आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./**ITA Nos.: 1120 & 1121/Chny/2019**

निर्धारण वर्ष / Assessment Years: 2015-16, 2016-17

M/s. City Union Bank Ltd., Administrative Office "Narayana" 24-B, Gandhi Nagar, Kumbakonam- 612 001. **[PAN: AAACC-1287-E]**	v.	Asst. Commissioner of Income-tax, Circle -1, Kumbakonam.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./**ITA No.: 672/Chny/2020**

निर्धारण वर्ष / Assessment Year: 2017-18

M/s. City Union Bank Ltd., Administrative Office "Narayana" 24-B, Gandhi Nagar, Kumbakonam- 612 001. **[PAN: AAACC-1287-E]**	v.	Deputy Commissioner of Income-tax, Circle -2(1), Trichy.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./**ITA Nos.: 1418 & 1419/Chny/2019**

निर्धारण वर्ष / Assessment Years: 2015-16, 2016-17

Asst. Commissioner of Income-tax, Circle -1, Kumbakonam.	v.	M/s. City Union Bank Ltd., Administrative Office "Narayana" 24-B, Gandhi Nagar, Kumbakonam- 612 001. **[PAN: AAACC-1287-E]**
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./**ITA No.: 636/Chny/2020**

निर्धारण वर्ष / Assessment Year: 2017-18

Deputy Commissioner of Income-tax, Circle -2(1),	v.	M/s. City Union Bank Ltd., Administrative Office "Narayana" 24-B, Gandhi Nagar,

Trichy. Kumbakonam- 612 001.
[PAN: AAACC-1287-E]

(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

Assessee by : Shri. S. Anandhan, CA & Smt. R. Lalitha, CA
Department by : Shri. Nilay Baran Som, CIT

सुनवाई की तारीख/Date of Hearing : 06.02.2024
घोषणा की तारीख/Date of Pronouncement : 11.03.2024

आदेश /O R D E R

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This bunch of six cross appeals filed by the assessee and, as well as the revenue are directed against separate, but identical orders of the learned Commissioner of Income Tax (Appeals)-1, Trichy, all dated 18.02.2019, 06.03.2019 and 12.03.2020 and pertains to assessment years 2015-16, 2016-17 & 2017-18. Since facts are identical and issues are common, for the sake of convenience these appeals were heard together and are being disposed off, by his consolidated order.

ITA No: 1120/Chny/2019 for assessment year 2015-16:

2. The assessee has raised the following grounds of appeal:

> *"1. The order of the Commissioner of Income Tax (Appeals) is bad in law & contrary to the facts & circumstances that are prevalent in the case of the Appellant.*

2. The learned Commissioner (Appeals) erred in confirming the disallowance of non-rural bad debts write off of Rs. 21,58,73,485/-.

2.1. The learned Commissioner (Appeals) failed to appreciate the fact that the amount claimed was write off effected by the bank.

2.2. The Learned Commissioner (Appeals) erred in allowing the amount by considering the amount debited to Profit & Loss account.

2.3. The Learned Commissioner (Appeals) erred in the method adopted to arrive at the allowable amount of deduction under Sec 36(1)(vii).

2.4. The Learned Commissioner (Appeals) erred in relying on the Explanation 2 to Sec 36(1)(vii) which is not applicable to the facts of this case.

2.5. The Learned Commissioner (Appeals) erred in confirming the bad debts written off based on surmises and conjectures.

3. The learned Commissioner (Appeals) erred in confirming the disallowance of non-rural bad debts write off of Rs. 43,62,86,255/-

4. The Learned Commissioner (Appeals) erred in confirming CSR expenses of Rs.3,53,83,891/-

4.1. The Learned Commissioner (Appeals) failed to appreciate the fact the expenses have resulted in generation of goodwill for the bank.

4.2. The Learned Commissioner (Appeals) failed to appreciate the fact it is only pure CSR expenses without any other benefit are covered by the Explanation to Sec 37.

5. The Learned Commissioner (Appeals) erred in confirming ESOS expenses of Rs.7,61,57,839/- and enhancing the disallowance by Rs.26,22,43,000/-.

5.1. The Learned Commissioner (Appeals) erred in holding the ESOS expenses are capital in nature.

5.2. The Learned Commissioner (Appeals) failed to appreciate the fact that the bank claimed ESOS expenses only on the actual shares exercised by employee at the time of exercise.

5.3. The Learned Commissioner (Appeals) erred in holding the ESOS expenses are notional.

5.4. The Learned Commissioner (Appeals) erred in not considering the case laws in support of the claim of the appellant.

5.5. The Learned Commissioner (Appeals) decided the issue on surmises and conjectures.

6. The Learned Commissioner depreciation (Appeals) erred in giving direction to the AO to compute the on Investments as per CBDT circular.

6.1. The Learned Commissioner (Appeals) failed to appreciate the fact that the appreciation cannot be adjusted against the depreciation.

6.2. The learned Commissioner (Appeals) failed to consider the Apex court decision on this issue which supports the claim of the Appellant.

7. The Learned Commissioner (Appeals) erred in confirming an amount of Rs. 16,59,07,839/- u/s 40(a)(ia) of the Income Tax Act, 1961.

7.1. The Learned Commissioner (Appeals) failed to consider the fact of that the institutions whose income is wholly exempt from tax under section 10 or 11 & 12 and Individuals whose taxable income is below the threshold limit, are not required to pay tax, are outside the provisions of section 201.

7.2. The Learned Commissioner (Appeals) failed in not considering that the interest paid has been reflected in the Form 26AS of the Depositors.

7.3. The Learned Commissioner (Appeals) failed in not considering the first proviso to section 201 of the Income Tax Act, 1961.

7.4. The Learned Commissioner (Appeals) erred in sustaining the disallowance without appreciating the fact that the AO has passed the order without giving sufficient time as requested by the Appellant for submission of evidence.

8. The Learned Commissioner (Appeals) erred in confirming the QIP expenses of Rs. 1,75,43,308/- by holding that the same is not covered u/s 35D.

8.1. The Learned Commissioner (Appeals) erred in holding that there was no extension of existing undertaking.

8.2. The Learned Commissioner (Appeals) failed to appreciate the fact that the proceeds of QIP is for augmentation of business by opening more branches of the Bank and hence the QIP expenses are allowable u/s 35D.

9. The Learned Commissioner (Appeals) erred in confirming an amount of Rs. 10,61,97,071/- u/s 36(1)(viii) of the Income Tax Act, 1961.

9.1. The Learned Commissioner (Appeals) erred in rejecting the computation of Appellant bank based on surmises and conjunctures.

9.2. The Learned Commissioner (Appeals) failed to appreciate the fact that the Appellant bank had computed the deduction u/s 36(1)(viii) as per the provisions of the Act.

9.3. The Learned Commissioner (Appeals) erred in considering the income of the Bank as a whole for arriving at the deduction u/s 36(1)(viii).

9.4. The Learned Commissioner (Appeals) failed to appreciate the fact that the profit from eligible business worked out by AO is not in conformity with the provisions of section 36(1)(viii).

10. The Learned Commissioner (Appeals) erred in confirming a sum of Rs.100,11,07,158/- claimed by the appellant bank u/s 36(1)(viia).

10.1. The Learned Commissioner (Appeals) erred in holding that only the incremental advance made during the Financial Year has to be considered for computing the Average Rural Advances as per Rule 6ABA of Income Tax Rules, 1962.

10.2. The Learned Commissioner (Appeals) failed to appreciate the fact that there is no such requirement in Rule 6ABA so as to consider only the incremental advances.

10.3. The Learned Commissioner (Appeals) erred in holding that some of the branches are not rural branches as per the definition of Sec 36(1)(viia).

10.4. The learned Commissioner (Appeals) relied the latest decision of the ITAT ignoring the earlier decision of the ITAT in which the claim of the Appellant was upheld.

For all these and other grounds which may be urged at the time of the hearing of this appeal, the appellant prays that its appeal be allowed."

3. The brief facts of the case are that, the appellant, City Union Bank Ltd, Kumbakonam, a banking company, filed its return of income on 24.09.2015 for the assessment year 2015-16, admitting total income of Rs. 314,90,05,870/-, under normal provisions of the Act, and Rs. 505,19,73,592/- under the provisions of section 115JB of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The case has been subsequently reopened u/s. 147 of the Act and notice u/s. 148 of the Act, dated 01.01.2018 was issued and served on the assessee. In response, the assessee company has filed its return of income for the assessment year 2015-16 on 31.01.2018. The assessment has been completed u/s. 143(3)

r.w.s. 147 of the Act and determined total income of Rs. 575,49,22,469/- by making the following additions:

1	*Excess provision made in respect of rural advances u/s.36(2)(v) claimed as deduction on account of Non rural bad debts written off u/s.36(1) (vii)*	*21,58,73,485*
2	*Disallowance of u/s.14A*	*2,05,86,520*
3	*Corporate Social Responsibility expenses*	*3,53,83,891*
4	*Expenses on shares alloted to employees on ESOS*	*7,61,57,839*
5	*Net profit on investment*	*29,66,29,150*
6	*Disallowance u/s.40(a)(ia)*	*16,59,07,839*
7	*1/5th of shares issues expenses under QIP mode u/s.35D*	*1,75,43,306*
8	*Excess depreciation on ATM*	*7,55,27,480*
9	*Accrued interest on NPA*	*62,94,991*
10	*Accrued interest on government securities*	*12,92,76,203*
11	*Amount assessed/s.41(1) and 28(iv)*	*2,31,45,410*
12	*Disallowances of Sec. 36(1) (vii)*	*10,61,97,071*
13	*Disallowances of Sec. 36(1) (vi) (a)*	*100,11,07,158*
14	*Disallowance of excess claim of provision for bad and doubtful debts*	*43,62,86,255*

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the ld. CIT(A). Before the ld. CIT(A), the assessee has challenged various additions made by the Assessing Officer, including excess provision made in respect of rural advances u/s. 36(2)(v) of the Act, claimed as deduction on account of non-rural bad debts written of u/s. 36(1)(vii) of the Act, disallowance of Corporate Social Responsibility expenses, addition towards net profit on

investment, disallowance u/s. 40(a)(ia) of the Act and disallowance of excess claim of provisions for Bad and Doubtful debts. The ld. CIT(A), for the reasons stated in their appellate order dated 18.02.2018, partly allowed appeal filed by the assessee, where the ld. CIT(A) deleted additions made towards disallowance u/s. 14A r.w.r. 8D of I.T. Rules, 1962, excess depreciation on ATMs, accrued interest on NPA, accrued interest on government securities and additions towards income assessed u/s. 41(1) and 28(iv) of the Act. However, sustained additions made towards NPA provisions claimed as write off, disallowance of CSR expenses, expenses of shares allotted under ESOS, disallowance u/s. 40(a)(ia) of the Act, expenses of QIP issue of shares, bad debts provisions u/s. 36(1)(viia) of the Act, non-rural bad debts written off and profit from eligible business u/s. 36(1)(viii) of the Act. The ld. CIT(A), had also enhanced the assessment and made additions towards expenses on shares allotted under ESOS amounting to Rs. 26,22,43,000/-. Aggrieved by the ld. CIT(A) order, the assessee and as well as the revenue are in appeal before us.

5. The first issue that came up for our consideration from ground no. 4.1 to 4.2 of assessee appeal is disallowance of CSR expenses of Rs. 3,53,83,891/-. The assessee has claimed deduction towards Corporate Social Responsibilities expenses. The Assessing Officer disallowed CSR expenses on the ground that, as per Explanation (2) to section 37 of the Act, CSR expenses cannot be allowed as deduction to be an expenditure incurred by the assessee for the purpose of business or profession.

5.1 The Ld. Counsel for the assessee, Shri. S. Anandhan, CA and R. Lalitha, CA, submitted that the ld. Assessing Officer and CIT(A) were erred in confirming disallowance of CSR expenses without appreciating fact that, CSR expenditure voluntarily incurred by the assessee will not be covered by the Explanation (2) to section 37 of the Act. The Ld. Counsel for the assessee, submitted that the CSR expenses which are made only to comply with the provisions of section 135 of the Companies Act, 2013 and which have no connection with the business of the assessee is only disallowable as per the Explanation (2) to section 37 of the Act. The CSR expenses

incurred by the assessee by voluntarily in the business is not covered by the Explanation and hence, allowable. In this regard, he relied upon the decision of Hon'ble Karnataka High Court in the case of CIT vs Info Technologies Ltd reported in [2014] 260 ITR 714 and also decision of Gujarat High Court in the case of Gujarat Narmada Valley Fertilizer and Chemicals Ltd reported in [2020] 422 ITR 164 (Guj).

5.2 The ld. DR, on the other hand supporting the order of the Assessing Officer and the ld. CIT(A) submitted that, Explanation (2) to section 37 of the Act, inserted by the Finance Act, 2014 w.e.f. 01.04.2015 clarified that, any expenditure incurred by the assessee on the activities relating to corporate social responsibilities referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purpose of business or profession.

5.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The CSR expenses is one which has been incurred by

the assessee as per mandate of section 135 of the Companies Act, 2013. As per section 135 of the Companies Act, 2013, some specified companies require to spend specified amount of their profit for corporate social responsibilities out of their profit. In our considered view, when an expenditure is incurred out of profit of an assessee, it partakes the nature of appropriation of profit, but not expenditure incurred wholly and exclusively for the purpose of business of the assessee. Further, Explanation (2) to section 37 of the Act, put a restriction on deductibility of expenditure of any kind referred to u/s. 135 of the Companies Act, 2013 i.e., corporate social responsibilities expenses, w.e.f. assessment year 2015-16. Although, the assessee has relied upon the decision of CIT vs Info Technologies Ltd (Supra) and Gujarat Narmada Valley Fertilizer and Chemicals Ltd (Supra), but in our considered view, said judgments were rendered before insertion of Explanation (2) to section 37 of the Act and thus, the ratio laid down by the Karnataka High Court and also Hon'ble Gujarat High Court is not applicable to the facts of the present case.

5.4 In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that the assessee is not entitled for deduction towards CSR expenses and thus, we are inclined to uphold the findings of the ld. CIT(A) and reject ground taken by the assessee.

6. The next issue that came up for our consideration from ground no 5 of assessee appeal is disallowance of ESOS expenses and enhancement of disallowance of ESOS expenses by the ld. CIT(A). The facts with regard to the impugned dispute are that, the appellant has allotted shares to employees under ESOS scheme and claimed difference between market price and exercise price as allowable expenses of Rs. 33,84,00,000/-. The appellant bank had claimed the deduction only in respect of those shares which were exercised and allotted to employees. In other words, no deduction was claimed in respect of lapsed options. The difference in market price and exercise price of shares allotted under ESOS scheme is charged as perquisite in the hands of the eligible employees and tax has been deducted u/s. 192 of the Act. The Assessing Officer has disallowed part of the

expenses of Rs. 7,61,57,839/-, mainly on account of lapsed options which have not been exercised by the employees. The Assessing Officer has discussed the issue at length in light of decision of ITAT Special Bench in the case of Biocon Ltd vs DCIT [2013] 25 ITR (Trib) 602 (Bang), and held that differential between the market price and exercise price is allowable as deduction u/s. 37(1) of the Act, but said deduction should be allowed equally over the vesting period. Therefore, worked out proportionate disallowance based on allotment price, market price and claim of expenses by the assessee and accordingly, disallowed sum of Rs. 7,61,57,839/-. On appeal, the ld. CIT(A) enhanced the assessment and disallowed total expenditure claimed by the assessee amounting to Rs. 33,84,00,839/-, on the ground that in case of ESOP, the whole idea of treating differential value of shares as expenses is based on the misconception and thus, the question of allowing deduction towards difference between market price and exercise price does not arise. Aggrieved by the ld. CIT(A) order, the assessee is in appeal before us.

6.1 The Ld. Counsel for the assessee, submitted that this issue is squarely covered by the decision of Hon'ble Madras High Court in the case of ALSEC Technologies Ltd [2017] 12 TMI 1581, where the issue has been decided by the Hon'ble Madras High Court in favour of the assessee and thus, deduction claimed by the assessee should be allowed.

6.2 The ld. DR, Shri. Nilay Baran Som, CIT, on the other hand supporting the order of the Assessing Officer and ld. CIT(A) submitted that, first of all there is no expenditure for the assessee towards allotment of shares under ESOP scheme. Further, such expenditure is capital in nature. Therefore, just because said expenditure is taxed in the hands of the employees as perquisite, does not alter the scheme of taxation. Since, the assessee is not incurring any expenditure and only claiming notional expenditure towards difference between market price of shares and option exercised by employees under the scheme, the same cannot partake the nature of expenditure of the assessee and thus, cannot be allowed as deduction.

6.3 We have heard the rival parties, perused material available on record and gone through orders of the authorities below. During the financial year 2014-15 relevant to assessment year 2015-16, the assessee had allotted 71,91,961 equity shares to its employees under ESOS and claimed expenditure of Rs. 33,84,00,000/-. The assessee has worked out expenditure deductible towards ESOS on the basis of market price as on date of allotment (-) option price determined as on board meeting. The Assessing Officer has worked out expenses deductible towards ESOS by following ITAT Special Bench decision in the case of Biocon Ltd vs DCIT [2013] 25 ITR (Trib) 602 (Bang) and according to the Assessing Officer, the assessee has claimed excess deduction of Rs. 7,54,57,839/-. We find that, in principle ESOS discount is deductible business expenditure, since it represents consideration/compensation for services rendered by employees. Further, differential amount on market price of shares and option price as on the date of option exercised by the employees has been taxed in the hands of the employees as perquisite. Further, when it comes to deduction u/s. 37(1) of the Act, the simple method of calculation is number of

shares allotted to employees multiplied by market price as on the date of allotment (-) number of shares allotted to employees multiplied by option price determined as on board meeting and this principle is explained by Special Bench of ITAT in the case of Biocon vs DCIT (supra). Although, the Assessing Officer in principle accepted ESOS expenses is deductible u/s. 37(1) of the Act and also followed the decision of Biocon Ltd vs DCIT (Supra), in computing disallowance, but arrived at difference amount of deduction. In our considered view, when there is no ambiguity in computation of expenditure deductible towards ESOS expenses and also said deduction has been computed in light of SEBI guidelines, the Assessing Officer is erred in re-computing allowable expenses by adopting his own formula is incorrect. Since, the appellant has deducted difference between market price and the price at which the option is exercised by the employees is deductible expenditure u/s. 37(1) of the Act, in our considered view the Assessing Officer is completely erred in re-computing the deduction without assigning proper reasons. Further, this principle is supported by the decision of Hon'ble Madras High Court in the case of CIT vs PVP Ventures Ltd [2013] 001 ITR –

OL 307 (Mad), where it has been clearly held that the difference between the market price and the price at which the option is exercised by the employees is to be debited to the profit and loss account as an expenditure. A similar view has been taken by Hon'ble Madras High Court in the case of CIT vs M/s. ALSEC Technologies Ltd [2017] 12 TMI 1581, where it has been held that difference between market price and the employees stock option plan is revenue expenditure and allowable u/s 37(1) of the Act.

