the materials available on record including the detailed paper book filed by the assessee. The facts stated hereinabove remain undisputed and hence the same are not reiterated for the sake of brevity. It is not in dispute before the lower authorities that the loan accounts had become sticky and doubtful of recovery. The only contention of the revenue is that section 43D of the Act read with Rule 6BA of the Rules permits accounting of interest income on receipt basis only if the loan account had become overdue for more than six months, whereas in the instant case, it is more than three months but less than six months as on 31.3.2010. The loan account becoming overdue and becoming sticky was never disputed. The next issue is whether the prudential norms of RBI for income recognition would override the provisions of the IT Act. This issue has been addressed by the Hon'ble Supreme Court in the case of Southern Technologies Ltd supra in the context of allowability of deduction towards 'Provision for NPA. We find that the same decision clearly stated that the interest income on NPA accounts should not be recognized on accrual basis which is in line with RBI prudential norms for income recognition. This fine distinction has been duly considered in the decision of the Hon'ble Delhi High Court in the case of CIT vs Vasisth Chay Vyapar Ltd supra. When the account becoming NPA is not*



*disputed by the revenue, the recognition of income is to be done only on receipt basis which is in consonance with the real income theory. In these circumstances and respectfully following the decisions of Hon'ble Delhi High Court in 330 ITR 440 and various other decisions referred to supra, we hold that the interest income on NPA accounts should not be assessed on mercantile basis and the same is to be taxed only on receipt basis. Accordingly, the grounds raised by the assessee are allowed."*

*We have also perused the provision of Sect. 43D of the Act which are reproduced as under:*

*"43D. Notwithstanding anything to the contrary contained in any other provision of this Act,-*

*(a) in the case of a public financial institution or a scheduled bank or "[a cooperative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank or] a State financial corporation or a State industrial investment corporation [for a deposit taking non-banking financial company or a systemically important non-deposit taking non-banking financial company] the income by way of interest" in relation to such categories of bad or doubtful debts as may be prescribed" having regard to the guidelines issued by the Reserve Bank of India in relation to such debts,*

*(b) in the case of a public company, the income by way of interest" in relation to such categories of bad or doubtful debts as may be prescribed having regard to the guidelines issued by the National Housing Bank in relation to such debts,*

*shall be chargeable to tax in the previous year in which it is credited by the public financial institution or the scheduled bank or "[a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank or] the State financial corporation or the State industrial investment corporation or "[a deposit taking non-banking financial company or a systemically important non-deposit taking non-banking financial company or] the public company to its profit and loss account for that year or as the case may be, in which it is actually received by that institution or bank or corporation or company, whichever is earlier."*

*It is categorically provided in the provisions of section 43D that income by way of interest in relation to bad and doubtful debts to be prescribed in accordance with guidelines issued by the RBI. The section 43D was introduced by the Finance Act, 1991 as per the section the category of bad and doubtful debts to be prescribed in the Income Tax Rules having regard to the guidelines issued by the RBI in relation to such debts. In 1992 the Rules 6E was framed and as per RBI guidelines the norms for categorization of advances as NPA were those advances which remained over due for more than 6 months. The RBI has revised the guideline from time to time and made changes in the period of overdue of advances for categorization of NPA. During the year under consideration the RBI has reduced the period to 90 days for*



*categorization of interest on sticky loan as NPA, however, similar changes was not made to Rule 6EA. After considering the provisions of Sec. 43D and judicial findings as supra we consider that norms for categorization of bad and doubtful debts had to be prescribed considering the guidelines issued by the RBI. Therefore, the ld. CIT(A) is not justified in substituting the limit for recognizing of interest on account of NPA to 180 days from 90 days in view of the clear provisions of Sec. 43D(a) that in the case of public financial institutions or schedule bank or a state financial corporation or a State Industrial Investment Corporation, the income by way of interest in relation to such categories of bad and doubtful debt as may be prescribed having regard to the guidelines issued by the RBI in relation to such debts. Therefore, both the ground of appeals of the assessee are allowed.”*

24.3 We find that Tribunal in the case of the state Bank of India has relied on the decision of the Hon'ble Delhi High Court in the case of **Housing and urban development Corporation Ltd (supra)**, where specific issue of NHB guidelines vis-à-vis Rule 6EA read with section 43D of the Act was involved, which being a decision of higher appellate forum, therefore, keeping in view the judicial discipline, we are bound to follow the decision of the Tribunal in the case of State Bank of India (supra). We accordingly, uphold the finding of the Ld. CIT(A) on the issue in dispute. The ground No. XV of the appeal of the assessee is accordingly dismissed.

25. The ground No. XVI of the appeal relate to disallowance of deduction amounting to ₹24,91,43,645/- claimed by the assessee under section 36(1)(viia) of the Act in respect of provision of rural advances separately.

25.1 The brief facts qua the issue in dispute are that under section 36(1)(viia) of the Act , the assessee has claimed deduction in respect of provision for bad and doubtful debts amounting to



₹129,79,83,400/- and for provision against the rural advances amounting to Rs. 24,91,43,645/-. According to the assessee, the deduction for provision of rural advances is allowable under section 36(1)(viia) separately other than the deduction for provision of bad and doubtful debt which is subjected to limit of 7.5% of total income before claiming deduction under chapter VIA of the Act. It is stated by the assessee that 7.5% of the total income before claiming deduction under chapter VIA of the Act works out to ₹221,14,18,694/-, but the assessee's book provision was lower than 7.5% of the total income and therefore the assessee restricted its claim under section 36(1)(viia) to the extent of ₹129,79,83,437/- and the claim for 10% of rural advances amounting to ₹24,91,43,645/--was made separately. According to the AO, however the deduction under section 36(1)(viia) cannot exceed the total provision for bad and doubtful made by the assessee. On further appeal, the Ld. CIT(A) following the decision of the Hon'ble Punjab and Haryana High Court in the case of State Bank of Patiala Vs CIT (supra) , upheld the finding of the Assessing Officer. The relevant finding of Ld. CIT(A) is reproduced as under:

*"16.4.1 I have considered the submissions made by the appellant and have perused the material available on record. The appellant has requested to allow the claim of Rs. 24,91,43,645/- made u/s 36(1)(viia) in respect of provision made for Rural Advances. The appellant's main contentions are that the provision of Rural Advances was inserted under section 36(1) (viia) to promote Rural Banking and thus provided an incentive to Banks who advance credit to the Rural Sector. On placing reliance of the CBDT circular 464 dated 18.07.1986, the appellant has submitted that the amendment u/s 36(1)(viia) was made to split the deduction into two separate provisions, one related to the prescribed percentage of aggregate average advance made by Rural Branches and*



the other was in respect of prescribed percentage of total income. The appellant has further submitted that it maintains only one account in respect of provisions of advances and which is in tune with the Explanation to section 36(1)(vii) of the Act. The contentions of the appellant have been considered carefully. The provisions of section 36(1)(viii) of the Act as it stood in the relevant assessment year, stipulates as under.

[(viii) [in respect of any provision for bad and doubtful debts made by—

(a) a scheduled bank [not being [\*] a bank incorporated by or under the laws of a country outside India or a non-scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank], an amount [not exceeding seven and one-half per cent] of the total income (computed before making any deduction under this clause and Chapter VIA) and an amount not exceeding [ten] per cent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner :"

From the above it is evident that for claiming any deduction u/s 36(1)(viii) creation of provision for bad doubtful debt is sine-qua-none and once the provision for the same has been made therein, the same is required to be restricted to an amount not exceeding seven and one-half per cent of the total income, computed before making any deduction under this section & under this clause and Chapter VIA, and an amount not exceeding 10% of the aggregate average advances made by the Rural Branches of such Bank computed in the manner prescribed therein. Hence, it is evident that under no circumstances the claim of deduction u/s 36(1)(viii) can exceed the provision for bad and doubtful debt created therein. In the present case it is an admitted fact that the appellant has made provision for bad and doubtful debt u/s 36(1)(viii) at Rs. 129,79,83,437/-. The appellant has also admitted that 7.5% of total income before claiming any deduction under chapter VIA works out to Rs. 221,14,18,694/- and since the appellant's book's provision was lower than 7.5% of total income, the appellant has restricted its claim u/s 36(1)(viii) of the Act to Rs. 129,79,83,437/-. Having claimed the deduction u/s 36(1)(viii) by restricting 7.5% of total income to the provisions made in the books, surprisingly in its computation of income the appellant has made separate claim u/s 36(1)(viii) of the Act in respect of Rural Advances. The appellant's contention that it is eligible to claim of deduction u/s 36(1)(viii) separately for Rural Advances, without any provision for bad and doubtful debt made in books in respect of same is contrary to provisions of sec 36(1)(viii) of the Act. As discussed above, the first step to claim deduction u/s 36(1)(viii) is to create provisions for bad and doubtful advances in books and then the same has to be restricted to prescribed percentage of total income and rural advances made. The appellant has already claimed deduction u/s 36(1)(viii) to the extent of provisions made in the books and hence any further claim of deduction u/s 36(1)(viii) of the Act in respect of rural advances, over and above the provisions made in book is not as per the provisions of the Act. The Hon'ble Punjab and Haryana High court in the



case of *State Bank of Patiala vs CIT* reported in 143 Taxman 196, considered similar issue and has held as under.

5. Section 36(1) (viiia) of the Act as applicable to the assessment year 1985-86, reads as under:

"in respect of any provision for bad and doubtful debts made by a scheduled bank [not being a bank approved by the Central Government for the purposes of clause (viiia) or a bank incorporated by or under the laws of a country outside India] or a non-scheduled bank, an amount not exceeding ten per cent of the total income (computed before making any deduction under this clause and Chapter VI-A) or an amount not exceeding two per cent of the aggregate average advances made by the rural branches of such bank, computed in the prescribed manner, whichever is higher."

6. A bare perusal of the above shows that the deduction allowable under the above provisions is in respect of the provision made. Therefore, making of a provision for bad and doubtful debt equal to the amount mentioned in this section is a must for claiming such deduction. The Tribunal has rightly pointed out that this issue stands further clarified from the proviso to clause (vii) of section 36(1) of the Act, which reads as under:

"Provided that in the case of an assessee to which clause (viiia) 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."

7. This also clearly shows that making of provision equal to the amount claimed as deduction in the account books is necessary for claiming deduction under section 36(1)(viiia) of the Act. The Tribunal has distinguished various authorities relied upon by the assessee wherein deductions had been allowed under various provisions which also required creation of reserve after the assessee had created such reserve in the account books before the completion of the assessment. It has been correctly pointed out that in all those cases, reserves/provisions had been made in the books of account of the same assessment year and not of the subsequent assessment year.