6.4 In this view of the matter and by following the decision of Hon'ble Madras High Court in the case of M/s. ALSEC Technologies Ltd (supra), we are of the considered view that ESOS expenses is allowable deduction u/s. 37(1) of the Act and thus, we direct the Assessing Officer to delete additions made towards disallowance of expenses and also enhancement made by the ld. CIT(A).

7. The next issue that came up for our consideration from ground no. 6 of assessee appeal is depreciation on investments. The appellant bank is treating its security as

stock in trade. For the purpose of income tax, it prepares a separate investment trading account and offers the net result of the trading account to tax. It values individual securities at lower of cost or market value. However, for the purpose of books of accounts, the bank classifies securities as per RBI norms in the following categories i.e., Held to Maturity (HTM), Available for Sale (AFS) and Held for Trading (HFT) and also value them as per RBI guidelines. The Assessing Officer, disallowed depreciation on investments by relying on instruction no. 17/2008, dated 26th Nov, 2008 and according to the Assessing Officer, the appellant bank has to classify securities under HFT & AFS, as per RBI norms and depreciation has been aggregated scrip wise and only the net depreciation, if, any is required to be provided in the accounts. On appeal, the ld. CIT(A) confirmed additions made by the Assessing Officer.

7.1 The Ld. Counsel for the assessee, submitted that this issue is squarely covered in favour of the assessee by the decision of the Hon'ble High Court of Madras in appellant's own case for assessment years 1991-92 to 1993-94 in CIT vs City

Union Bank [2007] 291 ITR 144, where the Hon'ble High Court held that when investments are made in accordance with the requirements of the Act, wherein the market price changed from the value shown in the opening balance at the end of the year, then same can be allowed as depreciation.

7.2 The ld. DR, on the other hand supporting the order of the Assessing Officer and ld. CIT(A) submitted that, the bank has classified securities into three categories, HTM securities which are carried at acquisition cost unless the cost is more than the face value. Securities Available For Sale (AFS) are valued at quarterly or at more frequent intervals. Similarly, securities Held for Trading (HFT) will be valued at monthly or at more frequent intervals. The Assessing Officer, has followed RBI guidelines and instruction no. 17/2008 dated 26th Nov, 2008 and worked out disallowances. Therefore, the argument of the assessee that the issue is settled by the decision of Hon'ble High Court in appellant's own case is incorrect.

7.3 We have heard the rival parties, perused material available on record and gone through orders of the authorities

below. The assessee has classified all its securities as stock in trade for the purpose of Income Tax Act, which provides a separate investment trading account and offers the net result of the trading account to tax. The stock in trade was valued at lower of cost or market value. However, for the purpose of books of accounts, the bank classifies securities as per RBI norms and also valued them as per RBI guidelines. There is a difference between value as per RBI norms and value for the purpose of Income Tax Act. The Assessing Officer, disallowed excess depreciation claimed on certain investments on the ground that, said depreciation is contrary to RBI guidelines and vide Circular no. 17/2008, dated 26th Nov, 2008. In our considered view, this is a recurring issue and the Hon'ble Jurisdictional High Court of Madras in appellant's own case in CIT vs City Union Bank (Supra), has decided the issue in favour of the assessee. The Hon'ble High Court, after considering relevant facts and also by following the decision of Hon'ble Karnataka High Court in the case of South Indian Bank Ltd vs CIT [2003] 262 ITR 579, held that depreciation on investment as per market price as on the date of balance sheet is eligible for deduction. In the present case, the

assessee has followed different method of accounting for the purpose of Income tax Act and claimed that it has investments under one category and followed cost or market price whichever is lower, which is different from valuation of securities for the purpose of books which is as per RBI guidelines. Since, the issue is covered by the decision of Hon'ble High Court of Madras in appellant's own case, we are of the considered view that, the Assessing Officer is erred in making additions towards disallowance of depreciation on investments and thus, we direct the Assessing Officer to delete additions made towards disallowance of depreciation on investments.

8. The next issue that came up for our consideration from ground no. 7 of assessee appeal is disallowance of interest u/s. 40(a)(ia) of the Act, for non-deduction of tax at source u/s. 194A of the Act. The Assessing Officer, called upon the appellant to submit necessary details to verify the compliance of section 194A of the Act, in respect of interest payment of deposits to various persons. The appellant has filed list of Form 15G & 15H submitted by the depositors and classified

into two categories. According to the assessee, it has accepted Form 15G & 15H from individual and HUF, below 60 years, above 60 years and Senior Citizens above 80 years. It has also obtained Form 15G & 15H from trust/associates/societies etc. The assessee has paid interest amount of Rs. 55,30,26,131/-, on which TDS was not deducted. The Assessing Officer, discussed the issue at length in light of provisions of section 197A(1A), 197A(1B) & 197A(1C) of the Act, in light of Form 15G & 15H submitted by the depositors and held that, wherever the appellant has furnished no deduction certification in respect of trust/societies, the Assessing Officer has accepted the claim of the assessee and excluded interest amount of Rs. 14,51,95,445/-. Further, wherever the interest payment excludes maximum amount not chargeable to tax for the relevant assessment year, the Assessing Officer has not accepted Form 15G & 15H furnished by the appellant bank and disallowed 30% of interest u/s. 40(a)(ia) of the Act and made additions of Rs. 16,59,07,839/-.

8.1 The Ld. Counsel for the assessee, Shri. S. Anandhan, CA, submitted that, wherever the appellant filed Form 15G & 15H in respect of trust/associates/societies, whose income is exempt u/s. 11 & 12 of the Act, then the appellant bank is not required to deduct TDS and this principle is supported by the decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs Canara Bank [2016] 387 ITR 229. He, further submitted that in case of individual and HUF, the appellant has already filed Form 15G & 15H and proved that the declarants income is not liable to tax and accordingly, no TDS has been deducted in respect of payment. Although, the appellant has furnished necessary details, the Assessing Officer has disallowed 30% of interest u/s. 40(a)(ia) of the Act and thus, the matter may be set aside to the file of the Assessing Officer to verify the claim of the assessee and to decide the issue in accordance with law.

8.2 The ld DR, on the other hand supporting the order of the ld. CIT(A) submitted that, the assessee should prove that declaration submitted by the depositors in Form 15G & 15H are true and correct. Further, it is for the appellant to deduct

TDS in a case where the interest payment exceeds maximum amount chargeable to tax for the relevant assessment year, even if depositors submits Form 15G & 15H. Since, the appellant has failed to comply with provisions of section 197A(1A), 197A(1B) & 197A(1C) of the Act, the Assessing Officer has rightly rejected declaration submitted by the appellant and disallowed interest u/s. 40(a)(ia) of the Act, for non-deduction of tax and their order should be upheld.

8.3 We have heard the rival parties, perused material available on record and gone through orders of the authorities below. The Ld. Counsel for the assessee claims that out of total disallowance of Rs. 16,59,07,839/-, a sum of Rs. 12,86,72,319/- relates to trusts and institutions whose income is exempt u/s. 10 & 11 of the Act. In case, as claimed by the Ld. Counsel for the assessee, interest payment to trust and institutions are exempt u/s. 11 & 12, then it is for the declarants to obtain necessary certificates u/s. 197 of the Act, from the Assessing Officer and produce before the appellant's bank for compliance. In this case, although the Ld. Counsel for the assessee claims that, a sum of Rs. 12,86,72,319/-

interest payment relates to trusts and institutions, but no evidences has been offered before us like relevant certificate u/s. 197 of the Act obtained from the concerned Assessing Officer and any other particulars of trust/institutions. Since, income of trust and associations is exempt u/s. 11 & 12 of the Act, unless otherwise said exemption was either withdrawn or not granted by the authorities, in our considered view, this aspect needs to be verified by the Assessing Officer in light of averments made by the Ld. Counsel for the assessee and also necessary evidences that may be placed before the Assessing Officer to prove its claim. Similarly, in respect of remaining interest disallowance of Rs. 3,72,35,522/-, it is the claim of the appellant's bank that in most of the cases, the deductees have already filed return of income and paid income tax on interest payment made by the bank. This fact also needs to be verified by the Assessing Officer, with necessary evidences that may be filed by the appellant. Therefore, we are of the considered view that this issue needs to go back to the file of the Assessing Officer for further verification and thus, we set aside the order of the ld. CIT(A) on this issue and restore the issue back to the file of the Assessing Officer with a direction

to reexamine the claim of the assessee, in light of any evidences that may be placed by the assessee before the Assessing Officer to prove their case.

9. The next issue that came up for our consideration from ground no. 8 of assessee appeal is disallowance of QIP expenses of Rs. 1,75,43,308/- . The Assessing Officer has disallowed 1/5th of the share issue expenses under QIP mode amounting to Rs. 1,75,43,308/-, on the ground that QIP expenses is not eligible for deduction u/s. 35D of the Act, as no extension of existing business is undertaken. It was the argument of the Ld. Counsel for the assessee that, it has issued share to existing shareholders under Qualified Institutional Placements (QIP) and incurred share issue expenditure. The proceeds of share issue has been utilized for the purpose of extension of existing business by setting up new branches, ATMs and additions on such assets which resulted in increase in business of the assessee. Therefore, expenditure incurred under QIP mode is qualified for deduction u/s. 35D of the Act.

9.1 We have heard the rival parties, perused material available on record and gone through orders of the authorities below. Provisions of section 35D deals with amortization of certain preliminary expenses incurred before the commencement of business or after the commencement of business, in connection with the extension of existing business. In order to allow deduction, the expenditure referred to in sub-section (1) has been satisfied or not to be seen. In this case, the assessee has incurred expenditure for allotment of shares under Qualified Institutional Placements (QIP) scheme. Since, the appellant has incurred said expenditure after the commencement of business, the only point for consideration to allow deduction towards said expenditure is there any extension of existing business or not. It is the claim of the Ld. Counsel for the assessee that, the appellant's bank has utilized QIP share allotment amount for the purpose of extension of existing business by setting up ATMs, new branches etc. If the claim of the appellant is correct, that it has utilized QIP proceeds for the purpose of setting up new branches and ATMs, which results in extension of existing business, then the appellant is eligible for claiming

deduction towards expenditure incurred on QIP allotments. But, fact remains that no evidences has been placed before us to prove that the assessee has spent the amount for extension of its existing business by setting up new branches and ATMs etc. Further, this issue has been covered by the decision of ITAT Mumbai Benches in the case of IDBI Bank Lt vs CIT [2020] 1 TMI 213, where a similar view has been expressed by the Tribunal. Therefore, we are of the considered view that the matter needs to go back to the file of the Assessing Officer to verify the claim of the assessee, in light of amount spent towards extension of existing business like setting up new branches, ATMs etc. In case, the appellant is able to prove its argument that the QIP proceeds has been utilized for extension of existing business, then expenditure incurred for QIP is allowable as deduction. The Assessing Officer is directed to verify the claim and decide the issue in accordance with law.

10. The next issue that came up for our consideration from ground no. 2, 3, 9 & 10 of assessee's appeal is deduction u/s. 36(1)(vii) and 36(1)(viia) of the Act, in respect of provision for

bad debts and bad debts actually written off in the books of accounts of the assessee. The Assessing Officer has discussed the issue in Para 1 of Page 2 to 4 and Para 12 of Pages 28 to 43 of assessment order. The facts with regard to the impugned disputed are that, the assessee is a scheduled bank and has claimed deduction u/s. 36(1)(viia) of the Act, in respect of provision for bad and doubtful debts. The assessee had also claimed deduction u/s. 36(1)(vii) of the Act, towards actual write off of bad debts in light of decision of Hon'ble Supreme Court in the case of Vijaya Bank vs CIT [2010] 323 ITR 166 SC. The assessee has claimed deduction u/s. 36(1)(vii) and sub-clause (a) in respect of rural advance @ 7.5% on total income and an amount not exceeded 10% of aggregate average advances made by the rural branches of the bank. The assessee has followed two systems for provision for bad and doubtful debts i.e., one for the purpose of books of accounts and other for the purpose of computation of income from profits and gains on business or profession. In the books of accounts, the assessee has made provisions as per RBI guidelines on asset classification and provisioning. However, when it comes to computation of income from profits

and gains of business or profession, the assessee has followed provisions of section 36(1)(vii) r.w.s. 36(2)(v) and provisions of section 36(1)(viia) of the Act. According to the assessee, when it comes to provision for bad and doubtful debts in respect of rural advances and actual write off of bad debts in respect of non-rural advances, the net result of provision for bad and doubtful debts in respect of rural advance and actual write off of bad debts in respect of non-rural advance alone needs to be considered without going into Explanation (2) to section 36(1)(vii) of the Act, where the law is very clearly specified that, for the purpose of section 36(1)(vii) and 36(2)(v) of the Act, the account referred to thereunder shall be only one account in respect of provision for bad and doubtful debts under Clause (viia) and such accounts are referred to all types of advances including advances made by the rural branches. The Assessing Officer, however was not satisfied with the explanation furnished by the assessee and according to the Assessing Officer, as per provisions of section 36(1)(vii) of the Act and Explanation (2), deduction shall be allowed in respect of write off of bad debts only in case the actual write off of bad debts exceeds the amount for provision

for bad and doubtful debts referred to u/s. 36(1)(viia) of the Act and for this purpose, it has only one provision for bad and doubtful debts account for all advances including advances made by rural branches.

10.1 The Ld. Counsel for the assessee, Shri. S. Ananthan, CA, at the outset submitted that this issue has been covered in favour of the assessee by the decision of ITAT Bangalore Benches, in the case of Karnataka Bank Ltd vs DCIT in ITA No. 1907/Bang/2018, where the issue has been dealt in detail in light of provisions of section 36(1)(vii) of the Act and explanation provided thereunder and also provisions of section 36(1)(viia) r.w.s. 36(2)(v) of the Act. The Tribunal had also discussed the issue in light of explanation (2) inserted by Finance Act, 2013 w.e.f. 01.04.2014 in light of decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank vs CIT [2012] 343 ITR 270, and held that for the purpose of deduction towards write off of non-rural debts u/s. 36(1)(vii) of the Act, there is no need to adjust credit in the account of provision for bad and doubtful debts created in terms of section 36(1)(viia) of the Act. The Ld. Counsel for the

assessee, has argued the issue at length in light of the decision of Karnataka Bank Ltd vs DCIT (Supra) and held that, even after insertion of Explanation (2) to section 36(1)(vii) of the Act, the ratio laid down by the Hon'ble Supreme Court in the above case is not nullified, in so far as, deduction towards provision for bad and doubtful debts u/s. 36(1)(viia) and 36(1)(vii) of the Act, in respect of rural advance given by branches. He, further submitted that, clause (a) of section 36(1)(vii) of the Act is a beneficial provision provided to banks operating in rural areas and extending credit facilities and thus, when the bank is claiming deduction towards provision for bad and doubtful debts, on the basis of provisions credited, then if you adjust write off of non-rural debts against provision account, then the benefit given to rural banks is taken away. In other words, when it comes to deduction towards provision for bad and doubtful debts u/s. 36(1)(viia) of the Act and write off of bad debts deductible u/s. 36(1)(vii) of the Act, the advances given by rural branches alone needs to be considered, without any adjustment towards provisions credited for non-rural advance and actual write off of non-rural advance. This issue is also covered by the decision of Hon'ble

Delhi High Court in the case of Oriental Bank of Commerce vs PCIT in ITA No. 521/2023, where the Hon'ble High Court has considered provisions of section 36(1)(vii) of the Act and explanation provided thereto and held that there is no substantial question of law raised from the decision of the Tribunal. From the above, it is very clear that the findings of the ITAT in respect of deduction towards provision for bad and doubtful debts u/s. 36(1)(viia) and write off of bad debts u/s. 36(1)(vii) of the Act, pertains to rural advances should be considered separately without any adjustment in respect of write off of bad debts pertains to non-rural debts. Therefore, he submitted that the Assessing Officer and ld. CIT(A) are erred in not considering relevant facts while deciding the issue and thus, the additions made by the Assessing Officer towards disallowance of deduction claimed u/s. 36(1)(vii) of the Act and 36(1)(viia) of the Act should be deleted.

10.2 The ld. DR, on the other hand supporting the order of the ld. CIT(A) submitted that, after insertion of Explanation (2) to section 36(1)(vii) by Finance Act, 2013 w.e.f. 01.04.2014, there is no ambiguity in respect of deduction

towards provision for bad and doubtful debts u/s. 36(1)(viia) of the Act and deduction towards write off of actual bad debts u/s. 36(1)(vii) r.w.s. 36(2)(v) of the Act, because the Explanation has been inserted to remove doubts in light of certain judicial precedents including the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank vs CIT (Supra), and thus, the arguments of the Ld. Counsel for the assessee that, even after insertion of Explanation (2), provision for bad and doubtful debts and write off of bad debts in respect of rural advances should be separately considered without any adjustment in respect of write off of non-rural debts. In this regard, he has filed a detailed submission which has been reproduced as under:

Written submission on bad debt write off claimed u/s 36(1)(vii)

The assessee has claimed deduction of bad debt write off (Non- rural) as irrecoverable u/s 36(1)(vii) of the IT Act in the computation of income as under:

AY	*Amont (Rs. In Cr)*
2015-16	*173.71**
2016-17	*137.58*
2017-18	*228.49*

** In the revised computation, claim was Rs. 66.19 Cr and Rs.152.12Cr; Total being Rs.218.32 Cr.*

This deduction was claimed only in the statements of Computation of Income for respective Assessment Years and not in the audited financial accounts prepared and published for those financial years.