8. In the present case, the assessee has not made any provision in the books of account for the assessment year under consideration, i.e., 1985-86, by making supplementary entries and by revising its balance-sheet. The provision has been made in the books of account of the subsequent year.

9. We are, therefore, satisfied that the Tribunal was right in holding that since the assessee had made a provision of Rs. 1, 19,36,000 for bad and doubtful debts, its claim for deduction under section 36(1)(viiia) of the Act had to be restricted to that amount only. Since the language of the statute is clear and is not capable of any other interpretation, we are satisfied



*that no substantial question of law arises in this appeal for consideration by this court."*

*Similar law has been laid down by the Hon'ble ITAT, Bangalore in the case of Karnataka Vikas Grameen Bank wherein the Hon'ble Tribunal, vide its order dated 25.04.2018 in ITA Nos. 673 & 674/Bang/2014 and 684/Bang/2014 has held as under.*

*"8. We have considered the rival submission. The provisions of Section 36(1) (viii) (a) of the Act lays down as follows:*

*"viii) in respect of any provision for bad and doubtful debts made by -*

*(a) a scheduled bank not being a bank incorporated by or under the laws of a country outside India] or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, an amount not exceeding seven and one-half per cent of the total income (computed before making any deduction under this clause and Chapter VI-A) and an amount not exceeding ten per cent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner;*

*Provided that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed in any of the relevant assessment years, deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf, for an amount not exceeding five per cent of the amount of such assets shown in the books of account of the bank on the last day of the previous year."*

*9. In the case of Syndicate Bank (supra) 78 TD 103 (Bang.), the Bangalore Bench of ITAT took the view that irrespective of the debit to the profit and loss account on account of provision for bad and doubtful debts (PBDD), an Assessee is entitled to 10 percent of the AARA as deduction u/s.36(1)(viii) of the Act. The relevant observations of the Tribunal in the aforesaid decision was as follows:*

*"20. The learned CIT has also acted under the misconception that deduction under cl. (viii) is related to the actual amount of provision made by the assessee for bad and doubtful debts. The true meaning of the clause, as indicated earlier, is that once a provision for bad and doubtful debts is made by a scheduled bank having rural branches, the assessee is entitled to a deduction which is quantified not with respect to the amount provided for in the accounts, but with respect to a certain percentage of the total income and also a certain percentage of the aggregate average advances made by the rural branches of the bank. In other words, this is a specific deduction given by the statute irrespective of the quantum provided by the assessee in its accounts towards provision for bad and doubtful debts."*

*10. However the Bangalore Bench of ITAT in the case of Syndicate Bank (supra) 150 ITD 103 (Bang.) noticed that the ITAT Bangalore Bench in the*



case of Canara Bank in ITA No.58/Bang/2004 dated 9.6.2006 considered in the case of Canara Bank in ITA No.58/Bang/2004 dated 9.6.2006 considered the decision of the ITAT in the case of Syndicate Bank 78 ITD 103(Bang) and the decision of the Hon'ble Punjab and Haryana High Court in the case of State Bank of Patiala (supra) and held that the decision rendered by the Hon'ble High Court has to be followed. The above decision though of a non jurisdiction High Court was followed as the said decision of the Hon'ble High Court was rendered after the decision in the case of Syndicate Bank 78 ITD 103 (Bang.). The Tribunal held that Judicial discipline demands that the Tribunal should follow the later decision which has considered both the decisions on the issue. The Tribunal following the said decision held deduction on account of Provision for Bad and Doubtful Debts u/s.36(1) (viiia) of the Act has to be allowed only to the extent such provision is actually debited in the Profit & Loss Account by the Assessee for the relevant previous year. We therefore respectfully following the decision of the Tribunal in the case of Canara Bank (supra), allow Gr. No.2 to 4 raised by the Revenue and hold that the disallowance made by the AO was proper and the Assessee is entitled to deduction only to the extent PBDD is debited to the P & L A/c.

Thus Gr. No.2 to 4 3 raised by the revenue are allowed.

11. As far as the decision of the Hon'ble Karnataka High Court in the case of Patil Vijayakumar (supra) cited by the learned counsel for the Assessee is concerned, We find that the issue in the aforesaid case was as to whether the Income-tax Act 1961 being all India statute, the view expressed by one High Court should be followed by the other High Courts of different state. The Hon'ble Karnataka High Court took the view that decision rendered by the High Court is binding only on the authorities and Courts subordinate to the said High Court and will not be binding on the High Court of another state and Courts and Tribunals functioning in that other State. The Tribunal in the case of in the case of Canara Bank in ITA No.58/Bang/2004 dated 9.6.2006 considered the decision of the ITAT in the case of Syndicate Bank 78 ITD 103(Bang) and the decision of the Hon'ble Punjab and Haryana High Court in the case of State Bank of Patiala (supra) and held. that the decision rendered by the Hon'ble High Court has to be followed. The Hon'ble Karnataka High Court in the case of Patil Vijayakumar (supra) dealt with argument that decision of one High Court of a State is not binding on the High Court of another State. In the present case the only decision of Hon'ble High Court available on the issue whether u/s.36 (1) (viiia) of the Act has to be allowed only on the basis of actual debit towards PBDD in the profit & Loss Account by the Assessee, is the decision of the Hon'ble Punjab & Haryana High Court in the case of State Bank of Patiala (supra). The question therefore is as to whether the co-ordinate Tribunal decision has to be followed in preference to a non jurisdictional High Court decision. The Hon'ble Karnataka High Court in the case of Patil Vijayakumar (supra) has not dealt with any such issue. Going by the hierarchical system in our country, this Tribunal in the case of Canara Bank ITA No. 58/Bang/2004 dated 9.6.2006, after considering the decision rendered in the case of Syndicate Bank 78 ITD 103(Bang.) preferred to follow the decision of Hon'ble Punjab & Haryana High Court in the case of State Bank of