Legal Provisions:

While computing the income referred in section 28 of the IT Act, actual bad debt written off is an allowable deduction and dealt with in Section 36. Section 36 of the IT Act deals with other deductions subject to certain conditions.

In order to claim those deductions, the assessee has to prepare their accounts in accordance with law by charging those expenditures into the P&L a/c and net profit has to be arrived accordingly.

As per section 36(1)(vii) of the IT Act,

"subject to the provisions of sub-section (2), the amount of any bad debt or part there of which is written off as irrecoverable in the accounts of the assessee, for the previous year.

Here the accounts means the books of account of the assessee regularly maintained in accordance with law. The bad debts written off should be charged to Profit & Loss account as irrecoverable in the previous year to eligible for deduction under the section 36(1)(vii).

Proviso-1: as per this proviso,

in case of an assessee to which clause (viia) applies, the amount of the deduction relating to any such debt or part there of shall be limited to the amount by which such debt or part there of exceeds the credit balance in the provision for bad and doubtful debts accounts made under that clause.

It is further explained in Explanation-2:

For the removal of doubts, it is hereby clarified that for the purposes of the proviso to clause (vii) of this sub-section and clause (v) of sub-section (2), the account referred to therein shall be only one account in respect of provision for bad and doubtful debts under clause (viia) and such account shall relate to all types of advances, including advances made by rural branches;

Section 36(1)(vii) and first proviso as well as the explanation refers to only one account and not two accounts i.e. one for rural and other for non-rural bad and doubtful debts. Such expenditure has to be charged to profit and loss account. For claiming bad debt write off as

irrecoverable, the assessee has to debit that bad debt written off in to the P&L a/c and crediting the corresponding debtor account in the Balance Sheet. This is what prescribed in section 36(1)(vii) of the IT Act. The Law is well settled on this aspect.

The accounting treatment for bad debt write off is

Debit	*Bad debt W/o in*	*P&L Ac*
Credit	*Corresponding Debtor A/c in*	*Balance sheet*

The bad debts written off has to be first debited to the provision for bad and doubtful debts(PBD) account and only the amount which is in excess of credit balance of PBD account only will be allowed to be claimed u/s 36(1)(vii) as per first proviso to section 36(1)(vii).

A. Revenue's contention:

The appellant claimed both provision for bad and doubtful debts u/s 36(1) (viia) and bad debt write off as irrecoverable u/s 36(1)(vii) of the IT Act as deduction while computing the total income. The arguments are advanced in the form of question and answers for ease of understanding.

1. What happened in the case of assessee?

Ans: Assessee is a scheduled bank incorporated in India. Hence, they can claim deduction in respect of any provision for bad and doubtful debts by debiting the same in the P&L account as per clause (a) of section 36(1)(viia) of the IT Act. It will be allowed as a deduction subject to certain limits prescribed under the act. The assessee has availed the benefit provided under 36(1)(viia) of the IT Act. The assessee has further availed deduction of bad debts written off u/s 36(1)(vii) without debiting the same into the provision created u/s 36(1)(viia).

2. Whether the provision for bad and doubtful debt was debited into the P&L a/c was allowed as a deduction?

Ans: Yes. It has debited the Provision for bad and doubtful debts under the head provisions and contingencies in the profit and loss account. The Provision for bad and doubtful debts has been added back in computation of Income and claimed deduction u/s 36(1)(viia). As per clause (a) of section 36(1)(viia) of the IT Act, the provision for bad and doubtful debt debited into the P&L a/c was allowed as a deduction not exceeding 7.5% of total income(computed before this clause and deduction of Chapter VIA)and an amount of 10% of the

aggregate average advances made by the rural branches of such bank was computed in prescribed manner. The P&L account and computation of total income, calculation of 36(1)(viia) given by the assessee bank is placed in paper book at P.No.1-18.

3. Whether the provision for bad and doubtful debt debited into the P&L a/c was only pertaining to rural bad and doubtful debts?

Ans: No. In the P&L account, the assessee debited provision for bad and doubtful debt for all the advances/loans given by the bank as a whole as prescribed by RBI guidelines. It was debited under the head "provisions and contingencies" as "provision for NPA". It includes provisions for both rural and urban NPAs of the previous year depending upon the performance of their NPA.

4. Have they added back this provision for NPA in the computation of total income?

Ans: Yes, it is added back, as it was merely a provision and not actual write off of bad debt as irrecoverable, prescribed in section 36(1)(viia).

5. Whether the A.O allowed deduction of provision for bad and doubtful debt as per clause (a) of section 36(viia) of the IT Act?

Ans: Yes. It is allowed as per section 36(1)(viia) of the IT Act. Because, the assessee is a scheduled bank, they are entitled to claim deduction of any provision for bad and doubtful debt, made by them, not exceeding the limit prescribed in clause(a) of section 36(1)(viia) of the IT Act.

6. How much was the 'provision for bad and doubtful debt'debited into the P&L a/c and how much was computed / allowed as per clause (a) of section 36(1)(viia) of the I T Act?

Ans:It is presented in the following table.

AY	*Amount debited into P&L account*	*Amount added back in computation*	*Amount claimed u/s 36(1)(viia)*
2015-16	*165.00*	*165.00*	*143.41*
2016-17	*205.00*	*205.00*	*181.08*
2016-17	*251.50*	*251.50*	*126.78*

**In the revised computation, this claim was Rs.98.45 crore*

7. Whether any other person can claim provision for bad and doubtful debt debited into P&La/c as per section 36(1)(viia)?

Ans: Yes. Section 36(1)(viia) allows deduction to various categories of the assessee engaged in banking or financing. It is as under;

Categories	*Class of assessee*	*Limit*
Clause (a)	*Scheduled bank incorporated in India, non-scheduled bank, co-operative bank other than primary agri. Credit society*	*Not exceeding 7.5% of total income AND 10% of aggregate average advances made by rural branches of that bank*
Clause (b)	*Bank incorporated under the laws of outside country Foreign banks*	*Not exceeding 5% of total income*
Clause (c)	*public finance institution or State Finance Corporation or State Industrial Investment Corporation*	*Not exceeding 5% of total income*
Clause (d)	*a non-banking financial company*	*Not exceeding 5% of total income*

8. Under which category assessee bank claimed this deduction of provision for bad and doubtful debts?

Ans: Being a scheduled bank, incorporated in India, they claimed deduction as per clause(a) of section 36(1)(viia).

9. Can they claim deduction of any bad debt or part thereof, which is written off as irrecoverable as per section 36(1)(vii)?

Ans: Yes. They can claim bad debt write off as irrecoverable, subject to provision of sub section (2) of section 36 of the IT Act. Provided, in case of any assessee being a scheduled bank, where they already claimed deduction of 'provision for bad and doubtful debt under clause(a) of section 36(1)(viia), to claim bad debt write off, the write

off should exceed the credit balance in the "provision for bad and doubtful debt" made.

Refer pictorial representation at P.No.62-63 of paper book.

10.Does it mean that assessee has to invariably create provision for bad and doubtful debt before claiming actual write off of bad debt u/s 36(1)(vii)?

Ans: Yes. Sub clause (v) of section 36(2) categorically prescribed that no such deduction (bad debt write off) shall be allowed to the assessee falling under 36(1)(viia), unless the assessee has debited the amount of such debt or part of debt in the previous year to the provision for bad and doubtful debts a/c made under 36(1)(viia).

As per RBI guidelines -prudential norms, they have to make a provision for bad and doubtful debt or provision for NPA on each NPA. It is classified as provision for bad and doubtful assets, category-1 or category-2, provision for loss asset etc. Such provision is depending upon the performance of NPA and the securities against each such NPA.

11. What is meant by "loss asset"?

It is a category of provision for NPA where 100% provision was made in the books of accounts. It is to be mentioned here that it has already passed through doubtful category-1, doubtful category-2 etc. This is also to be debited as provision for NPA only into the P&L account. If any recovery is made out of this NPA, it has to be duly offered as income u/s 41(1).

12. Whether the contention of the assessee that 36(1)(viia) of the IT Act was only applicable to rural bad debt write off and not applicable to urban bad debt write off is correct?

Ans: No. Section 36(1)(viia) starts as "in respect of any provision for bad and doubtful debts made by". It includes both rural and non-rural NPA. The section has been amended w.e.f. 1-4-1989, and the changes are clearly explained in circular 464 of 1986 and it is placed at P.No.64. The circular makes it clear that the assessee can claim benefit of deduction u/s 36(1)(viia) irrespective of whether the bad debts are rural or urban. The deduction is applicable to both urban and rural debts and not only to rural debts as claimed by the assessee. This claim by the assessee is not supported by the law.

13. Whether appellant claimed bad debt written off in the profit and loss account?

Ans: No such bad debt write off was charged into P&L account or annual reports prepared and published by the bank.

14. What is the significance of Explanation-1 to section 36(1)(vii)?

Ans: It was introduced in Finance Act 2001 w.r.e.f 1.4.1989 to plug the tax payers from claiming both provisions for bad debts as well as bad debt write off as an allowable deduction simultaneously of the same bad debt.

Explanation 1. For the purposes of this clause, any bad debt or part thereof written off as irrecoverable in the accounts of the assessee shall not include any provision for bad and doubtful debts made in the accounts of the assessee.

15. What is the significance of Explanation-2 of section 36(1)(vii)?

Ans: The provision of section 36(1)(vii) allows deduction of bad debt write off as irrecoverable in the accounts of the assessee. Section 36(1)(viia) allows deduction of any provision for bad and doubtful debt made by various class of assessee from (a) to (d) discussed above. Some of the judicial pronouncements gave findings that section 36(1)(viia) allows deduction of bad debts in respect of NPAs of rural branches and section 36(1)(vii) of the IT Act allows deduction of bad debts of non- rural NPA of the respective bank. However, it is not correct. To clear the doubts, this explanation-2 was brought into the statute in Finance Act, 2013. The Memorandum to the Finance Act, 2013 is placed in paper book at P.No.22.

16. Does it mean that before Explanation-2, the bank can claim urban bad debt write off separately u/s 36(1)(vii)?

Ans: NOT AT ALL. It was never ever intended since the introduction of these sections into IT Act 1961. Section 36(1)(vii), 36(1) (viia) and section 36(2) of the IT Act has to be studied together and not in isolation.

- *Every scheduled bank has to create provision for NPA into the books of accounts as per RBI prudential norms irrespective of rural or non rural advances that has gone bad.*

- *Such provision for NPA debited into the annual accounts under the head "provisions and contingencies".*

➢ *It has to be added back in the computation of income.*

➢ *They have to calculate 7.5% of total income and 10% of aggregate average made by the rural branches of the bank separately.*

➢ *Provision for bad and doubtful debts debited/created into the P&L account cannot exceed7.5% of total income and 10% of aggregate average made by the rural branches of the bank separately.*

➢ *To claim further deduction of bad debt write off u/s 36(1)(vii) of the IT Act, the write off should exceed the credit balance of provision for bad and doubtful debts already created.*

17. Whether the alternative claim that if the bad debt write off is disallowed by the A.O, recovery of the bad debt write off u/s 41(4) of the I T Act was also not to be charged was right?

Ans: It is also an incorrect claim. Prima facie, for the appellant, section 36(1)(vii) and section 41(4) is not be applicable as they have not written off any bad debt write off irrecoverable in their accounts (P&L accounts). Only they created provision for bad and doubtful debts and claimed as a deduction as per section 36(1)(viia) of the IT Act to the extent they are entitled.

➢ *Whenever the appellant created the provision for NPA/provision for bad and doubtful debt, it is allowed as a deduction u/s 36(1)(viia).*

➢ *If they provide 100% provision over the period years on those NPA, it will be classified as loss asset.*

➢ *If such NPA started performing, they have to offer the same as income in the P&L account as provision no longer required*

➢*It has to be charged u/s 41(1) of the IT Act as reversal of provision.*

This principle has been established in the case of Pragathi Grameena Bank Ltd vs CIT 91 taxmann.com 343(KAR)(2018) which has been affirmed by Supreme Court.

18. Where such reversal of provision for NPA can be found?

Ans: It can be found in the annual report itself under the head movement of provision for NPA. The opening balance of provision,

current year provision for NPA, write back of excess provision, write off of provision and closing balance etc are duly disclosed. It is as under:

Movement of provision for NPA (Rs. In Cr) - as per Annual report

AY	*Opening balance*	*Provision made during the year*	*Write off/write back of excess provision*	*Closing balance*
2014-15	*76.41*	*148.50*	*129.14*	*95.77*
2015-16	*95.77*	*165.00*	*157.74*	*103.33*
2016-17	*103.33*	*205.00*	*121.36*	*186.67*
2017-18	*186.67*	*251.50*	*167.86*	*251.66*

The relevant pages of the annual report are placed at P.No. 8,13,18.

19. What about prudential write off or technical write off?

Ans: These are prudential norms prescribed as per RBI norms. The technical write off or prudential write off or head office write off is the amount of NPAs written off at head office level but these debts remain outstanding at the branch level. Hence in books of account of the respective branches it remains as advance recoverable. It cannot be written off as irrecoverable.

20. Are these prudential write off or technical write off are actually bad debt write off as contemplated in section 36(1)(vii) of the IT Act?

Ans: No. These Technical or prudential write off are not "bad debts written off as irrecoverable" as contemplated in section 36(1) (vii) of the I T Act. The Hon'ble Supreme Court explained the differences between these two in Southern Technologies vs.JCIT[2010] in 320 ITR 577. This is also once again reiterated in the latest decision by the Apex Court in the case of PCIT v. Khyati Realtors (P.) Ltd [2022] reported in 141 taxmann.com 461, dated 25th August, 2022. These decisions are placed at P.No. 23-30 and 32-43 of the paper book.

B. Arguments advanced by the Counsel and rebuttal

1. The counsel of the appellant bank argued that section 36(1)(viia) is applicable to rural bad debt write off and section 36(1)(vii) of the I T Act is applicable to non-rural bad debt write off. However, this argument is devoid of any merit. The provisions of section 36(1)(vii), 36(1)(viia) and section 36(2) have to be read together.

2. The counsel also advanced an argument that 36(1)(viia) should have been placed first in the IT Act then section 36(1) (vii) of the IT Act could have been followed. This is not at all an acceptable argument. The legislature in its wisdom has placed those provisions rightly in the IT Act. Only the appellant read the provisions of IT Act in reverse. Harmonious reading of section 36(1)(vii) subject to section 36(2) will explain how any bad debt can be written off as irrecoverable.

3. The appellant placed his reliance heavily on the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank v. CIT[2012] reported in 343 ITR 270. It is seen from the decision that Hon'ble Supreme court has under the impression that the assessee maintained two separate accounts i.e one for rural NPA and other for Non-rural NPA and proceeded accordingly. That is not the case in present appeal. To remove the doubts, Explanation -2 was brought into stature in Finance Act 2013.

4. The counsel argued that if at all the legislature intended to clear the doubt, they ought to have provided Explanation-2 to section 36(1)(viia) and not to section 36(1)(vii). This understanding of the appellant is not correct. It is the appellant who claimed deduction u/s 36(1)(vii) of the IT Act, by reducing substantial amount of bad debt write off in the computation of income after closure of audit. It is for them to prove that they have followed section 36(1) (vii) read with sub section (2) of section 36 and also section 36(1)(viia) rightly. Every assessee claiming deduction of bad debt write off as irrecoverable in the accounts have to scrupulously follow section 36(1)(vii), 36(1)(viia)and section 36(2). Legislature in its wisdom has rightly placed every provision, explanations at right place and it has to be scrupulously followed while claiming deductions.

5. Appellant relied upon the decision of Hon'ble ITAT in the case of Karnataka Bank Ltd v. DCIT in ITA No.1907/Bang/2018 dated 26.05.2022. With due respect, it is submitted that this decision has not laid down the law correctly. While reading the decision, the counsel of the appellant conveniently omitted some of the findings advanced by the DR that is recorded at para 7.1. The DR had argued that mere provision for NPA cannot be considered as write off u/s

36(1)(vii) as held by Supreme Court in the case of Southern Technologies vs ACIT (352 ITR 577). DR also relied upon the decision rendered by Hon'ble Kerala High Court in the case of CIT vs. Hotel Ambassador [2002] (253 ITR 430), wherein it was held that the deduction u/s 36(1)(vii) of the Act is allowable only if the assessee debits the same into the accounts as irrecoverable. However, ITAT has ignored the significance of these landmark decisions.

6. Exactly, on similar fact and ground, the Hon'ble Supreme Court admitted the SLP in the case of Commissioner of Income-tax, LTU v. Vijaya Bank [2021] in 130 taxmann.com 149. This decision was also brought to the notice during the argument. It is placed in paper book at Page No.31

7. ITAT Bangalore in the case of DCIT Vs ING Vysya Bank [2014] 42 taxmann.com 303 categorically held that what has to be seen by the AO is as to whether provision for bad doubtful debts is created irrespective of whether it is in respect of rural or non-rural advances by debiting into P&L account. This decision is pertaining to AY 2003-04 and 2004-05. It is placed in paper book at P.No.44-61

C. Latest decision of Hon'ble Supreme Court on this subject:

In the case of PCIT v. Khyati Realtors (P.)Ltd [2022] reported in 141 taxmann.com 461, dated 25th August, 2022, the Apex Court gave the analysis and conclusion from paragraph 11 to 13. At paragraph-13, the Apex Court explained the scope of section 36(1)(vii) after 1.4.1989. It has also analysed various other decisions of the Supreme Court on the subject of bad debt write off, contemplated u/s 36(1)(vii) and gave salient finding in point no.17 as under:

"17. It is evident from the above rulings of this court, that:

(i) The amount of any bad debt or part thereof has to be written-off as irrecoverable in the accounts of the assessee for the previous year:

(ii) Such bad debt or part of it written-off as irrecoverable in the accounts of the assessee cannot include any provision for bad and doubtful debts made in the accounts of the assessee;

(iii) No deduction is allowable unless the debt or part of it "has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year", or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee;

(iv) The assessee is obliged to prove to the AO that the case satisfies the ingredients of Section 36(1)(vii) as well as section 36(2) of the Act."

***D. Summary and Prayer**:*

The decision of Apex Court in the case of Southern Technologies vs JCIT (352 ITR 577) and PCIT v. Khyati Realtors (P.) Ltd [2022] reported in 141 taxmann.com 461, dated 25th August, 2022laid down the law with clear cut analysis. Para-17 of Khyati realtors is sum and substance of bad debt write off contemplated in section 36(1)(vii) of the IT Act. The decision of SC in the case of Khyati Realtors is placed at P.No.32-43 of the paper book.

Assessee is a scheduled bank falling under clause-(a) of section 36(1)(viia) of the IT Act. They are entitled for any provision for bad and doubtful debt made by them in the books of accounts, not exceeding the limits prescribed therein. It was already claimed. No other bad debt was actually written off as irrecoverable as per section 36(1)(vii) of the IT Act in the annual accounts published. Hence the claim of bad debt write off in computation of income is not true and correct. It is prayed that the grounds raised by the appellant bank may be dismissed."

10.3 We have heard both the parties, perused material available on record and gone through orders of the authorities below. We have also carefully considered the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank vs CIT (Supra) and subsequent Explanation (2) inserted by Finance Act, 2013 w.e.f. 01.04.2014, in light of the decision of Hon'ble ITAT Bangalore Bench in the case of Karnataka Bank vs DCIT (Supra) in ITA No. 1907/Bang/2018. The controversy with regard to claim for deduction towards provision for bad

and doubtful debts in terms of section 36(1)(viia) of the Act and deduction towards actual write off of bad debts u/s. 36(1)(vii) r.w.s. 36(2)(v) of the Act, has to be understood in the context of rural advance and non-rural advance given by the banks.

10.4 The provisions of section 36(1)(vii) deals with deduction toward bad debts or part thereof which is written off as irrecoverable in the accounts of the assessee subject to the provision of sub-section (2) to section 36 of the Act. As per said provision in the case of assessee, to which clause (viia) applies, the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under that clause. Sub-section (2) to section 36 prescribed conditions for making any deduction for bad debts or part thereof and as per sub-section (v) to section 36(2), where debts or part thereof relates to advances made by an assessee to which clause (viia) of sub-section (1) applies, no such deduction shall be allowed unless the assessee had debited the amount of such

debt or part of debt in that previous year to the provision for bad and doubtful debts account made under that clause. A combined reading of sections 36(1)(vii) r.w.s. 36(2)(v) of the Act, it is abundantly clear that in order to get deduction u/s. 36(1)(vii) of the Act towards write off of irrecoverable bad debts, the assessee should first make a provision in terms of section 36(1)(viia) of the Act and deduction towards write off of actual bad debts should be in excess of credit balance in the provision for bad and doubtful debts account. There are litigations on this issue. The Hon'ble Supreme Court has dealt with this issue in the case of Catholic Syrian Bank vs CIT (Supra) and observed that, sub-clause (a) to section 36(1)(vii) of the Act applies only to rural advances. Taking a clue from the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank vs CIT (Supra), the ITAT Bangalore Bench in the case of Karnataka Bank Ltd vs DCIT (supra), has dealt the issue at length in light of provisions of section 36(1)(vii) r.w.s. 36(2)(v) of the Act and also provisions of section 36(1)(viia) of the Act, and held that write off of non-rural bad debts should be considered only against provision for bad and doubtful debts in respect of non-rural advances as per section

36(1)(viia) of the Act. In other words, the credit balance in provision for bad and doubtful debts in respect of rural advance only needs to be adjusted against write off of rural bad debts in terms of section 36(1)(viia) of the Act, without considering write off of non-rural debts. The relevant findings of the Tribunal are as under:

> *"7.7 We heard the Ld D.R and perused the record. Now the core question that arises is whether the bad debts relating to non-rural branches are also required to be first debited to PBDD a/c and then the excess amount over and above the balance available in PBDD alone could be allowed as bad debts u/s 36(1)(vii) of the Act.*
>
> *7.8 The provisions of sec. 36(1)(vii) allows deduction as under:-*
>
> > "36(1)(vii) **Subject to the provisions of sub-section (2)**, the amount of any bad debt or part thereof which is written off as
> > irrecoverable in the accounts of the assessee for the previous year. Provided that in the case of an assessee to which clause (viia) applies, the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account under that clause.
> > ……..
> > Explanation 2 – For the removal of doubts, it is hereby clarified that for the purposes of the proviso to clause (vii) of this sub-section and clause (v) of sub section (2), the account referred to therein shall be only one account in respect of provision for bad and doubtful debts under clause (via) and such account shall relate to all types of advances, including advances made by rural branches;"
> >
> > The provisions of sec.36(2)(v) are relevant here and it reads as under:-
> >
> > *"(2) In making any deduction for a bad debt or part thereof, the following provisions shall apply----*
> > *…….*

(v) where such debt or part of debt relates to advances made by an assessee to which clause (viia) of sub-section (1) applies, no such deduction shall be allowed unless the assessee has debited the amount of such debt or part of debt in that previous year to the 'provision for bad and doubtful debts' account made under that clause."

A combined reading of provisions of clause (vii) of sec.36(1), the proviso there under and clause (v) of sec.36(2) would show that

(a) the bank should debit the actual bad debts written off by it to "PBDD a/c" (sec. 36(2)(v))

(b) the deduction u/s 36(2)(vii) shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the PBDD made under clause (viia) of sec.36(1).

7.9 The contention of the revenue is that the Explanation 2 has expanded the scope of the proviso to sec. 36(1)(vii) and hence the bad debts relating to non-rural branches are also required to be first debited to PBDD a/c and the excess amount alone can be allowed as deduction u/s 36(1)(vii) of the Act. According to revenue, the decision rendered by Hon'ble Supreme Court in the case of Catholic Syrian Bank (2012)(343 ITR 270). In the above said case, the Hon'ble Supreme Court has expressed the view that the provisions of sec. 36(1)(vii) and 36(1)(viia) allow separate deduction and they are independent provisions. The Supreme Court further held that the ***clause (viia)(a) applies only to rural advances****. So the bad debts relating to non-rural advances need not be deducted against the PBDD allowed under clause (a) of sec.36(1)(viia) of the Act. The Hon'ble Supreme Court, inter alia, also observed as under:-*

"31 It was neither in dispute earlier nor is it disputed before us, that the assessee-bank is maintaining two separate accounts, one being a provision for bad and doubtful debts other than provision for bad debts in rural branches and another provision account for bad debts in rural branches for which separate accounts are maintained…."

Referring to the above said observations, the revenue has taken the view that the Hon'ble Supreme Court has rendered its decision on the
assumption that the banks would be maintaining two separate PBDD a/c, viz., one for rural branches and another one for non-rural branches.

7.10 It is possible that all banks may not be maintaining two separate
accounts, as observed by the Hon'ble Supreme Court. Hence there was an apprehension in the minds of revenue with regard to the effect of the decision rendered by Hon'ble Supreme Court. For instance, if a particular bank is maintaining only a single PBDD a/c for the provision created u/s 36(1)(viia) of the Act and even if that bank is not having any rural branches, then it may try to avail the benefit of decision rendered by Hon'ble Supreme Court and may possibly contend that

(i) the provision allowed u/s 36(1)(viia) shall apply only to rural
branches.
(ii) since it does not maintain two separate PBDD a/c for rural and non-rural advances, the bad debts relating non-rural branches need not be reduced from the PBDD a/c allowed u/s 36(1)(viia) in terms of sec. 36(2)(v) and the proviso to sec. 36(1)(vii) of the Act.

However, the Ld A.R submitted before us that the Explanation 2 has been inserted in sec. 36(1)(vii) by Finance Act, 2013 (after the decision of Catholic Syrian Bank) to debar certain assessees to avail the interpretation given by Hon'ble Supreme Court in the case of Catholic Syrian Bank (supra).

7.11 We have considered the arguments advanced by Ld A.R on this point. According to Ld A.R, if we closely analyse the provisions of sec. 36(1)(viia) of the Act, the intention of the Parliament in inserting Explanation -2 shall become clear. Accordingly, we analysed the provisions of sec.36(1)(viia) and notice that the said section allows deduction of PBDD to various types of assessees, viz.,

(i) Clause (a) of sec. 36(1)(viia) shall be applicable to a Scheduled bank (not being a bank incorporated by or under the laws of a country outside India) or non-scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank. The quantum of deduction is 7.50% of Total income (computed before making any deduction under this clause and Chapter VIA) and an amount not exceeding 10% of aggregate average advances made by the rural branches of such bank.

(ii) Clause (b) of sec. 36(1)(viia) shall be applicable to a bank incorporated by or under the laws of a country outside India. The quantum of deduction is 5% of the

total income (computed before making any deduction under this clause and Chapter VIA).

(iii) Clause (c) is applicable to a public financial institution or a State financial corporation or a State industrial investment corporation. The quantum of deduction is 5% of total income (computed before making any deduction under this clause and Chapter VIA).

(iv) Clause (d) is applicable to Non-banking financial company from AY 2017-18.

The Hon'ble Supreme Court in the case of Catholic Syrian Bank (supra) has held that the PBDD allowed ***under clause (a) of Sec. 36(1)(viia) refers to 'rural advances' only.*** *In fact the expression "rural branches" finds place in clause (a) only. It can be noticed that the reference to "rural branches" is not there in clause (b) to (d). Generally, the foreign banks may not have rural branches. However, such kind of banks, financial institutions, NBFC etc. are also eligible to claim deduction towards PBDD u/s 36(1)(viia) of the Act under clauses (b) to (d). In view of the decision rendered in the case of Catholic Syrian bank, it is possible that the assessees covered by clause (b) to (d) may contend that the bad debts written off by them need not be adjusted against PBDD allowed u/s36(1)(viia) of the Act, since the bad debts relate to "non-rural debts". Accordingly, we are of the view that the Explanation 2 has been inserted in order to bring the assesses covered by clauses (b) to (d) within the ambit of the proviso to sec. 36(1)(vii) and sec. 36(2)(v) of the Act. Hence, in our view, advances given by rural and non-rural branches mentioned in Explanation 2 shall apply to the assesses covered by clause (b) to (d) of sec. 36(1) (viia) of the Act.*

7.12 At this juncture, we may gainfully refer to the "MEMORANDUM EXPLAINING FINANCE BILL 2013", which brings out the intention of the Parliament in inserting Explanation-2 in sec. 36(1)(vii) of the Act. It is extracted below:-

"**Clarification for amount to be eligible for deduction as bad debts in case of banks**:-
Under the existing provisions of section 36(1)(viia) of the Income-tax Act, in computing the business income of certain banks and financial institutions, deduction is allowable in respect of any provision for bad and doubtful debts made by such entities subject to certain limits specified therein. The limit specified under section 36(1)(viia)(a) of the Act restrict the claim of deduction for provision for bad and doubtful debts for certain banks

(not incorporated outside India) and certain cooperative banks to 7.5% of gross total income (before deduction under this clause) of such banks and 10% of the aggregate average advance made by the rural branches of such banks. This limit is 5% of gross total income (before deduction under this clause) under sections 36(1)(viia)(b) and 36(1)(viia)(c) for a bank incorporated outside India and certain financial institutions.

Provisions of clause (vii) of section 36(1) of the Act provides for deduction for bad debt actually written off as irrecoverable in the books of account of the assessee. The proviso to this clause provides that for an assessee, to which section 36(1)(viia) of the Act applies, deduction under said clause (vii) shall be limited to the amount by which the bad debt written off exceeds the credit balance in the provision for bad and doubtful debts account made under section 36(1) (viia) of the Act. The provisions of section 36(1)(vii) of the Act are subject to the provisions of section 36(2) of the Act. The clause (v) of section 36(2) of the Act provides that the assessee, to which section 36(1)(viia) of the Act applies, should debit the amount of bad debt written off to the provision for bad and doubtful debts account made under section 36(1) (viia) of the Act. Therefore, the banks or financial institutions are entitled to claim deduction for bad debt actually written off under section 36(1)(vii) of the Act only to the extent it is in excess of the credit balance in the provision for bad and doubtful debts account made undersection 36(1)(viia) of the Act.

However, certain judicial pronouncements have created doubts about the scope and applicability of proviso to section 36(1)(vii) and held that the proviso to section 36(1)(vii) applies only to provision made for bad and doubtful debts relating to rural advances. Section36(1)(viia) of the Act contains three sub-clauses, i.e. sub-clause (a), sub-clause (b) and sub-clause (c) and **only one of the sub-clauses i.e. sub-clause (a) refers to rural advances whereas other sub-clauses do not refer to the rural advances.** In fact, *foreign banks generally do not have rural branches*. Therefore, the provision for bad and doubtful debts account made under clause (viia) of section 36(1) and referred to in proviso to clause (vii) of section 36(1) and section 36(2)(v) applies to all types of advances, whether rural or other advances. *It has also been interpreted that there are separate accounts in respect of provision for bad and doubtful debt under clause (viia) for rural advances and urban advances and if*

the actual write off of debt relates to urban advances, then, it should not be set off against provision for bad and doubtful debts made for rural advances. **There is no such distinction made in clause (viia) of section 36(1).** In order to clarify the scope and applicability of provision of clause (vii), (viia) of sub-section (1) and sub-section (2), **it is proposed to insert an Explanation in clause (vii) of section 36(1) stating that for the purposes of the proviso to section 36(1)(vii) and section 36(2)(v), only one account as referred to therein is made in respect of provision for bad and doubtful debts under section 36(1)(viia) and such account relates to all types of advances, including advances made by rural branches.** Therefore, for an assessee to which clause (viia) of section 36(1) applies, the amount of deduction in respect of the bad debts actually written off under section 36(1)(vii) shall be limited to the amount by which such bad debts exceeds the credit balance in the provision for bad and doubtful debts account made under section 36(1)(viia) without any distinction between rural advances and other advances. This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

The CBDT has issued an Explanatory note to the Provisions of Finance Act, 2013 on 24.01.2014 in F No.142/24/2013 – TPC, wherein also the very same explanations have been given for introducing Explanation – 2 inSec. 36(1)(vii) of the Act. The above said Memorandum and the Explanatory Note issued by the Government/CBDT supports our view.

7.13 Our view is further fortified by certain observations made by Hon'ble Supreme Court in the case of Catholic Syrian Bank (supra). We may refer to paragraph 27 of the decision now:-

"27. As per this proviso to clause (vii), the deduction on account of the actual write off of bad debts would be limited to the excess of the amount written off over the amount of the provision which had already been allowed under clause (viia). The proviso by and large protects the interests of the Revenue. In case of rural advances which are covered by clause (viia), there would be no such double deduction. The proviso, in its terms, limits its application to the case of a bank to which clause (viia) applies. **Indisputably, clause (viia)(a) applies only to rural advances."**

It is pertinent to note that the Hon'ble Supreme Court has categorically held that clause (a) of sec. 36(1)(viia)

> applies to rural advances only. If the Parliament wanted to undo the above said interpretation given by the Hon'ble Supreme Court, it should have brought amendment in clause (a) to sec. 36(1)(viia) to make its intention clear that the clause (a) shall apply to both rural and non-rural advances. Since there is no such amendment, the interpretation given by Hon'ble Supreme Court that "clause (viia)(a)applies to rural advances only" shall remain intact. Explanation 2 inserted in sec. 36(1)(vii), in our view, does not override the above said interpretation given by Hon'ble Supreme Court.

7.14 In the Memorandum explaining the purpose of introducing Explanation -2 in Sec. 36(1)(vii), it has been acknowledged that only the clause (a) refers to "rural branches". It has also been stated that the foreign banks do not have rural branches. The assesses covered by clause (b) to (d) may not be having rural branches. Hence, the memorandum explains as under with regard to the decision rendered by Hon'ble Supreme Court in the case of Catholic Syrian Bank (supra):-

> "However, certain judicial pronouncements have created doubts about the scope and applicability of proviso to section 36(1)(vii) and held that the proviso to section 36(1)(vii) applies only to provision made for bad and doubtful debts relating to rural advances."

Because of the interpretation so given by Hon'ble Supreme Court, as discussed earlier, there arose a necessity for the Parliament to clarify that the PBDD allowed u/s 36(1)(viia) shall apply to all types of advances including advances made by rural branches. However, as stated earlier, the clause (a) to sec.36(1)(viia) has been held to be applicable to rural advances only and this interpretation has not been overridden by any amendment.

7.15 As noticed earlier, the assessees covered by clauses (b) to (d) may not be having rural branches, but they would be getting the benefit of deduction of PBDD u/s 36(1)(viia) of the Act. Hence, in order to bring those assessees within the ambit of the proviso to sec. 36(1)(vii) and sec. 36(2)(v), it was imperative for the Parliament to clarify the legal position and accordingly Explanation-2 has been inserted in sec. 36(1)(vii) of the Act. Accordingly, on the analysis of the provisions discussed above, we are of the view that the above said Explanation-2 shall operate

(a) in respect of clause (a) of sec. 36(1)(viia) of the Act only to rural advances and

(b) in respect of clauses (b) to (d), for advances given by both rural and non-rural branches.

7.16 In the instant case, the assessee has claimed deduction towards PBDD under clause (a) to sec. 36(1)(viia) of the Act, meaning thereby, the clause (a) is applicable to rural advances only as per the decision given by Hon'ble Supreme Court in the case of Catholic Syrian Bank. Hence the bad debts relating to non-rural branches are not required to be adjusted against PBDD allowed under clause (a) of sec. 36(1)(viia) of the Act in terms of the proviso to sec. 36(1)(vii) and sec. 36(2)(v) of the Act.