*Patiala (supra) though of a non jurisdictional High Court than the decision of co-ordinate Bench in the case of Syndicate Bank 78 ITD 103 (Bang.). In our view therefore the decision of the Hon'ble Karnataka High Court in the case of Patil Vijayakumar (supra), does not support the plea of the assessee. We, therefore hold that the relief allowed by the CIT(A) in the matter of allowing deduction for provision for bad and doubtful debts was not in accordance with law. The addition made by the AO is, therefore, restored. The ground Nos. 2 and 4 raised by the Revenue are allowed."*

*In view of above discussions and respectfully following the above referred decisions of the Hon'ble Punjab & Haryana High Court and that of Hon'ble ITAT, Bangalore, I am of the considered opinion that the contentions of the appellant in this respect are devoid of merits and hence herewith rejected. The impugned disallowance of Rs. 24,91,43,645/- being claim of deduction u/s 36(1)(viiia) in respect of Rural Advances is CONFIRMED. Accordingly Ground No. XI raised in appeal is DISMISSED."*

25.2 We have heard rival submissions of the parties and perused the relevant material on record. In our opinion, Ld. CIT(A) has followed a precedent on the issue in dispute and the learned counsel for the assessee has not brought on record any decision of any High Court or jurisdiction High Court in its favour and therefore, we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute and accordingly, we uphold the same. The ground No. XVI of the appeal of the assessee is accordingly dismissed.

26. The ground No. XVII of the appeal relate to disallowance of interest paid on Innovative Perpetual Debt Instruments(IPDI) under section 36(1)(iii) of the Act.

26.1 The issue in dispute is whether the IPDI bonds issued by the assessee are in the nature of equity capital or debt. According to the assessee those are in the nature of the debt taken for the purpose of



business of the assessee, whereas according to the lower authorities, the said instruments are akin to shares and therefore the expenditure incurred in relation to them is in the nature of the capital expenditure directly related to expansion of the capital base of the company and thus, not allowable. The relevant finding of the Ld. CIT(A) is reproduced as under:

*"17.4.1 I have considered the submissions made by the appellant and have perused the materials available on record. The appellant has requested to delete the impugned disallowance of Rs. 77,53,20,737/-, being the claim of interest paid on Innovative Perpetual Debt Instrument (IPDI). The appellant has made elaborate submissions as detailed above and the same have been considered carefully. Before deciding the issue it is worthwhile to examine the nature of Instrument under consideration. The appellant has issued Innovative Perpetual Debt Instrument (IPDI) which by nature is perpetual and the investor has no right to ask for refund at any time. It is the discretion of the appellant as to decide whether such IPDI is to be called back or not. The Wikipedia defines the "Perpetual Bond" as under.*

*"Perpetual bond, which is also known as a perpetual or just a perp, is a bond with no maturity date. Therefore, it may be treated as equity not as debt. Issuers pay coupons on perpetual bonds forever, and they do not have to redeem the principal. Perpetual bond cash flows are, therefore, those of a perpetuity."*

*Similarly the Black Dictionary defines the Perpetual Bond as "a bond with no maturity date and investor receives coupon but the principle is never paid. Conceptually, with the perpetual bonds, the agreed-upon period of time over which interest will be paid, i.e. in perpetuity and in this respect the perpetual bonds function similarly to dividend-paying stocks or certain preferred securities. Just as owners of such stock receive dividend payment for the entire time the stock is held, perpetual bond owners receive interest payments, for as long as they hold onto the bond.*

*17.4.2 The RBI Master Circular related to Prudential Norms on Capital Adequacy dated 01.07.2015 in DBR.No.BP.BC.3/21.01.002/2015-16, while defining the Components of Capital Funds, stipulates that the capital funds would include the components Tier I capital and Tier II capital. It further provides that Elements of Tier I capital include*

*(i) Paid-up capital (ordinary shares), statutory reserves, and other disclosed free reserves, if any;*



(i) Perpetual Non-cumulative Preference Shares (PNCPS) eligible for inclusion as Tier I capital - subject to laws in force from time to time;

(ii) Innovative Perpetual Debt Instruments (IPDI) eligible for inclusion as Tier I capital; and

(iv) Capital reserves representing surplus arising out of sale proceeds of assets.

*From the above, it is evident that the RBI guidelines recognize and require the IPDI to be classified as Tier I capital and it has been treated at par with the Paid up capital (ordinary shares), statutory reserves, other free reserves, Perpetual Non-cumulative Preference Shares (PNCPS) and capital reserves representing surplus arising out of sale proceeds of assets. The said Master Circular of RBI also provides that the term of maturity of IPDI shall be "perpetual" and the same shall not be issued with a 'Put Option' or a 'Step-up option'. However, the same can be issued with a call option subject to strict compliance with the conditions prescribed therein. The RBI further stipulates that IPDI shall not be subjected to a progressive discount for capital adequacy since these are perpetual. Though the claims of the investors are superior to the claims of investors in equity shares but it is subordinate to the claims of all creditors."*

26.2 We have heard rival submission of the parties and perused the relevant material on record. We find that identical issue has been decided by the coordinate bench of Tribunal in the case of state Bank of India in ITA 3033 & 2873/Mum/2019 for assessment year 2015-16. The relevant finding of the Tribunal is reproduced as under:

**“13** *The ground No. 4 of the appeal of the assessee relates to disallowance of Rs. 18,00,00,000/- for interest paid on Innovative Perpetual Debt Instruments (IPDI Bonds). The IPD bonds issued by the assessee qualify as Tier I capital of bank and book value of such bonds was reported by the assessee Rs. 160,00,00000/-at the end of the relevant previous year corresponding to the A.Y. under consideration. Before the Ld. A.O., the assessee claimed deduction on account of the interest paid/payable on those bonds u/s 36 (1)(iii) of the Act. According to the assessee these bonds are in the nature of the debentures carrying a fixed interest rate and the interest is paid out of the distributable profit of the previous year or current year. It was further claimed that interest paid to bondholders unlike dividend income is not exempt as per the provisions of the Act and the bondholders would have accordingly offered the same to the income in their respective returns and therefore disallowance of said interest would result in double taxation of the*



same income. The Ld. A.O. however rejected the contention of the assessee and held that the perpetual bonds are the bonds with no maturity date. The investor don't get the right to redeem the bonds at any point of the time and only the issuing bank can buy back the bonds from the investor, therefore even if subsequently borrower buyback these bonds, it will not alter the nature and character of these bonds. The Ld. A.O. summarized that perpetual bonds are quasi equity and they have equity-features like perpetual nature, high loss absorption capacity and discretionary payout with existence of full coupon discretion. The Ld. A.O. relied on the decision of Hon'ble Punjab and Haryana High Court in the case of **Pepsu Road transport Corporation versus CIT reported in 130 ITR 18 (P& H)** wherein it is held that an element of refund or repayment is a must in case of concept of borrowing and if there is no obligation to refund the capital provided, the interest on such capital is not deductible u/s 36(1)(iii) of the Act. Accordingly, the Ld. A.O. held that in case of perpetual bonds, where the lender does not have authority to claim refund of the amount given, said amount cannot be held as borrowing and interest on such bonds was held disallowable u/s 36(1)(iii) of the Act.

14 On further appeal, the Ld. CIT(A) also upheld disallowance of the interest paid/payable in respect of perpetual bond holding them analogous to preference shares. The relevant finding of the Ld.CIT(A) is reproduced as under:

*I have considered the submissions made by the appellant and have perused the materials available on record. The appellant has requested to delete the impugned disallowance of Rs. 18,00,00,000/-, being the claim of interest paid on Innovative Perpetual Debt Instrument (IPDI). The appellant has made elaborate submissions as detailed above and the same have been considered carefully. The appellant has submitted that the IPDI under considerations were issued in the year 2009-10 and since then the interest was paid by the bank consistently by debiting to the Profit and Loss account and the department has regularly allowed it as an expenditure in the past years. The appellant has further submitted that in none of these year department has made any disallowance on account of interest paid on IPDI Bonds. The said contentions of the appellant have been considered carefully. It is settled law that rule of res-judicata does not apply to the Income Tax proceedings and an erroneous or mistaken view cannot fetter the authorities into repeating them by application of rule such as estoppel, for the reason that being an equitable principle, it has to be yield to the mandate of law. Similar law has been laid down by the Hon'ble Delhi High Court in the case of Krishak Bharati Cooperative Ltd reported in 23 taxmann.com 265, wherein the Hon'ble Court held as under.*

*It is now necessary to take up the submission that the Tribunal erred in departing from the "consistency" rule. This is based on the fact that for the period of about 15 years, the income tax authorities had accepted the assessee's submissions and permitted annual amortization of the initial lease consideration, as advance rent. The assessee here relied on*



the "consistency" rule enunciated in *Radhasaami Satsang (supra)*. The Supreme Court observed, in that case that:

*"...where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.*

*On these reasonings in the absence of any material change justifying the Revenue to take a different view of the matter-and if there was not change it was in support of the assesses-we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income-Tax in the earlier proceedings, a different and contradictory stand should have been taken."*

*This Court notices that there cannot be a wide application of the rule of consistency. In Radhasomi Satsang's case (supra) itself, the Supreme Court acknowledged that there is no res judicata, as regards assessment orders, and assessments for one year may not bind the officer for the next year. This is consistent with the view of the Supreme Court that "there is no such thing as res judicata in income-tax matters" Raja Bahadur Visheshwara Singh v. CIT AIR 1961 SC 1062. Similarly, erroneous or mistaken views cannot fetter the authorities into repeating them, by application of a rule such as estoppel, for the reason that being an equitable principle, it has to yield to the mandate of law. A deeper reflection would show that blind adherence to the rule of consistency would lead to anomalous results, for the reason that it would engender the unequal application of laws, and direct the tax authorities to adopt varied interpretations, to suit individual assesses, subjective to their convenience, - a result at once debilitating and destructive of the rule of law. A previous Division Bench of this Court, in Rohitasava Chand v. CIT [2008] 306 ITR 242/ 171 Taxman 147 had held that the rule of consistency cannot be of inflexible application."*

15 Before us, the Ld. Counsel of the assessee submitted that disallowance needs to be deleted on two grounds. Firstly, it was submitted that the IPD bonds under consideration were issued in the year 2009 and since then interest paid on such bond was claimed deduction and allowed by the Revenue, therefore no disallowance is to be made on account of principle of consistency. Secondly, it was submitted that in view of the decision of the coordinate bench of the Tribunal in the case of *Tata Power Co Ltd versus PCIT* (in ITA Nos. 2710 and 2711/MUM/2018, wherein it has been principally accepted that IPD bonds are in the nature of the borrowing/debt and not equity, the addition need to be deleted. The Ld. DR on the other hand relied on the order of the lower authorities.

16 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. As far as argument of rule of consistency is concerned, the Ld. CIT(A) has rejected the contention of the assessee following the decision of the Hon'ble Delhi High Court in the case of *Krishak Bharati cooperative Ltd (supra)*.



The said finding being based on the precedent, we concur with the finding of the Ld. CIT(A).

16.1 The assessee has distinguished the decision of Hon'ble Punjab Haryana High Court in the case of Pepsu Road transport Corporation (supra) on the ground that in said case capital was provided by the Union of India under a statutory obligation which had no provision of repayment. Further in the event of the liquidation of Pepsu Road transport Corporation after meeting the liabilities if any, the assets were to be divided among Central Government and the State Government and such other parties, if any as may have subscribed to the capital in proportion to the contribution made by each of them to the total capital. However in the instant case there was no statutory obligation on the investors to subscribe to IPDs and further the claim of the investor of the IPD bonds is superior to that of equity investor and subordinate to other creditors. Further, it was submitted that interest paid on IPD cannot be equated with the dividend as dividend is not mandatory to be paid each year and it has to be paid if there is profit during the any financial year and on approval of the proposal of the Board of Directors by the shareholders in the annual general meeting. Whereas in the case of the IPD, it is mandatory to pay interest irrespective of the availability of the profit and no approval of the Board of Directors or shareholders was required. In view of the above discussion, we concur with the contention of the assessee that ratio in the case of Pepsu Road transport Corporation Ltd (supra) cannot be applied or the instant case.

16.2 However as far as finding of the Coordinate bench of Tribunal in the case of Tata Power Co Ltd (supra) is concerned, the Tribunal has in principle held that perpetual bond are not in the nature of equity and therefore quashed the revision proceedings passed by the Ld. PCIT, The relevant finding of the Tribunal (supra) is reproduced as under:

Heard both the sides and perused the material on record. Assessment in the case of the assessee was completed by the Assessing Officer u/s 143(3) r.w.s 144C(13) of the I.T. Act, 1961 on 30.06.2017. The ld. Pr.CIT has held vide order u/s 263(3) of the Act, dated 28.03.2018 that assessment order passed u/s 143(3) r.w.s 144C(13) as erroneous insofar as it was prejudicial to the interest of revenue holding that the Assessing Officer was not correct in allowing the interest on perpetual debt instruments without examining and verifying the allowability of such expenditure. With the assistance of ld. representatives we have gone through the copies of documents and detailed submission made before the A.O during the course of assessment proceedings as per page no. 1 to 160 of the paper book filed by the assessee. It is noticed that assessing officer has specifically asked the assessee vide notice dated 24.11.2016 to provide the detail of income tax reversal on distribution of unsecured perpetual securities. In this regard assessee has given detailed submission vide letter dated 16.12.2016 stating that it has issued 11.4% unsecured perpetual securities (bonds) for the purpose of business use. Interest of such securities is payable @ 11.40% per annum. The assessee has also specifically explained in line with



accounting standard, the aforesaid interest is charged to reserve and surplus. The gross amount of interest of aforesaid securities was of Rs.142.03 crores for F.Y. 2010-11. But the same was charged to Rs.113.61 crores after netting off taxes [142.03 - 28.42]. The amount of tax impact of Rs.28.42 crores has been charged to reserve and surplus during the year. Thereafter again on 23.12.2016 the assessee has explained to the assessing officer that during the year the company has incurred Rs.18.63 crores on issue of 10.75% debenture of Rs. 1500 crores. This amount being expenditure of capital nature has not been claimed by the assessee in its return of income. The assessee has also supplied to the Assessing Officer detailed offer document issued for unsecured perpetual debentures of Rs.1500 crores during the course of assessment proceedings. In the offer document the terms and conditions of issuing perpetual debentures, basis of allotment, creation of debenture redemption reserves along with object of the issue were clearly mentioned. As per the copy of object of the issue placed at page 67 of the paper book, it is mentioned that utilization of funds to be raised through this private placement will be for general business purpose and at page no. 62 issue size was mentioned of 15000 debentures of face value of Rs. 10 lac each aggregating to Rs.1500 crores. It is demonstrated from the detailed submission and copies of documents placed in the paper book that assessing officer has made detailed inquiry/verification during the course of assessment proceedings that assessee has borrowed funds for business use by issue of debentures. The borrowed fund were payable on call option exercising by company after the 10th year or any at the end of every year thereafter. It was also explained that the lenders were not entitled to share any surplus or bear any loss like shareholders. Debentures trustee were appointed to safeguard interest of the lenders. The assessee company had also stated on the basis of aforesaid discussion that it had borrowed fund for the purpose of its business and the interest on debenture was deductible in computing the income from profit and gains from business and profession. In the light of the above facts and after considering the detailed material furnished by the assessee during the course of assessment proceedings before the assessing officer we observe that the assessee has categorically explained to the assessing officer with relevant supporting material that it has issued unsecured perpetual non-convertible debentures and such lenders were not entitled to share any surplus or bear any loss like shareholders. These debentures were entitled for fixed interest @11.40% along with redemption after the 10th year. These facts and submissions were also brought to the notice of the ld. Pr.CIT during the course of proceedings u/s 263 of the Act, however, the ld. Pr.CIT without controverting these undisputed fact held that assessment order was erroneous so far it was prejudicial to the interest of Revenue. Therefore, we consider that the order passed by the ld. Pr.CIT u/s 263 is unjustified and we quash the same. Therefore, we allow the ground of appeal of the assessee.

16.3 Respectfully, following the finding of the Tribunal (supra), we set aside the finding of the Ld. CIT(A) on the issue in dispute and direct the Ld. A.O. to delete the disallowance of interest amounting to Rs.



*18,00,00,000/-, which was made u/s 36(1)(iii) of the Act. The ground No. 4 of the appeal of the assessee is accordingly allowed.”*

26.3 Thus, respectfully following the finding of the Tribunal(supra), we set aside the finding of the Ld. CIT(A) and delete the disallowance of interest in respect of IPDI , which was made under section 36(1)(iii) of the Act. The ground of appeal of the assessee is accordingly allowed.

27. The ground No. XVIII has been raised as an alternative to ground No. XVII of the appeal, which we have already allowed in favour of the assessee and therefore this ground is rendered merely academic and hence dismissed as infructuous.

28. In ground No.XIX and XX, the assessee has raised the issue of levy of interest under section 234A and 234D of the Act.

28.1 We find that Ld. CIT(A) directed the Assessing Officer to verify the claim of the assessee as in the assessment order no details of computation of interest under section 234A or section 234D was provided. In the grounds raised the assessee has submitted with regard to interest under section 234A of the Act that return of income was filed within the statutory Limit as specified under section 139 of the Act. Regarding interest levied under section 234D of the Act, it has been submitted that the assessee had not received any refund for captioned Year before the date of the Regular Assessment. In our opinion, computation of the interest under section 234A and 234D is a matter of verification from the record



and in absence of details of computation, the Ld. CIT(A) is justified in directing the Assessing Officer for verification in accordance with law. We therefore, feel it appropriate to direct the Assessing Officer that if he had not complied with the direction of the Ld. CIT(A) than he may verify the claim of the assessee in accordance with law and compute the interest accordingly. The ground Nos. XIX and XX of the appeal are accordingly allowed for statistical purposes.

29. The ground No. 3 & 4 of the appeal of the Revenue relate to deletion of disallowance of deduction for broken period interest in relation to HTM category of investment.

29.1 The Ld. CIT(A) deleted the addition following the finding of his predecessor in assessment year 2014-15. The relevant finding of Ld. CIT(A) reproduced as under:

*“9.4.1 I have considered the submissions made by the appellant and perused the materials available on record. The appellant has requested to delete impugned disallowance of Rs. 68,06,37,940/- being claim of Broken Period Interest on HTM securities. The appellant has made detailed submissions as above and the same have been considered carefully. While disallowing the said broken period interest, the Ld. AO has given the finding that the interest on securities does not fall under the head 'Profits and Gains of Business and Profession' and the same has to be brought to tax under the head 'Income from Other Sources'. However, from computation of total income it appears that apparently the Ld. AO has not taxed the same under the head 'Income from Other Sources'. Further, in the appellants own case for AY 2014-15, my Ld. Predecessor, vide his above referred order dated 31.01.2018 has held that prima-facie the bank is classifying the securities under the categories AFS, HFT and HTM as stock in trade and hence it's claim for broken period interest in respect of the same is allowable as a revenue deductions. Further, the Hon'ble Supreme Court in the case of CIT vs. Nawanshahar Central Cooperative Bank Ltd, reported in 160 Taxman 48 has held that the investments made by a banking concern are part of the business of banking. The CBDT has recognized the said laws pronounced by the Hon'ble Apex Court and vide Circular No. 18/2015*



dated 02.11.2015 has brought the same to the notice of the field formations and the same stipulates as under.

"CIRCULAR NO. 18/2015 [F.NO.279/MISC./ 140/2015/ITJ], DATED 2-11-2015

It has been brought to the notice of the Board that in the case of Banks, field officers are taking a view that, 'expenses relatable to investment in non-SLR securities need to be disallowed u/s 57(i) of the Act as interest on non-SLR securities is income from other sources."

2. Clause (id) of sub-section (1) of Section 56 of the Act provides that income by way of interest on securities shall be chargeable to income-tax under the head "Income from Other Sources", if the income is not chargeable to income-tax under the head "Profits and Gains of Business and Profession".

3. The matter has been examined' in light of the judicial decisions on this issue. In the case of CIT v. Nawanshahar Central Cooperative Bank Ltd.

2007] 160 Taxman 48(SC), the Apex Court held that the investments made by a banking concern are part of the business of banking. Therefore, the income arising from such investments is attributable to the business of banking falling under the head "Profits and Gains of Business and Profession".

3.2 Even though the abovementioned decision was in the context of co-operative societies/Banks claiming 80P (2)(a) (i)of the Act, the principle is deduction under section equally applicable to all banks/commercial banks, to which Banking Regulation Act, 1949 applies.

4. In the light of the Supreme Court's decision in the matter, the issue is well settled. Accordingly, the Board has decided that no appeals may henceforth be filed on this ground by the officers of the Department and appeals already filed, if any, on this ground before Courts/Tribunals may be withdrawn/ not pressed upon. This may be brought to the notice of all concerned."

Further, it is observed that the issue of allowance of above referred broken period interest was decided by my Ld. predecessor in appellant's own case for AY 2014-15, vide his above referred order dated 31.01.2018, and therein it has been held as under.

#### "7.3 Decision

I have considered the facts of the issue and submissions of the appellant. The only issue in this Ground of appeal is that the AO has classified AFs and HIF securities as 'stock in trade' and HTM securities as 'investments' and hence allowed claim for broken period interest (BPI) for AFS and HFT categories of securities and disallowed assessee's claim for deduction of interest relatable to HTM category of securities. Prima facie it appears from the records that assessee has



*been treating all the three categories of securities as 'stock in trade' for income tax purposes irrespective of the fact that these were classified as 'investments' for books purposes as per RBI guidelines. This method of accounting has been consistently and regularly followed by the assessee for the last several years and appears to have been accepted by the department for earlier assessment years as well. Prima facie the HTM securities are 'stock in trade' of the assessee as per the regular system of accounting followed by the assessee for the last several years and hence its claim for broken period interest (BPI) in respect of the same is allowable as a revenue deduction. In this connection, it may e mentioned here that the AO had dealt with only one aspect of treating the HTM securities as capital assets, but had not dealt with other consequential issues of taxability of income arising from the sale of securities as capital gains and other relevant issues under section 45 to 55 of the I.T. Act 1961. Anyhow, assessee's diam for deduction of broken period interest of Rs. 49,96,29,21 1/-is aliowed. In this connections, reliance is also "placed on the decisions of Bombay High Court in the case of HDFC vs CIT -366/ITR/505 and Bombay ITAT in the case of KBC Bank vs JCIT-34/TAXMAN.COM/26. In nutshell, assessee's appeal is allowed."*

*The facts and circumstances of the issue under consideration remain same as that in AY 2014-15 and hence respectfully following the said decision of my Ld. Predecessor in appellant's own case for AY 2014-15 the impugned disallowance of Rs 68,06,37,940/- is DELETED. Accordingly, the Ground No. IV raised in appeal is ALLOWED."*

29.2 Before us the learned counsel for the assessee referred to the decision of the coordinate bench of the Tribunal in the case of the assessee in assessment year 2011-12 to 2013-14 in ITA No.3498 to 3500 & 3296 to 3238/ Mum/2018 and submitted that issue in dispute is covered in favour of the assessee. The relevant finding of the Tribunal is reproduced as under:

*"099. Ground number 5 and 6 with relation to the broken period interest allowable as a deduction. The learned authorised representative stated that the honourable Bombay High Court in CIT versus HDFC bank Ltd has decided the issue while deciding ground number (b) before them. The learned departmental representative supported the order of the AO.*

*100. We find that this issue squarely covered in favour of the assessee by the decision of the honourable Bombay High Court in CIT versus HDFC bank Ltd 366 ITR 505 wherein while deciding issue number (b) i.e.*



*B) Whether the ITAT was correct in law in holding that the broken period interest is allowable as a deduction, inspite of the Hon'ble Supreme Court's decision in the case of CIT v. Vijay Bank (187 ITR 541) and the Rajasthan High Court's decision in the case of Bank of Rajasthan (316 TR 391) ?*

*Honourable High Court held as Under:-*

*"6. Even as far as question (B) is concerned, we find no infirmity in the orders passed by the CIT (Appeals) or the ITAT. In deciding this issue, CIT (Appeals) and the ITAT have merely followed the judgment of this Court in the case of American Express International Banking Corpn. v. CIT [2002] 258 ITR 601/125 Taxman 488. On going through the said judgment, we find that question*

*(B) reproduced above and projected as substantial by Mr Suresh Kumar is squarely answered by the judgment of this Court in the case of American Express International Banking Corpn. (supra). In view thereof, we do not find that even question (B) gives rise to any substantial question of law that needs to be answered by this Court."*

29.3 We have heard rival submissions of the parties on the issue in dispute and perused the relevant material on record. The issue in dispute is whether the broken period interest in relation to HTM securities is allowable as business expenditure. Since the issue whether the HTM securities in the case of the assessee are in the nature of the stock-in-trade or investment, has been raised in the appeal of the assessee in ground Nos. IX and X , which has been restored back to the file of the Ld. AO, we feel it appropriate to restore this issue also to the file of the Ld. AO for deciding afresh in the light of decision of the coordinate bench (supra). The ground Nos. 3(three) and 4(four) of the appeal of the revenue are accordingly allowed for statistical purposes.

29.4 The issue of amortisation of premium in relation to HTM categories of securities raised in ground No. 5 (fiv) of the appeal of the Revenue is also dependent on whether the same are in the



nature of stock-in-trade or investment. Since that issue has already been restored to the file of the Ld. AO in ground No. IX and X of the appeal of the assessee and therefore the ground No. five of the appeal of the revenue is also restored to the file of the Ld. AO for deciding afresh. The ground No. 5 (five) of the appeal of revenue is accordingly allowed for statistical purposes.

30. In the result, both the appeal of assessee as well as appeal of the Revenue is allowed partly for statistical purpose.

**Order pronounced in the open Court on 05/02/2024.**

**Sd/-**  
**(KAVITHA RAJAGOPAL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;

Dated: 05/02/2024

Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Assistant Registrar)  
**ITAT, Mumbai**