7.17 In view of the foregoing discussions, we are unable to agree with the view expressed by Ld CIT(A) on this issue. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to allow the bad debts relating to non-rural branches u/s 36(1)(vii) of the Act without adjusting the same against the PBDD a/c, since the said PBDD a/c relates to rural advances only''.

10.5 In this view of the matter and by respectfully following the decision of coordinate bench of ITAT Bangalore in the case of Karnataka Bank vs DCIT (Supra), which has been further strengthened by the decision of Hon'ble Delhi High Court in the case of Oriental Bank of Commerce vs PCIT (supra), we are of the considered view that, the bad debts written off relating to non-rural advances is not required to be adjusted against provision for bad and doubtful debts allowed u/s. 36(1)(viia) of the Act and thus, we direct the Assessing Officer to re-compute deduction in respect of write off of non-

rural debts without any adjustment to credit balance in the provision for bad and doubtful debts account in respect of rural advance.

10.6 In so far as additions of Rs. 21,58,73,485/- u/s. 36(1)(vii) r.w.s. 36(2)(v) of the Act, we find that the Assessing Officer has made additions on the ground that excess provisions made in respect of rural advances has been claimed as non-rural bad debts written off u/s. 36(1)(vii) of the Act. On the other hand, it was the argument of the Ld. Counsel for the assessee that, write off of non-rural bad debt u/s. 36(1)(vii) of the Act is exclusive for provision for bad and doubtful debts u/s. 36(1)(viia) of the Act. He further submitted that, to ascertain facts the Assessing Officer may verify with reference to details that may be filed by the assessee and in case the Assessing Officer finds that a sum of Rs. 21,58,73,485/- is on account of actual write off of non-rural debts, then same may be allowed as deduction u/s. 36(1)(vii) of the Act. We find that, we have dealt with the issue of deduction towards provision for bad and doubtful debts u/s. 36(1)(viia) of the Act and deduction for write off of

actual bad debt u/s. 36(1)(vii) of the Act in previous paragraph and held that while allowing deduction for actual write off of non-rural debts, same need not be adjusted against credit balance in provision for bad and doubtful debts account. Therefore, we direct the Assessing Officer to verify the facts with regard to amount claimed by the assessee and in case, the Assessing Officer found that what was claimed as deduction is pertains to write off of non-rural debts, then the same should be allowed as deduction without adjusting against credit balance in provision for bad and doubtful debts account created u/s. 36(1)(viia) of the Act. Thus, this issue has been set aside to the file of the Assessing Officer, with a direction to reconsider the issue in light of our discussions given hereinabove.

10.7. The assessee has also filed an additional ground in respect of deduction u/s. 36(1)(vii) of the Act towards write off of non-rural debts amounting to Rs. 44,61,22,062/- and argued that said issue has not been dealt by lower authorities. We find that the issue of deduction towards write off of non-rural debts u/s. 36(1)(vii) of the Act has been dealt by us in

previous paragraphs and held that actual write off of non-rural debts should be allowed as deduction u/s. 36(1)(vii) of the Act without any adjustment to credit balance in provision for bad and doubtful debts account created u/s. 36(1)(viia) of the Act towards rural debts. This ground also pertains to deduction towards actual write off of non-rural debts as claimed by the assessee. If the claim of the assessee is correct, then the same needs to be considered for the purpose of deduction u/s. 36(1)(vii) of the Act, without any adjustment to credit balance in provision for bad and doubtful debts account created u/s. 36(1)(viia) of the Act in respect of rural debts. But, facts are not clear. There is no details with us with regard to actual write off of bad debts amounting to Rs. 44,61,22,062/- to ascertain whether it is for rural debt or non-rural debt. Therefore, we are of the considered view that, this issue needs to go back to the file of the Assessing Officer for fresh verification. Thus, we set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to reconsider the issue in light of evidences that may be filed by the assessee and decide the issue in accordance with law in terms of our observation given herein above.

11. The next issue that came up for our consideration from ground no 9 of assessee appeal is addition made by the Assessing Officer towards deduction @20% in respect of income earned from providing long term finance to eligible business u/s. 36(1)(viii) of the Act. The assessee has claimed a deduction of Rs. 32 crores u/s. 36(1)(viii) of the Act, towards profit derived from eligible business. The assessee being a banking company provided long term finance for industrial, agricultural and development of infrastructural facilities in India (called eligible business) and claimed deduction @ 20% on profit from the eligible business. The bank has adopted a method in which cash profit was arrived and proportionate amount was claimed as deduction u/s. 36(1)(viii) of the Act, since there is no prescribed method in the Income-tax Act, 1961 to arrive at the profits from eligible business. The Assessing Officer, recomputed deduction of eligible profit u/s. 36(1)(viii) of the Act, on the ground that, as per provisions of section 36(1)(viii) of the Act, prescribed method has been provided for computing deduction for eligible profit and as per said section, an amount not exceeding 20% of profit derived from eligible business computed under the head 'profit and

gains of business or profession' (before making any deduction under this clause) carried to such reserve account. According to the Assessing Officer, as per the decision of the CIT vs The Kerala State Industrial Development Corporation [1998] 233 ITR 197 (SC), the Hon'ble Supreme Court has specified the method and manner of computing deduction u/s. 36(1)(viii) of the Act and as per the observations of the Hon'ble Supreme Court, such deduction should be computed on profits and gains of business or profession, in accordance with provisions of section 30 to 43A, except section 36(1)(viii) of the Act. The Assessing Officer, further observed that the assessee has classified its business into three separate businesses, one for mobilization of deposits, another for extending of loans and third one for investment in various securities and accordingly, apportioned various expenses towards these activities to arrive at profit from eligible business and said method is not in accordance with provisions of the Act. Therefore, rejected the method followed by the assessee for computing eligible deduction u/s. 36(1)(viii) of the Act, and recomputed profit by taking into account advances given to eligible business, total

advances and profit from the total business in terms of percentage.

11.1 The Ld. Counsel for the assessee, submitted that the assessee has adopted a scientific method right from the beginning to arrive at profit from eligible business and said method has been accepted for earlier years. As against this, the Assessing Officer has arrived at profit from eligible business after considering total income which comprises income from various other business activities. Therefore, he submitted that there is an error in computation of eligible profit for the purpose of section 36(1)(viii) of the Act by the Assessing Officer and thus, the matter may be set aside to the file of the Assessing Officer for verification in light of decision of ITAT, Chennai Benches in the case of Indian Bank vs CIT 2019 (9) TMI 231 ITAT.

11.2 The ld. DR, on the other hand supporting the order of the ld. CIT(A) submitted that the law is very clear in so far as computation of deduction u/s. 36(1)(viii) of the Act and as per said provisions, eligible profit from the business should be

computed in terms of provisions of section 30 to 43A of the Act and before any deduction u/s. 36(1)(viii) of the Act. The assessee has adopted a unique method and segregated its business into three divisions and apportioned various expenses, even though various activities carried out by the assessee is one business of banking. Therefore, the Assessing Officer has rightly recomputed deduction u/s. 36(1)(viii) of the Act and their order should be upheld.

11.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Provisions of section 36(1)(viii) deals with, any special reserve created and maintained by a specific entity, an amount not exceeding 20% of the profit derived from eligible business computed under the head 'profit and gains of business or profession'. The profit and gains of business should be computed in accordance with provisions contained in section 30 to 43D, that means any admissible and inadmissible as per section 30 to 43D should be carried out to the net profit and arrived at profits and gains from business and profession. Further, the assessee is into banking business which involves

mobilization of deposits, lending of advance to various sectors and investment in various securities in terms of RBI guidelines etc., and said business is only one business of banking as defined under the Banking Regulation Act, 1949. The assessee cannot segregate its business into various segments based on different activities carried out by the assessee like mobilization of deposits, lending of money and making investments in securities. Therefore, to this extent, we are in full agreement with the Assessing Officer and his findings that the assessee cannot segregate its business into various segments for the purpose of computing profit and gains of business and profession and also the income from profit and gains of business or profession should be computed in terms of section 30 to 43D of the Act. Although, the appellant claims that there is no prescribed method provided for computing profit and gains of business and profession and accordingly, it has adopted its own scientific method to arrive at a profit and gains of business and profession, in our considered view, when the law is clear in respect of computing profit and gains of business and profession, the assessee should compute the income of the business in accordance with said provisions, but

it cannot adopt its own method which is contrary to the provisions of the Act. Therefore, we reject arguments of the assessee and upheld findings of the Assessing Officer.

11.4 Having said so, let us come back to deduction worked out by the assessee and deduction worked out by the Assessing Officer. The assessee has considered gross income from eligible business and allowed deduction for various expenses pertaining to said activities to arrive at profit from eligible business. The Assessing Officer, has followed a different method by considering long term advances given for eligible business, total advances of the assessee's bank, total profit and gains of business and profession and computed percentage to work out deduction u/s. 36(1)(viii) of the Act. In our considered view, when the assessee has not maintained separate books of accounts for eligible business, the method followed by the Assessing Officer to work out profit from eligible business may be one of accepted method for computation of profit and gains from eligible business, because the Assessing Officer has computed percentage of advances given to eligible business out of total advances given by the

assessee and also worked out profit from eligible business out of total profit of the assessee for the relevant period. The fact remains that the Ld. Counsel for the assessee claims that the method followed by the assessee has been upheld by the Jurisdictional High Court of Madras in the case of Indian Bank vs DCIT 2019 (9) TMI 231. We find that the Jurisdictional High Court of Madras has considered deduction claimed u/s. 36(1)(viii) of the Act in light of facts of that case and set aside the issue on the ground that both the sides agreed to go back to the Assessing Officer for applying correct principle of computing 20% of the profit derived from eligible business. The Hon'ble High Court further observed that in the above case details with regard to the interest earned from eligible business and total expenditure incurred by the assessee is also available. In the present case, the facts are not clear whether the interest earned from eligible business and corresponding expenditure incurred for said business is separately available with the assessee or not. Further, the assessee has computed profit and apportioned various expenses into three businesses and this method followed by the assessee has been disapproved by us. If the assessee is able to furnish necessary

details with regard to interest income earned from eligible business and corresponding total expenditure incurred for the activity, then there is no problem for computing eligible profit. In case, the assessee does not have any details, then the method followed by the Assessing Officer should be accepted. Since, facts are not clear, we are of the considered view that this issue needs to go back to the file of the Assessing Officer for fresh consideration. Thus, we set aside the issue to the file of the Assessing Officer with a direction to reconsider the issue in light of our observations given herein above and allow deduction u/s. 36(1)(viii) of the Act in accordance with law.

12. The next issue that came up for our consideration from ground no 10 of assessee appeal is addition of Rs. 100,11,07,158/- u/s. 36(1)(viia) of the Act in respect of deduction claimed u/s. 36(1)(viia) of the Act. The assessee bank had made a provision for bad and doubtful debts u/s. 36(1)(viia) of the Act and while computing the deduction has considered total aggregate average advance made by rural branches in terms of Rule 6ABA of I.T. Rules, 1962. The Assessing Officer, has recomputed deduction u/s. 36(1)(viia)

of the Act, by considering only incremental average rural advance on the ground that, considering total aggregate average rural advance for the purpose of deduction gives distorted figure. According to the Assessing Officer, deduction @ 10% on the cumulative outstanding balance at the end of the accounting year of the loan given by the rural branches, year on year on the same amount advanced, without recourse to the figure of the amount actually advanced by the rural branches of the bank during the year, would result in allowing deduction which may be more than the amount advanced by the rural branches of the bank. This is absurd and of course not the intention of the legislature. The Assessing Officer has given an example in Page 37 of their order and argued that, if you follow method adopted by the assessee, the assessee may claim deduction under the main provisions of section 36(1)(viia) of the Act on the aggregate outstanding rural advances which remains same throughout the period. Therefore, rejected method followed by the assessee and considered only incremental average rural advance given for the relevant assessment year and then applied 10% for computing eligible deduction. The assessee has computed

deduction of Rs. 143,41,26,515/- originally, in the return of income but, subsequently, the claim was reduced to Rs. 95,45,45,298/-. As against this, the Assessing Officer has computed eligible deduction u/s. 36(1)(viia) of the Act at Rs. 43,30,19,357/- and after considering deduction claimed by the assessee at Rs. 143,41,26,515/- disallowed excess claim of Rs. 100,11,07,158/- u/s. 36(1)(viia) of the Act.

12.1 The Ld. Counsel for the assessee, submitted that the assessee has classified rural branches based on the population of 2011 census and if you consider population as per 2011 census, the branches classified by the assessee as rural branches is correct and accordingly, computation of deduction u/s. 36(1)(viia) of the Act is also correct. Further, the assessee has considered aggregate average advance at the end of the relevant financial year, whereas the Assessing Officer has considered only incremental advance for the purpose of computing deduction. He further submitted that this issue is covered in favour of the assessee by the decision of Hon'ble Madras High Court in appellant's own case in City Union Bank Ltd vs CIT 2022 [4] TMI 113.

12.2 The ld. DR, on the other hand supporting the order of the ld. CIT(A) submitted that, if you consider method followed by the assessee for computing deduction u/s. 36(1)(viia) of the Act, then it gives distorted figure, because if aggregate average advances at the end of the financial year is considered, then the deduction claimed by the assessee may be in excess of loan advanced by the assessee. The Assessing Officer, has rightly considered incremental average advances of the relevant assessment year and computed deduction and said computation is in accordance with law. Therefore, the order of the Assessing Officer should be upheld.

12.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. As per Rules 6ABA of I.T. Rules, 1962, for the purpose of clause (viia) of sub-section (1) of section 36, an aggregate average advance made by the rural branches of a scheduled bank shall be computed by taking into account the amount of advances made by each rural branch as outstanding at the end of the last day of each month comprised within the previous year. If you go by Rule 6ABA of I.T. Rules, 1962, it talks

about the aggregate average advances made by the rural branches as outstanding at the end of the last day of each month, but it does not speak about only advances given by rural branches during the relevant financial year. Further, the Hon'ble Madras High Court in appellant's own case has considered an identical issue and by following the decision of Hon'ble Kolkata High Court in the case of PCIT vs Uttarbanga kshetriya Gramin Bank [2018] 94 Taxman.com 90 Kolkata, held that aggregate average advances made by rural branches as outstanding at the end of the last day of each month should be considered, but not aggregate monthly advances taking loans and advances made only during the previous year relevant to the assessment year as computed by the Assessing Officer. But, the High Court has remitted the matter back to the file of the Assessing Officer for the purpose of re-computation after considering the fact that the Assessing Officer has not computed deduction based on the documents produced by the assessee. The relevant findings of the Hon'ble High Court are as under:

> *"10.2 Similarly, the second issue relating to deduction of Rs.8.53 crores u/s 36(1)(viia) with regard to the provision for bad and doubtful debts, is covered by the decision in Principal Commissioner of Income Tax, Jalpaiguri v. Uttarbanga Kshetriya Gramin Bank [(2018) 94 taxmann. Com 90*

(Calcutta), in favour of the assessee and the relevant passage of the same is usefully extracted below:

> *"6.Mr. Nizamuddin, learned advocate appeared on behalf of the Revenue and submitted the amended direction made by the Tribunal on the ITO has resulted in the assessee getting double deduction which is not permissible on computation made under Rule 6ABA. He submitted a double deduction in the manner thus obtained by the assessee has not been expressly provided. He relied on a judgment of the Supreme Court in the case of Escorts Ltd. v. Union of India reported in (1993) 199 ITR 43, on the following portion in the said judgment appearing in page 64 of the report.*
>
> > *"A double deduction cannot be a matter of inference, it must be provided for in clear and express language, regard being had to its unusual nature and its serious impact on the revenues of the State."*
>
> *7. Mr.Khaitan, learned senior Advocate appeared on behalf of the assessee and submitted that the computation to be made as prescribed by Rule 6ABA is for the purpose of fixing the limit of the deduction available under section 36(1)(viia). Clause (a) and (b) in Rule 6ABA cannot be given the restricted interpretation. The amount of advances as outstanding at the last day of each month would be a fluctuating figure depending on the outstanding as increased or reduced respectively by advances made and repayments received. The assessee might provide for bad and doubtful doubts but the deduction would only be allowed at the percentage of aggregate average advance, computation of which is prescribed by Rule 6ABA.*
>
> *8. We find from the amended direction made by the Tribunal that such direction is in terms of Rule 6ABA. The ITO has made the computation of aggregate monthly advances taking loans and advances made during only the previous year relevant to assessment year 2009-10 as confirmed by CIT (A). The Tribunal amended such direction, in our view, correctly applying the rule.*
>
> *9. For the reasons aforesaid we do not find the questions suggested to be substantial questions of law involved in the case. As such the application and appeal are dismissed. "*

11. This court has no disagreement with the legal proposition laid down in the aforesaid decisions. However, in the present case, though there was no double deduction, as alleged by the appellant / Revenue, there was no clear vision about the advances made by the rural and non-rural branches of the bank and the quantum of deduction was not properly

determined by the assessing officer based on the materials furnished by the respondent / assessee. In this context, the relevant paragraphs of the assessment order dated 31.03.2006 passed by the assessing officer are quoted below:

> *"5.3 When the assessee was asked to clarify whether the advances which were considered to be bad and doubtful in earlier years and for which the provision was made so as to claim deduction under section 36(1)(viia) of the Act, have been recovered subsequently, it was stated that as the provision claimed was not with reference to any particular debt due to the assessee but on an overall basis, it is not possible to certify that the bad debts claimed as trading loss for deduction u/s 36(1)(viia) was recovered or not. It was also stated that the assessee would not be able to give age-wise details of outstanding advances for the branches more so for the rural branches with reference to which the deduction was claimed, so as to determine whether any advance of earlier year for which provision was made is still outstanding.*
>
> *5.4. In other words, the assessee is not in a position to give details of the advances with reference to which the deduction of Rs.14.99 crores was allowed as per Annexure 2 as deduction under section 36(1)(viia) towards unknown and anticipated trading loss by virtue of mere provision made on ad-hoc basis for bad and doubtful debts and to confirm that these advances were still outstanding as at the end of the previous year relevant to this accounting year."*
>
> *"6.3.1. Therefore due to assessee's inability to relate the provision to any particular advance of a branch, it cannot be said whether it is a provision for rural advance or for non-rural advance so as to examine the monetary limit prescribed under section 36(1)(viia) for allowing deduction thereunder. Then such provision is only reserve for bad debts and not provision for bad and doubtful debts. Though the provisions of section 36(1)(viia) may be understood as a beneficial provision to the assessee company to claim deduction even in respect of reserve created by it to meet certain anticipated loss or contingency due to default of its debtors whom the assessee may not be able to easily identify at the end of the previous year, yet the computation machinery for determining the deduction admissible in the matter of write off bad and doubtful debts of rural or non-rural advance u/s 36(1)(v) read with the proviso thereunder and section 36(2)(v) of the Act would fail."*

Thus, it is evident from the above extract that the quantum of deduction arrived at by the assessing officer was not based on

the documents produced by the respondent / assessee. The CIT(A) as well as the Tribunal also, did not look into those aspect, while allowing the deduction claimed by the respondent / assessee. Therefore, this court is of the opinion that for that limited purpose, the matter has to be re-examined by the assessing officer and the same has also been agreed upon by the learned counsel appearing for both sides.

12. In such view of the matter, the order of the Tribunal, which is impugned herein, is set aside and the matter is remitted to the assessing officer for quantification of the deduction allowable to the respondent. The assessing officer shall complete the said exercise, after providing due opportunity to the respondent for submission of both oral and documentary evidence, if any, and pass appropriate orders, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this judgment."

12.4 In so far as deciding a particular branch is rural branch or not, the population of 2011 census should be considered because said data was officially available with the bank while deciding the branches as rural branches or urban branches and this issue is covered by the decision of ITAT, Chennai benches in the case of Karur Vysya Bank in ITA Nos. 2762/Chny/2017 & 332/Chny/2018, dated 03.11.2011, where the issue has been discussed in detail. Therefore, we direct the Assessing Officer to consider the issue in light of the decision of the ITAT, Chennai Benches in the case of Karur Vysya Bank vs CIT (Supra).

12.5 In this view of the matter and considering facts and circumstances of the case and also following the decision of Hon'ble High Court of Madras in appellant's own case for earlier years, we are of the considered view, that the Assessing Officer is erred in computing deduction u/s. 36(1)(viia) of the Act, by considering only incremental advances made by rural branches of appellant bank as against the aggregate average advances made by rural branches of appellant bank as outstanding at the end of the financial year and thus, we direct the Assessing Officer to consider aggregate average advances outstanding at the end of the relevant financial year for the purpose of computing deduction u/s. 36(1)(viia) of the Act. Further, to compute correct amount of deduction, the matter has been set aside to the file of the Assessing Officer with a direction to reconsider the issue in light of our discussions given herein above and also the details that may be filed by the assessee.

13. The next issue that came up for our consideration from ground no. 11 of assessee appeal is deduction towards education cess and secondary and higher education cess. The

Ld. Counsel for the assessee, at the time of hearing submitted that the assessee does not want to press this ground and thus, ground no. 11 of assessee appeal is dismissed as not pressed.

14. In the result, appeal filed by the assessee for assessment year 2015-16 is partly allowed for statistical purposes.

ITA NO: 1418/Chny/2019 AY 2015-16:

15. The revenue has raised the following grounds of appeal:

> *"1. The order of the learned CIT(A) is bad in law and against the facts and circumstance of the case.*
>
> *2. The Ld. CIT(A) failed to appreciate that the assessee had itself made adhoc disallowance u/s 14A of the Act in the return of income and the AO rightly worked out the correct disallowance by applying Rule 8D of Income Tax Rule.*
>
> *3. The Ld. CIT(A) erred to notice that the AO had rightly restricted the deductions u/s 36(1)(vii) & 36(1)(viia) of the Act to the credit balance of the provision for bad and doubtful debts made for rural branches as against the credit balance of provision for bad and doubtful debts made for all branches.*
>
> *4. The Ld. CIT(A) erred to notice that the Assessing Officer has rightly invoked the provisions of sec 41(1) and 28(iv) of the Act with regard to unclaimed money, stale drafts and cheques reflected in the balance sheet for more than three year by applying the principle of limitation and the notification of RBI was issued on 24/05/2014 only, mandating the banks to transfer such unclaimed amount to "Depositor Education and Awareness Fund Scheme" and this instruction is prospective only.*
>
> *For the above grounds and other grounds that may be adduced during the time of hearing the order of the CIT(A)*

may be cancelled and the Department appeal may be allowed."

16. The first issue that came up for our consideration from ground no 2 of revenue appeal is deletion of additions made towards disallowance of expenditure relatable to exempt income u/s. 14A r.w.r. 8D of I.T. Rules, 1962. The Assessing Officer has disallowed a sum of Rs. 2,05,86,520/- u/s. 14A r.w.r. 8D of I.T. Rules, 1962, after reducing suomoto disallowances made by the assessee u/s. 14A of the Act of Rs. 1,43,403/-. On appeal, the ld. CIT(A) deleted additions made by the Assessing Officer u/s. 14A r.w.r. 8D of I.T. Rules, 1962 by following the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd vs CIT [2018] 91 Taxman.com 154.

16.1 The ld. DR, Shri. Nilay Baran Som, CIT, submitted that the ld. CIT(A) erred in deleting additions made by the Assessing Officer u/s. 14A of the Act, without appreciating fact that the appellant has made adhoc disallowances u/s. 14A, without considering Rule 8D of I.T. Rules, 1962, even though the Hon'ble Supreme Court in Maxopp Investment Ltd vs CIT (Supra) has clearly held in Para 39 of their order that, moment

the assessee claims exemption u/s. 10(34) of the Act, towards dividend income received from shareholder as stock in trade, the theory of apportionment of expenditure between taxable and non-taxable income comes into play and thus, depending upon facts of each case, expenditure incurred in acquiring those shares which yielded exempt income will have to be apportioned.

16.2 The ld. AR, on the other hand submitted that this issue has been squarely covered in favour of the assessee by the decision of ITAT Chennai Benches in assessee's own case for assessment years 2012-13 & 2015-16 [2019] 74 ITR (Trib) 644, where the Tribunal by following the decision of Coordinate bench of ITAT, Chennai bench in the case of Karur Vysya Bank Ltd vs CIT 2021 (11) TMI 568, deleted additions made by the Assessing Officer u/s. 14A of the Act.

16.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. This issue is squarely covered in favour of the assessee by the decision of coordinate bench of ITAT, Chennai benches

in appellant's own case for assessment years 2012-13 & 2013-14, where the Tribunal under identical set of facts held as under:

> *"27. Ground No.1 challenges the decision of the ld. CIT(A) in deleting the addition made u/s.14A of the Act on the ground that investments held by the assessee company is stock in trade and therefore resort to provisions u/s.14A of the Act cannot be made. The Assessing Officer made a disallowance of I2,82,57,685/- u/s.14A r.w.r. 8D. On appeal before the ld. CIT(A), the ld. CIT(A) held that the provisions of Section 14A of the Act cannot be applied in case of exempt income earned from investment held in stock in trade. Reasoning of the ld. CIT(A) has been overturned by the Hon'ble Supreme Court in the case of Maxopp Investment Ltd vs. CIT, (2018) 402 ITR 640. Therefore contention of the assessee that provisions of Section 14A of the Act cannot be invoked, when the securities are held as stock-in-trade, cannot be accepted. As regards to other limb of the argument of the assessee that in the absences of any finding by the Assessing Officer as to how the contention of the assessee that no expenditure was incurred is incorrect no disallowance should be made. We find from the assessment order that the assessee bank itself has offered a sum of I2,19,751/- under the provisions of Section 14A of the Act. From the perusal of the order of the Assessing Officer, it is clear that the Assessing Officer had not assigned any reason whatsoever as to how the claim of the assessee is incorrect. In the similar facts, the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT, 402 ITR 640 held that in the absence of the finding of the Assessing Officer resort to provisions of Section 14A of the Act r.w.r 8D of the Rules cannot be made. This decision was followed by the Co-ordinate Bench of the Tribunal in the case of Karur Vysya Bank (supra) cited by holding as under:-*
>
> > *"Ground No. 8 challenges the addition of I3,88,882/- invoking the provision of Section 14A of the Act. It is the contention of the appellant that the appellant had not incurred any expenditure to earn exempt income. The Assessing Officer had not given any findings as to how the claim of the assessee- bank that no expenditure was incurred to earn the exempt income was incorrect. In*

the absence of this finding resort to the provisions of rule 8D of the Income Tax Rules cannot be made as held by the Hon'ble Supreme Court in the case of Maxopp Investment Ltd vs. CIT, (2018) 402 ITR 640. Therefore this ground of appeal filed by the assessee is allowed. Accordingly, this ground of appeal stands allowed in favour of the assessee".

Similar view was taken up by the Hon'ble Delhi High Court in the case of CIT vs. Taikisha Engineering India Ltd, 370 ITR 338 and PCIT vs. Moonstar Securities Trading and Finance Co. (P) Ltd, 105 taxmann.com 274. The Hon'ble Delhi High Court had firmly held that mere rejection of the explanation of the assessee per se cannot be accepted. This decision of Delhi High Court in the case of Moonstar Securities Trading and Finance Co. (P) Ltd, was affirmed by the Hon'ble Supreme Court in the case of dismissal of SLP in PCIT vs. Moonstar Securities Trading and Finance Co. (P) Ltd, 105 taxmann.com 275. In the light of the above legal positions, we are of the considered opinion that even in the present case no reason was assigned by the Assessing Officer for rejecting the explanation of the assessee. In the circumstances, ratio of the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd (supra) is squarely applicable. We direct the Assessing Officer to delete the addition made u/s.14A of the Act. Thus, ground No.1 raised by the Revenue is dismissed."

16.4 In this view of the matter and by following the decision of coordinate bench of ITAT, Chennai Benches in appellant's own case for earlier assessment years, we are inclined to uphold the findings of the ld. CIT(A) and reject ground taken by the revenue.

17. The next issue that came up for our consideration from ground no. 3 of revenue appeal is deduction u/s. 36(1)(vii)

and 36(1)(viia) of the Act. We have dealt with this issue in assessee's appeal for assessment year 2015-16 in ITA No. 1120/Chny/2019 in preceding paragraph nos. 10 to 10.7 in detail and held that deduction u/s. 36(1)(vii) of the Act towards actual write off of bad debts of non-rural debts should be allowed as deduction, without any set off against credit balance in provision for bad and doubtful debts account created in terms of section 36(1)(viia) of the Act for rural debts. Further, other issues with regard to computation of deduction have been set aside to the file of the Assessing Officer for verification. Therefore, the ground taken by the revenue on this issue becomes infructuous and thus, the same is dismissed as not maintainable.

18. The next issue that came up for our consideration from ground no 4 of revenue appeal is deletion of additions made towards Excess cash, Stale drafts and Branch suspense account. The assessee has kept Excess cash, Stale drafts and Branch suspense to be transferred to Depositors Education and Awareness Fund, wherever said Excess cash, Stale drafts and Branch suspense account is lying more than 10 years. The

Assessing Officer has made addition towards Excess cash, Stale drafts and Branch suspense account as income of the assessee u/s. 41(1) and 28(iv) of the Act, on the ground that sale drafts for more than three years becomes income of the assessee over a period. On appeal, the ld. CIT(A) deleted additions made by the Assessing Officer by following the decision of ITAT, Chennai Benches in the case of Karur Vysya Bank Ltd vs CIT in ITA NO. 2349/Chny/2016, order dated 29.03.2017.

18.1 The ld. DR, submitted that the ld. CIT(A) erred in appreciating fact that unclaimed money, Stale drafts and cheques reflected in the balance sheet for more than three years becomes income of the assessee by applying the principle of limitation and thus, the Assessing Officer has rightly made additions towards Excess cash, Stale drafts and Branch suspense account as income of the assessee u/s. 41(1) & 28(iv) of the Act and their order should be upheld.

18.2 We have heard both the parties, perused materials available on record and gone through orders of the authorities

below. We find that this issue is squarely covered in favour of the assessee by the decision of Hon'ble High Court of Madras in appellant's own case reported in [2020] 118 Taxman.com 96 (Mad), where the Hon'ble High Court of Madras by following the decision of Hon'ble High Court of Karnataka in the case of CIT vs Raddi Sahakara Bank Niyamitha [2017] 88 Taxmann.com 560, held that Excess cash, Stale drafts and Branch suspense account cannot be treated as income of the assessee, because as per RBI guidelines/notifications said amount should be transferred to Depositors Education and Awareness Fund. The relevant findings of the Hon'ble High Court are as under:

> *"4. Both the learned counsel fairly submit that, the controversy involved in the present appeal is covered by a decision of the Division Bench of the Karnataka High Court in "Commissioner of Income Tax -Vs- Raddi Sahakara Bank Niyamitha" delivered on 30.01.2017 reported in [2017] 395 ITR 652 (Karnataka) (to which one of us DR.VINEET KOTHARI, J. was a party), in which the Division Bench of the Karnataka High Court has held as under:*
>
> > *"4. The learned counsel at bar submitted before the court that this controversy is no longer res integra and the Division Bench of this court in CIT v. Karnataka Vikas Grameen Bank in I. T. A. No. 100014 of 2014 and connected case, decided on December 14, 2015, has held, following the decision of the hon'ble Supreme Court in the case of CIT v. T. V. Sundaram Iyengar and Sons Ltd. reported in [1996] 222 ITR 344 (SC), that such an addition cannot be made under section 41(1) of*

the Act, since the liability of the assessee-bank to pay back the amounts to the customers in respect of such stale demand drafts and pay orders does not cease in law. The relevant extract from the judgment of the Division Bench of the court as contained in para 18 thereof including the extract from the decision of the hon'ble Supreme Court is quoted below for ready reference :

"18. A careful perusal of the above provision leads us to infer that section 41(1) can be pressed into service when an allowance or deduction is sought to be made in respect of loss, expenditure or trad ing liability is incurred by the assessee. In the instant case, the sum of Rs. 58,38,581 has remained with the assessee owing to the fact that the payees or holders of the draft/pay orders had not encashed them. The language employed by the Legislature being unambiguous, it would be incongruous to construe the said sum as either a loss, expenditure or trading liability incurred by the assessee. While deal ing with a situation of unclaimed amount, the hon'ble Supreme Court.

In the case of T. V. Sundaram Iyengar and Sons Ltd. [1996] 222 ITR 344 (SC), has held as follows (page 351 of 222 ITR) :

"We are unable to uphold the decision of the Tribunal. The amounts were not in the nature of security deposits held by the asses see for performance of contract by its constituents. As it appears from the facts of the case, the amounts were depleted by adjustments made from time to time. The Commissioner of Income-tax (Appeals) found that the assessee wrote back the amounts to its profit and loss account because the various trading parties did not claim these amounts for a long time. The amounts represented credit balances in the name of the trading parties and was taken to its profit and loss account. The Commissioner of Income-tax (Appeals) held that these amounts were not revenue receipts but were of capital nature. The provisions of section 41(1) were not attracted in the facts of this case because the assessee's liability to pay back the amounts to its cus

tomers had not ceased. The Tribunal agreed with this view.' (under lining is by us)

19. The Tribunal adverting to the above ruling has rightly deleted the sum of Rs. 58,38,581 added by the assessing authority by holding it as unsustainable in law."

5. Having perused the record, we are in respectful agreement with the aforesaid decision of the Division Bench of this court and we do not find any reason to take a different view of the matter and in view of the aforesaid, we do not find any substantial question of law arising in the present case."

5. We agree with the said view of the Karnataka High Court and accordingly the question of law framed in this appeal is answered against the Revenue and in favour of the Assessee. The Appeal filed by the Revenue deserves to be dismissed and is accordingly dismissed. No costs."

18.3 In this view of the matter and by following the decision of Hon'ble High Court of Madras, in appellant's own case, we are inclined to uphold the findings of the ld. CIT(A) and reject ground taken by the revenue.

19. In the result, appeal filed by the revenue for assessment year 2015-16 is dismissed.

ITA NO: 1121/CHNY/2019 ASSESSMENT YEAR 2016-17:

20. The assessee has raised the following grounds of appeal:

"1. The order of the Commissioner of Income Tax (Appeals) is bad in law & contrary to the facts & circumstances that are prevalent in the case of the Appellant.

2. The Learned Commissioner (Appeals) erred in confirming an amount of Rs. 5,36,74,409- (being 30% on Rs. 17,89,14,696/-) on interest paid to individual & HUF, u/s 40(a)(ia) of the Income Tax Act, 1961.

2.1. The Learned Commissioner (Appeals) failed in not considering the first proviso to section 201 of the Income Tax Act, 1961.

2.2. The Learned Commissioner (Appeals) erred in not considering the fact that the interest paid has been reflected in the Form 26AS of the depositors.

2.3. The Learned Commissioner (Appeals) erred in sustaining the disallowance without appreciating the fact that the AO has passed the order without giving sufficient time as requested by the Appellant for submission of evidence.

3. The Learned Commissioner (Appeals) erred in confirming CSR expenses of Rs. 10,45,09,355/-

3.1. The Learned Commissioner (Appeals) failed to appreciate the fact the expenses have resulted in generation of goodwill for the bank.

3.2. The Learned Commissioner (Appeals) failed to appreciate the fact it is only pure CSR expenses without any other benefit are covered by the Explanation to Sec 37.

4. The Learned Commissioner (Appeals) erred in confirming the QIP expenses of Rs. 1,75,43,308/- by holding that the same is not covered u/s 35D.

4.1. The Learned Commissioner (Appeals) erred in holding that there was no extension of existing undertaking.

4.2. The Learned Commissioner (Appeals) failed to appreciate the fact that the proceeds of QIP is for augmentation of business by opening more branches of the Bank and hence the QIP expenses are allowable u/s 35D.

5. The Learned Commissioner (Appeals) erred in confirming the disallowance of Rs. 48,03,464/- u/s 36(1) (viii) of the Income Tax Act, 1961.

5.1. The Learned Commissioner (Appeals) failed to consider that the issue involved is classification of advances and not computation of income for deduction under this section.

5.2. The similar addition made earlier years was allowed the Learned Commissioner (Appeals) for the AY 2012-13 & AY 2014-15.

6 The learned Commissioner (Appeals) erred in confirming disallowance of the non-rural bad debts write off of Rs. 137,58,65,624/-

6.1. The learned Commissioner (Appeals) failed to appreciate the fact that the amount claimed was write off effected by the bank.

6.2. The Learned Commissioner (Appeals) erred in allowing the amount by considering the. amount debited to Profit & Loss account.

6.3. The Learned Commissioner (Appeals) erred in the method adopted to arrive at the allowable amount of deduction under Sec 36(1)(vii).

6.4. The Learned Commissioner (Appeals) erred in relying on the Explanation 2 to Sec 36(1)(vii) which is not applicable to the facts of this case.

6.5. The Learned Commissioner (Appeals) erred in confirming the bad debts written off based on surmises and conjectures.

7. Without prejudice to the above ground, the Learned Commissioner (Appeals) erred in not considering the claim of Rs.82,59,27,392/- made u/s 36(1)(vii) by way Additional Grounds Appeal.

8. Without prejudice to Ground Nos 6 & 7 and as an alternate ground, the Learned Assessing Officer be directed not to tax the recovery from the written off accounts if the deduction is not allowed under Sec 36(1)(vii).

9. The Learned Commissioner (Appeals) erred in confirming a sum of Rs. 111,62,07,815/- claimed by the appellant bank u/s 36(1)(viia).

9.1. The Learned Commissioner (Appeals) erred in holding that only the incremental advance made during the Financial Year has to be considered for computing the Average Rural Advances as per Rule 6ABA of Income Tax Rules, 1962.

9.2. The Learned Commissioner (Appeals) failed to appreciate the fact that there is no such requirement in Rule 6ABA so as to consider only the incremental advances.

9.3. The Learned Commissioner (Appeals) erred in holding that some of the branches are not rural branches as per the definition of Sec 36(1)(viia).

9.4. The learned Commissioner (Appeals) relied the latest decision of the ITAT ignoring the earlier decision of the ITAT in which the claim of the Appellant was upheld.

For all these and other grounds which may be urged at the time of the hearing of this appeal, the appellant prays that its appeal be allowed".

21. The first issue that came up for our consideration from ground no. 2 of assessee appeal is disallowance of interest paid on deposits u/s. 40(a)(ia) of the Act for non-deduction of TDS u/s. 194A of the Act for Rs. 5,36,74,409/-. We find that an identical issue has been considered by us in appellant's own case for assessment year 2015-16 in ITA No. 1120/Chny/2019. The facts are identical for the year under consideration. The reasons given by us in preceding

paragraph no. 8 to 8.3, shall *mutatis mutandis* apply to this appeal, as well. Therefore, for similar reasons, we set aside the issue to the file of the Assessing Officer to reexamine the issue in light of our discussions given hereinabove for assessment year 2015-16 and decide the issue for the impugned assessment year in accordance with law.

22. The next issue that came up for our consideration from ground no. 3 of assessee appeal is disallowance of CSR expenses amounting to Rs. 10,45,09,355/-. An identical issue has been considered by us in appellant's own case for assessment year 2015-16 in ITA No. 1120/Chny/2019. The facts are similar for this year also. The reasons given by us in preceding paragraph no. 5 to 5.4, shall *mutatis mutandis* apply to this appeal, as well. Therefore, for similar reasons, we are inclined to uphold the findings of the ld. CIT(A) and sustain additions made by the Assessing Officer towards disallowance of CSR expenses. Accordingly, the ground of the assessee is dismissed.

23. The next issue that came up for our consideration from ground no. 4 of assessee appeal is disallowance of QIP expenses of Rs. 1,75,43,308/-. An identical issue has been considered by us in appellant's own case for assessment year 2015-16 in ITA No. 1120/Chny/2019. The facts are identical for the year under consideration. The reasons given by us in preceding paragraph no. 9 to 9.1, shall *mutatis mutandis* apply to this appeal, as well. Therefore, for similar reasons, we direct the Assessing Officer to delete additions made towards disallowance of QIP expenses.

24. The next issue that came up for our consideration from ground no. 5 of assessee appeal is disallowance u/s. 36(1)(viii) of the Act, towards eligible profit from providing long term finances to eligible business. An identical issue has been considered by us in appellant's own case for assessment year 2015-16 in ITA No. 1120/Chny/2019. The facts are identical for the year under consideration. The reasons given by us in preceding paragraph no. 10 to 10.7, shall *mutatis mutandis* apply to this appeal, as well. Therefore, for similar reasons, we set aside the issue to the file of the Assessing Officer and

direct the Assessing Officer to reconsider the issue, in light of our discussions given hereinabove for the assessment year 2015-16 on this issue and decide the issue for the impugned assessment year in light of our discussions.

25. The next issue that came up for our consideration from ground no. 6 to 9 of assessee appeal is deduction u/s. 36(1)(vii) and disallowance u/s. 36(1)(viia) of the Act towards actual write off of non-rural bad debts and deductions towards provision for bad and doubtful debts u/s. 36(1)(viia) of the Act. An identical issue has been considered by us in appellant's own case for assessment year 2015-16 in ITA No. 1120/Chny/2019. The facts are identical for the year under consideration. The reasons given by us in preceding paragraph no. 12 to 12.5, shall *mutatis mutandis* apply to this appeal, as well. Therefore, for similar reasons, we direct the Assessing Officer to allow deductions towards actual write off of non-rural debts u/s. 36(1)(vii) of the Act, without any adjustment to credit balance in provision for bad and doubtful debts account created in terms of section 36(1)(viia) of the Act for rural debts. The other issues like computation of eligible

deduction under both sections has been set aside to the file of the Assessing Officer for verification. The Assessing Officer is directed to reconsider the issue, in light of our discussions given hereinabove for the assessment year 2015-16 and decide the issue for the impugned assessment year in light of our discussions given in earlier paragraphs.

26. The next issue that came up for our consideration from ground no. 10 of assessee appeal is deduction towards education cess and secondary and higher education cess. The Ld. Counsel for the assessee, at the time of hearing submitted that, the assessee does not want to press this ground. Thus, ground no. 10 of assessee appeal is dismissed as not pressed.

27. In the result, appeal filed by the assessee for assessment year 2016-17 is partly allowed for statistical purposes.

ITA NO. 1419/CHNY/2019 AY 2016-17:

28. The revenue has raised the following grounds of appeal:

> *"1. The order of the learned CIT(A) is bad in law and against the facts and circumstance of the case.*
>
> *2. The Ld. CIT(A) failed to appreciate that the assessee had itself made adhoc disallowance u/s 14A of the Act in the return*

of income and the AO rightly worked out the correct disallowance by applying Rule 8D of Income Tax Rule.

3. The Ld. CIT(A) erred to notice that the AO had rightly restricted the deductions u/s 36(1)(vii) & 36(1)(viia) of the Act to the credit balance of the provision for bad and doubtful debts made for rural branches as against the credit balance of provision for bad and doubtful debts made for all branches.

4. The Ld. CIT(A) erred to notice that the Assessing Officer has rightly invoked the provisions of sec 41(1) and 28(iv) of the Act with regard to unclaimed money, stale drafts and cheques reflected in the balance sheet for more than three year by applying the principle of limitation and the notification of RBI was issued on 24/05/2014 only, mandating the banks to transfer such unclaimed amount to "Depositor Education and Awareness Fund Scheme" and this instruction is prospective only.

For the above grounds and other grounds that may be adduced during the time of hearing the order of the CIT(A) may be cancelled and the Department appeal may be allowed."

29. The first issue that came up for our consideration from ground no 2 of revenue appeal is deletion of additions made towards disallowance of expenses relatable to exempt income u/s. 14A r.w.r. 8D of I.T. Rules, 1962. An identical issue has been considered by us in appellant's own case for assessment year 2015-16 in ITA No. 1418/Chny/2019. The facts are identical for the year under consideration. The reasons given by us in preceding paragraph no. 16 to 16.4, shall *mutatis mutandis* apply to this appeal, as well. Therefore, for similar

reasons, we are inclined to uphold the findings of the ld. CIT(A) and reject ground taken by the revenue.

30. The next issue that came up for our consideration from ground no 3 of revenue appeal is deduction u/s. 36(1)(vii) and 36(1)(viia) of the Act towards actual write off of bad debts pertains to non-rural debts and deduction towards provision for bad and doubtful debts in terms of section 36(1)(vii) of the Act, for rural debts. An identical issue has been considered by us in appellant's own case for assessment year 2015-16 in ITA No. 1418/Chny/2019. The reasons given by us in preceding paragraph no. 17, shall *mutatis mutandis* apply to this appeal, as well. Therefore, for similar reasons, we are inclined to uphold the findings of the ld. CIT(A) and reject ground taken by the revenue.

31. In the result, appeal filed by the revenue for assessment year 2016-17 is dismissed.

ITA NO: 672/CHNY/2020 FOR AY 2017-18:

32. At the outset, we find that there is a delay of 65 days in appeal filed by the assessee, for which petition for condonation

of delay along with reasons for delay has been filed. After considering the petition filed by the assessee and also hearing both the parties, we find that there is a reasonable cause for the assessee in not filing appeal on or before the due date prescribed under the law and thus, in the interests of justice, we condone delay in filing of appeal and admit appeal filed by the assessee for adjudication.

33. The assessee has raised the following grounds of appeal:

"1. The order of the learned Commissioner of Income Tax (Appeals) is against law and facts of the case.

2. The learned Commissioner of Income Tax (Appeals) erred in law in disallowing a sum of Rs. 278,34,98,114/- u/s 36(1)(vii) of the Act.

2.1 The learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Rs. 113,31,51,493/- being bad debts written off in relation to accounts classified as NPA for the first time.

2.1.1. The learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance despite holding that the claim of the appellant can be considered as write off.

2.1.2. The learned Commissioner of Income Tax (Appeals) erred in holding that write off amount has to be adjusted against the provision allowed u/s 36(1)(viia) in view of Explanation 2 to Section 36(1)(vii) and only excess over and above the provision is to be allowed as deduction u/s 36(1)(vii).

2.1.3. The learned Commissioner of Income Tax (Appeals) erred in relying on the Explanation 2 to Section 36(1)(vii) which is not applicable to the facts of this case.

2.1.4. The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that no deduction was claimed in respect of these accounts u/s 36(1)(viia).

2.1.5. The learned Commissioner of Income Tax (Appeals) erred in not considering the decision of Apex Court applicable to the facts of the case.

2.1.6. Without prejudice to the above, the learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that the opening balance in the account under Section 36(1) (viia) as on 01/04/2013 is for rural advances and therefore only the rural branch write off needs to be adjusted against the opening balance.

2.1.7. Without prejudice to the above, the learned Commissioner of Income Tax (Appeals) ought to have allowed the recovery of first time NPA written off of Rs 49,85,96,672/- offered to tax by the appellant, as the write off claim was not allowed in the appeal.

2.2 The learned Commissioner of Income Tax (Appeals) erred in disallowing Rs. 165,03,46,621/- being bad debts written off by non- rural branches of the appellant bank.

2.2.1. The learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance holding that technical write off cannot be allowed as deduction u/s 36(1)(vii) since it is not debited to Profit & Loss Account.

2.2.2. The learned Commissioner of Income Tax (Appeals) erred in disallowing bad debts written off based on surmises and conjectures.

3. The learned Commissioner of Income Tax (Appeals) erred in law and facts in disallowing an amount of Rs. 17,96,00,000/- u/s 36(1) (viii) of the Act.

3.1 The learned Commissioner of Income Tax (Appeals) erred in rejecting the profits from eligible business worked out by the appellant bank based on surmises and conjectures.

3.2 The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that the appellant bank had

computed the deduction u/s 36(1)(viii) as per the provisions of the Act.

3.3 The learned Commissioner of Income Tax (Appeals) failed to appreciate that the profit from eligible business worked out by learned Assessing Officer is not in conformity with the provisions of Section 36(1)(viii) of the Act.

3.4 The learned Commissioner of Income Tax (Appeals) erred in considering the income of the bank as a whole for arriving at the deduction u/s 36(1) (viii) of the Act.

4. The learned Commissioner of Income Tax (Appeals) erred in law in disallowing an amount of Rs. 14,11,26,172/- u/s 40(a)(ia) of the Act being 30% of the interest paid to individuals.

4.1 The learned Commissioner of Income Tax (Appeals) failed to appreciate that Individuals whose taxable income is below the threshold limit, are not required to pay tax, are outside the provisions of Section 201 of the Act.

4.2 The learned Commissioner of Income Tax (Appeals) erred in not considering the first proviso to Section 201 of the Act.

4.3 The learned Commissioner of Income Tax (Appeals) erred in sustaining the disallowance without appreciating the fact that the learned Assessing Officer had passed the order without giving sufficient time as requested by the appellant for submission of evidence.

4.4 Without prejudice to the above, the learned Commissioner of Income Tax (Appeals) failed to appreciate that once Form 15G / Form 15H is obtained, no disallowance u/s 40(a)(ia) can be made.

5. The learned Commissioner of Income Tax (Appeals) erred in law in disallowing ESOS expenses of Rs. 13,83,71, 181/-.

5.1 The learned Commissioner of Income Tax (Appeals) failed to appreciate that disallowance was made on the lapsed options for which the bank has not made any claim.

5.2 The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that the bank claimed ESOS expenses only on the actual shares exercised by employee at the time of exercise.

5.3 The learned Commissioner of Income Tax (Appeals) failed to appreciate that the main objective of issuing ESOS is not to raise the share capital but to expect an uninterrupted service from the employee which will be used in revenue generation and hence, the same cannot be equated with issue of share capital against acquisition of asset so as to fall into the brackets of capital expenditure.

5.4 The learned Commissioner of Income Tax (Appeals) erred in relying on the decision of the Hon'ble Supreme Court not applicable to the facts of the case.

6. The learned Commissioner of Income Tax (Appeals) erred in law in disallowing CSR expenses amounting to Rs.8,65,92,170/- u/s 37 of the Act.

6.1 The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that the expenses have resulted in generation of goodwill for the bank.

6.2 The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact it is only pure CSR expenses without any other benefit is covered by the Explanation to Section 37.

7. The learned Commissioner of Income Tax (Appeals) erred in law in disallowing depreciation on investments amounting to Rs. 7,26,74,909/-.

7.1 The learned Commissioner of Income Tax (Appeals) failed to appreciate that the method adopted by the appellant in arriving at the depreciation on investments is in accordance with the requirements of guidelines issued by Reserve Bank of India and the hence, the same is allowable expenditure as per ICDS-VIII.

7.2 The learned Commissioner of Income Tax (Appeals) erred in adjusting the appreciation with the depreciation by adopting basket wise classification of investments.

7.3 The learned Commissioner of Income Tax (Appeals) erred in disallowing the claim of depreciation on investments based on surmises and conjectures.

8. The learned Commissioner of Income Tax (Appeals) erred in law in disallowing the QIP expenses amounting to Rs. 1,75,43,308/- by holding that QIP is not covered u/s 35D of the Act

8.1 The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that the proceeds of QIP is for augmentation of business by opening more branches of the Bank and hence the QIP expenses are allowable.

8.2 The learned Commissioner of Income Tax (Appeals) failed to appreciate that share issue expenditure incurred for QIP issue is covered under Section 35D of the Act.

9. In the facts and circumstances of the case and in law, the appellant be allowed a claim towards education cess & secondary & higher education cess amounting to Rs.5,52,48,210/- paid by it during the previous year 2016-17 in the computation of total income.

For all these and other grounds, which may be urged at the time of hearing, the appellant prays that its appeal be allowed."

34. The first issue that came up for our consideration from ground nos. 2 to 2.2 of assessee appeal is deduction u/s. 36(1)(vii) of the Act, towards write off of non-rural bad debts and disallowance of provision for bad and doubtful debts u/s. 36(1)(viia) of the Act. An identical issue has been considered by us in appellant's own case for assessment year 2015-16 in ITA No. 1120/Chny/2019. The facts are identical for the year under consideration. Therefore, for similar reasons, we direct

the Assessing Officer to allow deductions towards write off of non-rural debts u/s. 36(1)(vii) of the Act, without any adjustment to credit balance in provision for bad and doubtful debts account created in terms of section 36(1)(viia) of the Act. The other issues like computation of deduction has been set aside to the file of the Assessing Officer for fresh verification. The Assessing Officer is directed to verify the claim of the assessee in light of our discussions given hereinabove for assessment year 2015-16 on this issue and decide the issue for the impugned assessment year in light of our discussions given hereinabove.

35. The next issue that came up for our consideration from ground no 3 of assessee appeal is disallowance u/s. 36(1)(viii) of the Act, towards provision created for reserve for deduction of eligible profit from eligible business. An identical issue has been considered by us in appellant's own case for assessment year 2015-16 in ITA No. 1120/Chny/2019. The facts are identical for the year under consideration. The reasons given by us in preceding paragraph no. 11 to 11.4, shall *mutatis mutandis* apply to this appeal, as well. Therefore, for similar

reasons, we set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to reexamine the issue in light of our discussions given hereinabove for assessment year 2015-16 and decide the issue for the impugned assessment year in accordance with law.

36. The next issue that came up for our consideration from ground no. 4 of assessee appeal is disallowance of interest payment on deposits u/s. 40(a)(ia) of the Act for non-deduction of TDS u/s. 194A of the Act. An identical issue has been considered by us in appellant's own case for assessment year 2015-16 in ITA No. 1120/Chny/2019. The facts are identical for the year under consideration. The reasons given by us in preceding paragraph no. 8 to 8.3, shall *mutatis mutandis* apply to this appeal, as well. Therefore, for similar reasons, we set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to reconsider the issue in light of our discussions given hereinabove for the assessment year 2015-16 and decide the issue for the impugned assessment year in accordance with law.

37. The next issue that came up for our consideration from ground no. 5 of assessee appeal is disallowance of ESOS expenses and enhancement on disallowance of ESOS expenses by the ld. CIT(A). An identical issue has been considered by us in appellant's own case for assessment year 2015-16 in ITA No. 1120/Chny/2019. The facts are identical for the year under consideration. The reasons given by us in preceding paragraph no. 6 to 6.4, shall *mutatis mutandis* apply to this appeal, as well. Therefore, for similar reasons, we direct the Assessing Officer to delete additions made towards disallowances of ESOS expenses and delete enhancement made by the ld. CIT(A).

38. The next issue that came up for our consideration from ground no. 6 of assessee appeal is disallowance of CSR expenses of Rs. 8,65,92,170/-. An identical issue has been considered by us in appellant's own case for assessment year 2015-16 in ITA No. 1120/Chny/2019. The facts are similar for this year also. The reasons given by us in preceding paragraph no. 5 to 5.3, shall *mutatis mutandis* apply to this appeal, as well. Therefore, for similar reasons, we are inclined

to uphold the findings of the ld. CIT(A) and sustained additions made by the Assessing Officer towards disallowance of CSR expenses. Accordingly, the ground of the assessee is dismissed.

39. The next issue that came up for our consideration from ground no. 7 of assessee appeal is depreciation on investments. An identical issue has been considered by us in appellant's own case for assessment year 2015-16 in ITA No. 1120/Chny/2019. The facts are identical for the year under consideration. The reasons given by us in preceding paragraph no. 7 to 7.2, shall *mutatis mutandis* apply to this appeal, as well. Therefore, for similar reasons, we direct the Assessing Officer to delete additions made towards disallowance of depreciation on investments.

40. The next issue that came up for our consideration from ground no. 8 of assessee appeal is disallowance of QIP expenses amounting to Rs. 1,75,43,308/-. An identical issue has been considered by us in appellant's own case for assessment year 2015-16 in ITA No. 1120/Chny/2019. The

facts are identical for the year under consideration. The reasons given by us in preceding paragraph no. 9 to 9.1, shall *mutatis mutandis* apply to this appeal, as well. Therefore, for similar reasons, we direct the Assessing Officer to delete additions made towards QIP expenses.

41. The next issue that came up for our consideration from ground no. 9 of assessee appeal is deduction towards education cess and secondary and higher education cess. The Ld. Counsel for the assessee, at the time of hearing submitted that the assessee does not want to press this ground and thus, ground no. 9 of assessee appeal is dismissed as not pressed.

42. In the result, appeal filed by the assessee for assessment year 2017-18 is partly allowed for statistical purposes.

ITA NO: 636/CHNY/2020 AY 2017-18:

43. At the outset, we find that there is a delay of 39 days in appeal filed by the assessee, for which petition for condonation of delay along with reasons for delay has been filed. After considering the petition filed by the assessee and also hearing

both the parties, we find that there is a reasonable cause for the assessee in not filing appeal on or before the due date prescribed under the law and thus, in the interests of justice, we condone delay in filing of appeal and admit appeal filed by the assessee for adjudication.

44. The revenue has raised the following grounds of appeal:

"1. The order of the learned Commissioner of Income tax (Appeals), Trichy is contrary to the law, facts and circumstances of the case.

2. The CIT(A) erred in deleting the addition made u/s 14A of the Act r.w. Rule 8D of the Rules relying on the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd 402 ITR 640 (SC).

3. The CIT(A) failed to appreciate that Hon'ble Supreme Court in the case of Maxopp Investment Ltd 402 ITR 640 (SC) agreed with applicability of section 14A of the Act based on theory of apportionment of expenditure between taxable and non-taxable income as held in the case of Walfort Share & Stock Brokers (P) Ltd, when shares are held as stock in trade.

4. The CIT(A) failed to appreciate the decision of ITAT, Chennai in the case of M/s City Union Bank Limited Vs ACIT dated 09/7/2019 rendered in ITA Nos. 1129 & 1130/CHNY/2018 and 1315 & 1316/CHNY/2018, wherein the ITAT 'C' Bench rejected the contention of the assessee that provisions of section 14A of the Act cannot be invoked, when the securities are held as stock-in-trade following the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd vs Commissioner of Income tax [2018] 402 ITR 640 (SC).

5. The CIT(A) erred in deleting the addition made u/s 40(a)(ia) of the Act on account of non-deduction of TDS on payment of interest to Trust and Institutions.

6. The CIT(A) failed to note that sub-section (1B) of section 197A restricts filing of declaration in Form 15G whose income exceed the maximum amount which is not chargeable to income tax.

7. The CIT(A) erred in allowing the higher depreciation at 60% on ATMs following decision of Hon'ble Supreme Court in the case of CIT V State Bank of Patiala {2016} 70 taxmann.com36 (SC), without considering the facts that the Hon'ble Supreme Court in the above case dismissed the revenue's appeal due to finding of non-justifiable reason to condone delay of 234 days in filing SLP against the order of High Court.

8. The CIT(A) failed to appreciate the decision of Mumbai bench of the ITAT in the case of Venture Infotek Global (P.) Ltd Vs. DCIT [2008] 25 SOT 184 Wherein it was held that the POS terminals and ATMs are neither data processing devices nor a composite system output of which is data processing, they are not eligible for depreciation at rate of 60 percent as provided for computer.

9. The CIT(A) failed to appreciate the decision of the Hon'ble Karnataka High Court in the case of Diebold System Pvt. Ltd V. Commissioner of Commercial taxes 144 STC 4 Kar, wherein it was held that the ATM is not a computer by itself and can be used independently, but once it is connected with the computer, further information sought by the customers can also be processed. Therefore, it cannot be said to be part of a computer or computer.

10. The CIT(A) erred in deleting the addition made towards accrued interest on NPA without appreciating the facts that NPA is to be classifiedas per Rule 6EA of Income tax -rules, which says an account can be treated as NPA only if the interest is overdue for more than six months.

11. The CIT(A) failed to appreciate the decision of the Hon'ble Delhi High Court in the case of Housing & Urban Development Corporation Ltd V Addl.CIT [2017]396 ITR 667(Delhi), wherein it was held that " section 43D read with rule 6EB is a complete code in itself and there is an element of discretion for rule making authority to follow or not to follow NHB guidelines as when they are revised, thus every change in NHB guidelines would not lead to any corresponding automatic change in Rule 6EB.

12. The CIT(A) failed to appreciate the decision of the Supreme Court in the case of Southern Technologies Ltd Vs Jt. CIT[2010] 320 ITR 577 which held that RBI Act does not override the provisions of the Act.

13. The CIT(A) erred in deleting the addition made on account of stale draft & Cheque without appreciating the facts that the assessee has never transferred these funds to the "Depositor Education and Awareness Fund".

14. The CIT(A) failed to appreciate the decision of ITAT, Chennai in the case of City Union bank vs JCIT reported in ITA Nos. 1671, 1801,1802, 1803,1804,2034 & 2035/Mds/2014 dated 28/12/2016 wherein the ITAT treated the unclaimed balance as the Revenue receipts irrespective of the fact that the bank is a custodian and allowed the ground of revenue relying on the judgment of Hon'ble Kerala High Court in the case of Catholic Syrian Bank Ltd Vs Assistant Commissioner of Income tax, 349 ITR 0569.

15. The CIT(A) failed to appreciate the decision of Hon'ble High Court of Kerala in the case of South Indian Bank Ltd v CIT, Trichur reported in 279 CTR 179 (Kerala), where the Hon'ble High Court held that excess cash in branches of assessee-bank that was to be refunded only if any customer would claim, is to be added to income under section 41(1) of the Act.

16. The CIT(A) erred in allowing the claim of the assessee towards provision of bad and doubtful debts u/s 36(1)(viia) of the Act.

17. The CIT(A) failed to appreciate that the concept of considering the incremental Average rural advance was upheld by the Hon'ble ITAT 'A' Bench Chennai vide order its 1548,1620,1206,1207,1208,1209,27,1621 in & ITA Nos. 1622/Mds/2014 1205, dated 29/01/2016 in the case of M/s Lakshmi Vilas Bank Vs Assistant Commissioner of Income tax. Further, the Hon'ble ITAT 'D' Bench Chennai Vide its order in ITA Nos. 496 & 497/Mds/2014 dated 23/02/2016 in the case of M/s Indian Overseas Bank Vs. Deputy Commissioner of Income tax and Also Vide its order in ITA Nos. 1671, 1801,1802,1803 & 1804/Mds/2014 dated 28/12/2016 in the case of M/s City Union Bank Limited vs. Joint Commissioner of Income tax had upheld the method of considering only the incremental average

rural advances instead of aggregate average advance by the rural branches.

18. The CIT(A) failed to appreciate the decision of Hon'ble Kerala High Court in the case of CIT v Lord Krishna Bank Ltd (2011) 339 ITR 606 (ker.) where in it was held that "place referred to in definition of 'rural branch' under Explanation (ia) to section 36(1)(viia) for purpose of identifying branch of a bank as a rural branch with reference to its location is revenue village and not a ward of a local authority like Panchayat or Municipality. Therefore, rural branches are such branches which are located in a village where population in village is less than 10,000.

19. The appellant craves to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of appeal."

45. The first issue that came up for our consideration from ground nos. 2 to 4 of revenue appeal is deletion of addition made u/s. 14A r.w.r. 8D of I.T. Rules, 1962 towards expenses relatable to exempt income. An identical issue has been considered by us, in appellant's own case for assessment year 2015-16 in ITA No. 1418/Chny/2019. The facts are identical for the year under consideration. The reasons given by us in preceding paragraph nos. 16 to 16.4, shall *mutatis mutandis* apply to this appeal, as well. Therefore, for similar reasons, we are inclined to uphold the findings of the ld. CIT(A) and reject ground taken by the revenue.

46. The next issue that came up for our consideration from ground no. 5 of revenue appeal is deletion of additions made u/s. 40(a)(ia) of the Act, on account of non-deduction of TDS on payment of interest from trust and institutions. An identical issue has been considered by us in appellant's own case for assessment year 2017-18 in ITA No. 672/Chny/2020, where the issue has been set aside to the file of the Assessing Officer with a direction to reexamine the issue in light of our discussions given hereinabove for the assessment year 2015-16. Therefore, the grounds of appeal filed by the revenue has also been set aside to the file of the Assessing Officer with a direction to the Assessing Officer to reexamine the issue in light of our discussions given hereinabove for the assessment year 2015-16 and decide the issue for the impugned assessment year in accordance with law.

47. The next issue that came up for our consideration from ground nos. 7 to 9 of revenue appeal is deletion of depreciation @ 60% on ATMs. The assessee has claimed 60% depreciation on ATMs, on the ground that ATMs is akin to computer and computer software. The Assessing Officer, has

disallowed excess depreciation on the ground that ATMs comes under normal depreciation of 15% as applicable to plant and machinery. On appeal, the ld. CIT(A) deleted additions made by the Assessing Officer by following the decision of Hon'ble Supreme Court in the case of CIT vs State Bank of Patiala [2016] 70 Taxmann.com 36 (SC).

47.1 The ld. DR, submitted that the ld. CIT(A) erred in deleting excess depreciation disallowed on ATMs by following the decision of Hon'ble Supreme Court in the case of CIT vs State Bank of Patiala (Supra), without considering the fact that the Hon'ble Supreme Court in the above case dismissed the revenue appeal, due to findings of non-justifiable reasons to condone delay. The ld. DR, further submitted that the Hon'ble Karnataka High Court in the case of Diebold System Pvt Ltd vs Commissioner of Commercial Taxes 144 STC 4 Kar, held that ATMs is not a computer by itself and can be used independently, and thus, it cannot be considered as computer and computer software. Therefore, he submitted that additions made by the Assessing Officer towards excess depreciation on ATMs should be upheld.

47.2 The Ld. Counsel for the assessee, Shri. S. Ananthan, CA, on the other hand supporting the order of the CIT(A) submitted that this issue is squarely covered in favour of the assessee by the decision of ITAT Chennai Benches in appellant's own case reported in [2019] 74 ITR (Trib) 644, where the additions made by the Assessing Officer towards disallowance of excess depreciation is deleted. Further, this issue is also covered by the decision of Hon'ble Supreme Court in the case of CIT vs State Bank of Patiala (Supra). Therefore, he submitted that there is no error in the reasons given by the ld. CIT(A) and their order should be upheld.

47.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The issue of depreciation @60% on ATMs is no longer *res-integra. The* coordinate bench of ITAT, in appellant's own case for assessment year 2012-13 & 2013-14 has considered an identical issue and after considering relevant facts held that ATMs are akin to computer and computer software and are eligible for higher depreciation @ 60%, but not depreciation @

15% as applicable to plant and machinery and as claimed by the Assessing Officer. The ld. CIT(A) deleted additions made by the Assessing Officer towards excess depreciation by following the decision of Hon'ble Supreme Court in the case of CIT vs State Bank of Patiala (Supra), where the Hon'ble Supreme Court has dismissed SLP filed by the revenue against the decision of Hon'ble Punjab and Haryana High Court. Therefore, we are of the considered view that there is no error in the reasons given by the ld. CIT(A) to delete additions made towards excess depreciation claimed on ATMs and thus, we are inclined to uphold the findings of the ld. CIT(A) and reject ground taken by the revenue.

48. The next issue that came up for our consideration from ground nos. 10 to 12 of revenue appeal is deletion of additions made towards interest on non-performing assets. The Assessing Officer has made additions towards interest accrued, but not due of NPA on the ground that NPA should be classified as per Rule 6EA of I.T. Rules, 1962, which says account can be treated as non-performing asset only, if the interest is overdue for more than 6 months.

48.1 The ld. DR, submitted that, the assessee has claimed NPA as per RBI guidelines, which is contrary to Income-tax Rules and thus, the Assessing Officer has rightly made additions towards interest on NPA and their order should be upheld.

48.2 The Ld. Counsel for the assessee, supporting the order of the ld. CIT(A) submitted that this issue is squarely covered in favour of the assessee by the decision of ITAT, Chennai Benches in appellant's own case for assessment year 2012-13 & 2014-15 reported in [2019] 74 ITR 644, where the Tribunal by following the decision of ITAT, Chennai Benches in the case of Karur Vysya Bank Ltd vs CIT (Supra) deleted additions made towards interest on NPA.

48.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The issue of addition towards interest on NPA is no longer *res-integra*. The coordinate bench of ITAT, Chennai Benches, in appellant's own case for assessment year 2012-13

& 2014-15, reported in City Union Bank vs ACIT (Supra), has considered an identical issue and dealt as under:

> *48. We heard the rival submissions and perused the material on record. This issue was dealt by the Co-ordinate Bench of the Tribunal in the case of Karur Vysya Bank (supra) wherein after referring to the decision of Hon'ble Supreme Court in the case of CIT vs. Vasisth Chay Vyapar Ltd (2019) 410 ITR 244, it was held as follows:-*
>
> > *''The next ground of appeal challenges the addition on account of interest 29 accrued in non performing assets accounts of Rs. 14,00,000. The Assessing Officer had brought to tax the interest on the non performing assets accounts by holding that interest had accrued in terms of the agreement entered by the appellant with borrowers. This issue is now covered in savour of the assessee-bank by the decision of the hon'ble Supreme Court in the case of CIT v. Vasisth Chay Vyapar Ltd. [2019] 410 1TR 244 (SC), wherein the hon'ble Supreme Court had confirmed the decision of the hon'ble Delhi High Court, that the interest income cannot be said to have been accrued to the assessee on the non performing assets accounts. Accordingly, we direct the Assessing Officer to delete the addition of Rs. 14,00,000 made on interest on non performing assets accounts.Accordingly, this ground of appeal stands allowed. ''*
> >
> > *We further note that the decision of Hon'ble Supreme Court in the case of Vasisth Chay Vyapar Ltd (supra) is subsequent to the decision in the case of Southern Technology Ltd (supra). Therefore the decision of Hon'ble Supreme Court in the case of Vasisth Chay Vyapar Ltd (supra) shall prevail over the decision of Southern Technology Ltd. Therefore, we direct the Assessing Officer not to assess interest on NPA. Ground of appeal No.8 filed by the Revenue is dismissed."*

48.4 In this view of the matter and by following the decision of coordinate bench of ITAT, Chennai Benches in appellant's own

case for earlier years, we are inclined to uphold the findings of the ld. CIT(A) and reject ground taken by the revenue.

49. The next issue that came up for our consideration from ground no 16 to 18 of revenue appeal is deduction u/s. 36(1)(vii) and 36(1)(viia) of the Act, towards actual write off of bad debts pertains to non-rural debts and deduction towards provision for bad and doubtful debts in terms of section 36(1)(vii) of the Act, for rural debts. An identical issue has been considered by us in appellant's own case for assessment year 2015-16 in ITA No. 1418/Chny/2019. The reasons given by us in preceding paragraph no. 17, shall *mutatis mutandis* apply to this appeal, as well. Therefore, for similar reasons, we direct the Assessing Officer to decide the issues in accordance with out directions given on this issue in assessee's appeal for the assessment year 2015-16 and recomputed disallowance for this assessment year.

50. In the result, appeal filed by the revenue for assessment year 2017-18 is partly allowed for statistical purposes.

51. As a result, appeals filed by the assessee in ITA NOs: 1120, 1121/Chny/2019 for assessment years 2015-16 & 2016-17, ITA No: 672/Chny/2020 for assessment year 2017-18 and appeal filed by the revenue in ITA No: 636/Chny/2020 for assessment year 2017-18 are partly allowed for statistical purposes, and appeals filed by the revenue in ITA No. 1418 & 1419/Chny/2019 for assessment years 2015-16 & 2016-17 are dismissed.

Order pronounced in the court on 11th March, 2024 at Chennai.

Sd/-	**Sd/-**
(वी दुर्गा राव)	**(मंजुनाथ. जी)**
(V. DURGA RAO)	**(MANJUNATHA. G)**
न्यायिकसदस्य/Judicial Member	**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,
दिनांक/Dated: 11th March, 2024.
JPV
आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Assessee
2. Revenue
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF