

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1219/Bang/2019
Assessment Year: 2015-16

Canara Bank (Erstwhile Syndicate Bank) FM Wing, Head Office 112, JC Road Bangalore 560 002 Karnataka PAN NO : AAACC6106G	Vs.	DCIT Circle-1 Udupi
APPELLANT		RESPONDENT

ITA No.186/PAN/2019
Assessment Year: 2015-16

DCIT Circle-1 Udupi	Vs.	Canara Bank (Erstwhile Syndicate Bank) Karnataka PAN NO : AAACC6106G
APPELLANT		RESPONDENT

Appellant by	:	Shri S. Ananthan, A.R.
Respondent by	:	Ms. Neera Malhotra, D.R.

Date of Hearing	:	06.08.2024
Date of Pronouncement	:	08.08.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

These are cross appeals directed against order of CIT(A), Mangalore for the assessment year 2015-16 dated 21.3.2019. The assessee raised following grounds:

1. *The order of the learned Commissioner of Income Tax (Appeals) is bad in law and against the facts of the case.*
2. *The learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Rs. 975,06,92,286/- u/s 36(1)(vii) being the non-rural write off by the bank.
Tax effect: 331,42,60,308/-*
3. *The learned Commissioner of Income Tax (Appeals) erred in holding that the deduction u/s 36(1)(viiia) has to be restricted to the extent provision created in the books.
Tax effect Rs.87,53,19,710/-*
4. *The learned Commissioner of Income Tax (Appeals) erred in holding that provisions of Section 115JB are applicable to the bank.*
5. *Without prejudice to the above ground, the learned Commissioner of Income Tax (Appeals) erred in sustaining the addition of provision for restructured accounts to arrive at the book-profit which is beyond the scope of the section.
Tax effect Rs.9,89,45,717/-
Total Tax effect Rs.428,85,25,735/-*

1.1. The revenue raised following grounds:

Grounds of appeal:

- i. *The Ld. CIT(A) has erred in law by deleting addition and thereby allowing deduction u/s 36(1)(vii).*
- ii. *The Ld. CIT(A) has not appreciated the fact that the Explanation 2 of 36(1)(vii) clarifies that for the purpose of 36(1)(viiia) r.w.s 36(2)(v), there shall be only 'one' provision account with respect to bad and doubtful debts and such accounts relates to all types of advances including advances made by Rural Branches.*
- iii. *Whether deduction under section 36(1)(viiia) of the Income Tax Act, 1961 r.w.r 6ABA of the Income Tax Rules, 1962 is to be allowed on the total outstanding advances including opening balances upon which the assessee bank has already claimed such deduction in earlier years or the same has to be allowed in respect of incremental advances made during the year?*
- iv. *The Ld. CIT(A) erred in law by allowing depreciation claimed on Held to Maturity(HTM) securities.*
- v. *The Ld. CIT(A) erred in law by ruling that depreciation on the value of stocks/securities Held to Maturity (HTM) is an eligible business expenditure, ignoring the fact that valuation of securities is done as per the norms provided in the Banking Regulation Act by the RBI and the said laws do not deal with permissible deductions or exclusion under the Income Tax Act.*
- vi. *The Ld. CIT(A) has erred in law by deleting addition of Rs. 2,03,00,000/- made by the A.O. being expenditure prohibited in law, as per Explanation 1 to section 37.*
- vii. *Whether in the facts and circumstances of the case, the Ld. CIT(A) is correct in holding that penalties levied under section 46 of the Banking Regulation Act are allowable expenditure.*
- viii. *The Ld. CIT(A) has erred in law by deleting addition and thereby allowing deduction u/s 36(1)(viii).*
- ix. *The Ld. CIT(A) has not appreciated the fact that on the same set of facts the jurisdictional ITAT, Bangalore had restored the case to the file of A.O in the ITA Nos. 321& 528/Bang/2019 dated 25.04.2023 in the case of Bank of Baroda.*

2. First we will take up assessee's appeal in ITA No.1219/Bang/2019. The first ground for our consideration in this appeal is with regard to confirming disallowance of Rs.975,06,92,286/- u/s 36(1)(vii) of the Act being the Non-Rural Write off by the bank.

3. Facts of the issue are that the learned Assessing Officer relying on the decision of Hon'ble Supreme Court in the case of Southern Technologies vs CIT [2010] 352 ITR 577 (SC) disallowed the claim holding that the assessee bank had not debited the amount of doubtful debt to P&L A/c instead they had debited the provision for NPA to P&L A/c. The assessee bank relying on the decision of Hon'ble Supreme Court in the case of Vijaya Bank 323 IT R 166 contended before the learned Commissioner of Income Tax (Appeals) that individual debts need not be written off and reduction of bad debts in balance sheet amounts to writing off the debts in the books of accounts. However, the learned Commissioner of Income Tax (Appeals) was of the view that the amount of non-rural bad debts written off Rs 975.07 Crores was not adjusted by the bank against the provision allowed u/s 36(1)(viiia) account. Therefore, the Commissioner of Income Tax (Appeals) vide his letter dated 19/02/2019 asked the assessee to explain why non-rural bad debts of Rs. 975.07 Crores written off u/s 36(1)(vii) should not be first adjusted with the provision allowed u/s 36(1)(viiia) in view the proviso to Section 36(1)(vii) r.w.s. 36(2)(v) r.w.s. 36(1)(viiia).

3.1 The assessee bank relying on the Hon'ble Supreme Court decision that Section 36(1)(viiia) is applicable only to rural advances in the case of Catholic Syrian Bank, contended that since no deduction is allowed for non-rural debts u/s 36(1)(viiia), the entire non-rural debts written off should be allowed as deduction u/s 36(1)(vii) without adjusting the same against the provision allowed u/s 36(1)(viiia). It contended that insertion of explanation 2 to Section 36(1)(vii) has not altered the proposition of law as it existed prior to

introduction of explanation. Further it contended that since Section 36(1)(viia) applies only to rural debts, in the case of banks having rural branches, it is only rural debts which are to be adjusted against the provision allowed u/s 36(1)(viia) and non-rural debts can be claimed in full.

3.2 Relying on decision of the Hon'ble Supreme Court in the case of Union of India vs Intercontinental Consultants & Technocrats (P.) Ltd [2018] 91 taxmann.com 67 (SC) it also argued that the term 'such debt' contained in proviso to Section 36(1)(vii) refers to the amount of provision allowed u/s 36(1)(viia) and hence, non-rural debts for which no deduction is allowed u/s 36(1)(viia) need not be adjusted against the provision created under that section and they should be allowed in full u/s 36(1)(vii).

3.3 Without prejudice to the other arguments, it was submitted before the learned Commissioner of Income Tax (Appeals) that recovery from written off accounts in AY 2013-14 & AY 2014-15, for which no deduction u/s 36(1)(vii) was allowed in the earlier years be reduced from income offered by the bank. However, the learned Commissioner of Income Tax (Appeals) observed that the reliance placed by the assessee on the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank is misplaced and out of context as he opined that Hon'ble Supreme Court never held that deduction allowed u/s 36(1)(viia) for Banks having both rural and non-rural branches is in respect of rural advances only, irrespective of the provision made in books of accounts. Further the learned Commissioner of Income Tax (Appeals) opined that aforesaid decision was delivered on the assumption that Banks would maintain two separate provision for bad and doubtful debts (PBDD) account in respect of rural branches and non-rural branches. He was of the view that insertion of explanation 2 to Section 36(1)(vii) was only clarificatory in nature and provision allowed u/s 36(1)(viia) account referred in the proviso and Section 36(2)(v) was always only single

account for all types of advances including rural advances since its introduction in 1985.

3.4 As the assessee bank was not maintaining two separate PBDD accounts, the learned Commissioner of Income Tax (Appeals) prepared single provision allowed account u/s 36(1)(viia). Based on his calculations, he disallowed the entire claim of the assessee bank u/s 36(1)(vii) stating that non-rural debt written off u/s 36(1)(vii) was less than the credit balance in the provision allowed account for non-rural advances.

4. After hearing both the parties, we are of the opinion that this issue came for consideration before this Tribunal in assessee's own case in ITA Nos.390 & 501/Bang/2023 for the AYs 2016-17 & 2017-18 dated 25.10.2023, wherein the Tribunal held as under:

"11. We have heard the rival submissions and perused the material on record. We notice that the from the decisions of the coordinate Bench quoted by the assessee in ITA No. 1885/Bang/2018 for AY 2014-15 (supra) in its own case, the issue has been decided in favour of the assessee as under:-

"12.3 We have heard rival submissions and perused the material on record. We notice that the CIT(A) had expressed the view that provision allowed u/s 36(1)(viia) of the Act would apply to non-rural advances also. An identical issue has been examined by the Hyderabad Bench of the ITAT in the case of State Bank of Hyderabad v. DCIT in ITA No.450/Hyd/2015, ITA No.498 and 499/Hyd/2015 (order dated 14.08.2015) wherein the Tribunal had not accepted the above said view expressed by the CIT(A). The Bangalore Bench of the Tribunal in assessee's own case for assessment year 2013-2014 by following the Hyderabad Bench order of the Tribunal in the case of State Bank of Hyderabad (supra), had set aside the view expressed by the CIT(A) that proviso to section 36(1)(vii) which requires adjustment of bad debts against the provisions allowed u/s 36(1)(viia) would apply to non-rural advances also. The relevant finding of the Bangalore Bench of the Tribunal in assessee's own case for assessment year 2013- 2014 reads as follows:-

"6.4 We heard the parties on this issue and perused the record. We notice that the Ld CIT(A) has expressed the view that the provision allowed u/s 36(1)(viia) of the Act would cover bad debts pertaining to non-rural advances also. An identical issue has been examined by Hyderabad bench of ITAT in the case of State Bank of Hyderabad vs. DCIT (ITA No.450/Hyd/2015, ITA No.498 and 499/Hyd/2015 dated August 14, 2015), wherein the Tribunal has not accepted the above said

view expressed by Ld CIT(A). The relevant observations made by the Tribunal are extracted below:-

“19. We have considered the rival submissions and perused the materials on record as well as the orders of revenue authorities. As could be seen from the finding of AO as well as ld. CIT(A), only reason for which claim of deduction for Rs. 209,07,50,831 representing actual write off of bad debts relating to non-rural advances u/s 36(1)(vii) was denied is, assessee having already availed deduction u/s 36(1)(viia), it is not eligible to claim deduction u/s 36(1)(vii) as it will amount to double deduction. In our view, both AO as well as ld. CIT(A) have committed fundamental error by mixing up provisions of sections 36(1)(vii) and 36(1)(viia). While 36(1)(vii) speaks of actual write off of bad debts in the books of account, section 36(1)(viia) even allows provision made towards bad and doubtful debts in respect of rural advances to the extent of provision made in the books of account subject to the ceiling fixed under clause (viia) of section 36(1). Proviso to section 36(1)(vii) operates only in a case where deduction is also claimed under section 36(1)(viia). In other words, proviso to section 36(1)(vii) applies to write off of bad debts relating to rural advances to the extent it exceeds the provision made u/s 36(1)(viia). If we examine the facts of the present case in the context of aforesaid statutory provision, it will be evident that assessee, though, has written off in the books of account an amount of Rs. 210.74 crore, but, in the computation of total income, the actual deduction claimed u/s 36(1)(vii) is Rs. 209.08 crore representing bad debts written off relating to nonrural/urban advances. The balance amount of bad debts relating to rural advances was not claimed as deduction by assessee in terms with the proviso to section 36(1)(vii) as it has not exceeded the provision for bad and doubtful debts relating to rural advances created u/s 36(1)(viia). Both AO and ld. CIT(A) have misconstrued the statutory provisions while observing that proviso to section 36(1)(vii) would also apply in case of bad debts relating to non-rural advances. The Hon'ble Supreme Court in case of Catholic Syrian Bank Vs. CIT (supra) while analyzing provisions of section 36(1)(vii) and 36(1)(viia) have observed that section 36(1)(viia) applies only to rural advances. The observations made by Hon'ble Apex Court in this regard in paras 26 & 27 of the judgment is extracted hereunder for convenience.

"26. The Special Bench of the Tribunal had rejected the contention of the Revenue that proviso to s. 36(1)(vii) applies to all banks and with reference to the circulars issued by the Board, held that a bank would be entitled to both deductions, one under cl. (vii) of s. 36(1) of the Act on the basis of actual write off and the other on the basis of cl. (viia) of s. 36(1) of the Act on the mere making of

provision for bad debts. This, according to the Revenue, would lead to double deduction and the proviso to s. 36(1)(vii) was introduced with the intention to prevent this mischief. The contention of the Revenue, in our opinion, was rightly rejected by the Special Bench of the Tribunal and it correctly held that the Board itself had recognized the position that a bank would be entitled to both the deductions. Further, it concluded that the proviso had been introduced to protect the Revenue, but it would be meaningless to invoke the same where there was no threat of double deduction.

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

Concurring with the aforesaid majority view, Hon'ble CJI, S.H. Kapadia, as the then he was, held as under:

"2. Under Section 36(1)(vii) of the ITA 1961, the tax payer carrying on business is entitled to a deduction, in the computation or taxable profits, of the amount of any debt which is established to have become a bad debt during the previous year, subject to certain conditions. However, a mere provision for bad and doubtful debt(s) is not allowed as a deduction in the computation of taxable profits. In order to promote rural banking and in order to assist the scheduled commercial banks in making adequate provisions from their current profits to provide for risks in relation to their rural advances, the Finance Act, inserted clause (viiia) in subsection (1) of Section 36 to provide for a deduction, in the computation of taxable profits of all scheduled commercial banks, in respect of provisions made by them for bad and doubtful debts relating to advances made by their rural branches. The deduction is limited to a specified percentage of the aggregate average advances made by the rural branches computed in the manner prescribed by the IT Rules, 1962. Thus, the provisions of clause (viiia) of Section 36(1) relating to the deduction on account of the provision for bad and doubtful debt(s) is distinct and independent of the provisions of Section 36(1)(vii) relating to allowance of the bad debt(s). In other words, the scheduled commercial banks continue

to get the full benefit of the write off of the irrecoverable debt(s) under Section 36(1)(vii) in addition to the benefit of deduction for the provision made for bad and doubtful debt(s) under section 36(1)(viii). A reading of the Circulars issued by CBDT indicates that normally a deduction for bad debt(s) can be allowed only if the debt is written off in the books as bad debt(s). No deduction is allowable in respect of a mere provision for bad and doubtful debt(s). But in the case of rural advances, a deduction would be allowed even in respect of a mere provision without insisting on an actual write off. However, this may result in double allowance in the sense that in respect of same rural advance the bank may get allowance on the basis of clause (viii) and also on the basis of actual write off under clause (vii). This situation is taken care of by the proviso to clause (vii) which limits the allowance on the basis of the actual write off to the excess, if any, of the write off over the amount standing to the credit of the account created under clause (viii). However, the Revenue disputes the position that the proviso to clause (vii) refers only to rural advances. It says that there are no such words in the proviso which indicates that the proviso apply only to rural advances. We find no merit in the objection raised by the Revenue. Firstly, CBDT itself has recognized the position that a bank would be entitled to both the deduction, one under clause (vii) on the basis of actual write off and another, on the basis of clause (viii) in respect of a mere provision. Further, to prevent double deduction, the proviso to clause (vii) was inserted which says that in respect of bad debt(s) arising out of rural advances, the deduction on account of actual write off would be limited to the excess of the amount written off over the amount of the provision allowed under clause (viii). Thus, the proviso to clause (vii) stood introduced in order to protect the Revenue. It would be meaningless to invoke the said 1 proviso where there is no threat of double deduction. In case of rural advances, which are covered by the provisions of clause (viii), there would be no such double deduction. The proviso limits its application to the case of a bank to which clause (viii) applies. Clause (viii) applies only to rural advances. This has been explained by the Circulars issued by CBDT. Thus, the proviso indicates that it is limited in its application to bad debt(s) arising out of rural advances of a bank. It follows that if the amount of bad debt(s) actually written off in the accounts of the bank represents only debt(s) arising out of urban advances, the allowance thereof in the assessment is not affected, controlled or limited in any way by the proviso to clause (vii)."

Thus, considered in light of principle laid down as referred to above, when the proviso to section 36(1)(vii) applies to bad debts written off relating to rural advances, the same cannot be applied for disallowing deduction claimed on account of write off of bad and doubtful debts relating to nonrural/urban advances. As far as application of explanation to section 36(1)(vii) is concerned, we agree with the ld. AR that its operation will be prospective and will not apply to the impugned AY. For this proposition, we rely upon the decision of the ITAT Mumbai in case of Bank of India Vs. Addl. CIT (supra). Even otherwise also, careful reading of explanation to section 36(1)(vii) would indicate that nowhere it suggests that the proviso to section 36(1)(vii) would apply in respect of bad debt written off relating to non-rural advances. In the aforesaid view of the matter, we hold that assessee would be eligible to avail deduction of an amount of Rs. 209.94 crore representing actual write off in the books of account of bad debts relating to nonrural/urban advances in terms with section 36(1)(vii), as proviso to the said section would not apply to non-rural advances. Accordingly, we delete the addition made by AO and confirmed by ld. CIT(A).”

6.5 Following the above said decision, we hold that the view expressed by Ld CIT(A) is not legally correct. Accordingly, we set aside the order passed by Ld CIT(A) with regard to his alternative decision, i.e., the view that the proviso to sec. 36(1)(vii) which requires adjustment of bad debts against provision allowed u/s 36(1)(viiia) would apply to non-rural advances also. Accordingly, we direct the AO to delete the disallowance of Rs.1258.47 crores.”

12.4 In view of the above co-ordinate Bench order of the Tribunal in assessee’s own case for assessment year 2013- 2014 (supra), we hold that the view expressed by the CIT(A) is not correct. Therefore, the alternative decision taken by the CIT(A) (i.e. the proviso to section 36(1)(vii) which requires adjustment of bad debts against provision allowed u/s 36(1)(viiia) would apply to non-rural advances also) is hereby set aside. Hence, we direct the A.O. to delete the disallowance made by the CIT(A). It is ordered accordingly.”

11.1 Similar issue has also been decided by the coordinate Bench of the Tribunal in the case of Bank of Baroda v. Addl. CIT, LTU, in ITA No.321/Bang/2019 dated 25.4.2023 in favour of the assessee. The ld. DR has submitted that the Hon’ble Apex court has admitted the SLP filed by the revenue but the status of the same could not be furnished by the ld. DR, accordingly, we are bound by the order of the Jurisdictional High Court. Accordingly respectfully following the above decisions, we delete the addition made u/s. 36(1)(vii). This ground is allowed.”

4.1 In view of the above order of the Tribunal, taking a consistent view, we allow the above ground taken by the assessee.

5. With regard to ground no.2.7 of the assessee's appeal, after hearing both the parties, we are of the opinion that this ground is infructuous in view of the findings in ground Nos.2.1 to 2.6 as above. Accordingly, this ground is dismissed as infructuous.

6. Ground No.3 is with regard to deduction u/s 36(1)(vii)(a) of the Act.

6.1 Facts of the case are that the assessee bank had claimed a deduction of Rs. 1702,94,76,906/- u/s 36(1)(vii)(a) being the amount eligible as calculated under the section. The assessee had calculated the deduction based on the Aggregate Average Rural Advances (AAA) computed as per Rule 6ABA of Income Tax Rules, 1962. During the assessment proceedings the learned Assessing Officer relied on the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd (343 IT R 270) and held that the provision made in the accounts relating to rural debts alone should be considered to arrive at the deduction u/s 36(1). During the course of assessment proceedings the assessee Bank had reduced the claim by Rs. 7,35,24,597/- being provision pertaining to 3 branches, where the population exceeded 10,000 as per latest census. Therefore, Assessing Officer disallowed a sum of Rs.1387,81,80,315/- out of total claim of Rs.1695,59,52,309/-. The assessee bank contended before the learned Commissioner (Appeals) that there is no requirement in Section 36(1)(vii)(a) that the provision should be in relation to rural advances. Further, it was contended that the reliance placed by the learned Assessing Officer on the decision (Supreme Court in the case of Catholic Syrian Bank Ltd (supra) is misplaced as the Hon'ble Supreme Court did not go into the manner of deduction u/s 36(1)(vii)(a). To support its contentions, the assessee bank placed reliance on the decision of Hon'ble Bangalore Bench of the Tribunal in the case of ING Vysya Bank [(2014) 149 ITD 611] & Vijaya Bank [ITA No. 578/Bang/2012 dated 27/02/2015]. Without prejudice to the above, it was submitted that bank had created a

provision of Rs. 1445,42,49,751/- and claimed deduction of Rs.1695,59,52,309/- based on the decision of Bangalore Bench of the Tribunal in the assessee's own case reported in 78 ITD 103. Accepting the contentions of the assessee bank that provision need not related to rural advances for the purpose of calculating deduction u/s 36(1)(viia), the learned Commissioner of Income Tax (Appeals) allowed the claim of the bank u/s 36(1)(viia) but restricted the claim to the extent PBDD created by relying on various decisions.

7. After hearing both the parties, we are of the opinion that similar issue came before Hon'ble Karnataka High Court in the case of Syndicate Bank Vs. DCIT in ITA No.783 of 2018 dated 18.6.2021 wherein the jurisdiction court held as under:

“13. Thus, a conjoint reading of provision contained in Section 36(1)(viia) and explanatory note dated 0.06.1982, it is evident that deduction provided in Section 36(1)(viia) shall be allowed in respect of the matters dealt therein, in computing the income. The condition precedent for claiming deduction under section 36(1)(viia) of the Act is that a provision for bad and doubtful debt should be made in the accounts of the assessee. The aforesaid Section mentions the maximum amount for which such a provision should be made. If a provision is made in excess of the limits prescribed under the Section, the assessee would not be entitled to deduction of the excess amount. Once a provision is made and the amount of deduction is within the limit prescribed under the Act, the assessee would be entitled to deduction of the amount for which provision is made in the books of accounts.

14. The assessee is therefore entitled to deduction subject to the limit mentioned in Section 36(1)(viia) of the Act. The substantial Questions of law Nos. 1 and 3 framed by this Court, are substantially answered by this Court in I.T.A.Nos.256/2011 and 258/2011 and therefore, the said questions are at-steered in favour of the revenue and against the assessee. The Tribunal was right in holding that the decoction computed at the rate of 7.5% of the total income ought to be computed after setting off of brought forwards losses.”

7.1 In view of the above judgement of Hon'ble High Court, this ground of assessee is dismissed.

8. Next ground for our consideration is ground no.4 with regard to applicability of provisions of section 115JB of the Act.

8.1 Facts of the case are that the assessee bank had not computed book profit and accordingly not calculated MAT as it was of the opinion that the assessee bank being a public sector bank is not a company under Companies Act, 1956 as well as Banking Regulations Act, 1949 as such provisions of Section 115JB doesn't apply to them. However, the learned Commissiong. of Income Tax (Appeals) dismissed the assessee bank's appeal by concurring with the cogent reasons and justifications given by the AO.

9. After hearing both the parties, we are of the opinion that similar issue came for consideration in the case of Canara Bank in ITA Nos.391 & 392/Bang/2023 for the assessment year 2019-20. The Tribunal vide order dated 22.12.2023 held as under:

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

The Ld.AR submitted that, the assessee does not fall within definition of banking company as defined under Companies Act, 1956 and therefore it is not covered by proviso to section 211(2) of the Companies Act. The Ld. AR thus submitted that provisions of s. 115JB are not applicable to assessee. In support of this submission, he placed reliance on decision of Hon'ble Delhi High Court in the case of CIT v Punjab National Bank Ltd. (successor of erstwhile Oriental Bank of Commerce) in ITA 594/2023 by order dated 20/10/2023, wherein the question of law considered by the court is proposed in question (e) has been dismissed. The said order of Hon'ble Delhi High Court in the case of CIT v Punjab National Bank Ltd. (successor of erstwhile Oriental Bank of Commerce) (supra) is placed at page 35-37 of the PB. The Ld.AR further relied on decision of Hon'ble Delhi Tribunal in the case of Oriental Bank of Commerce v. ACIT reported in [2022] TIOL 331 ITAT-DEL. The Ld.AR submitted that, the provisions of section 115JB, as it stood prior to its amendment by virtue of Finance Act, 2012, would not be applicable to a banking company. He submitted that coordinate Bench of Delhi Tribunal considered this issue by observing as under:-

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

- Canara Bank vs JCIT, LTU in ITA No. 530/Bng/2010 & other dtd. 30.03.2016 = 2016-TIOL-1120-HC-P&H-IT*
- M/s. Canara Bank vs CIT(LTU) In ITA No. 305/Bang/2011 dtd. 18.06.2012*
- Krung Thai Bank PCI vs Joint Director of Income Tax (ITAT) (Mumbai) in ITA No.3390/Mum/09 dtd. 30.09.2010 reported in (2010) 45 DTR 218*

- *Union Bank of India vs ACIT, LTU (ITAT) (Mumbai) in ITA Nos.4702 to 4706/Mum/2010 dtd. 30.06.2011*
- *Indian Bank vs Addl. CIT (ITAT) (Chennai) in ITA No.469/Mds/2010 dtd. 03.08.2011*
- *Union Bank of India (ITAT Mumbai) in ITA Nos. 4155 to 4161 of 2011 dtd. 27.03.2012*

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

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

"This legal dichotomy emerging from the provisions of subsection (2) of Section 115JB particularly having regard to the first proviso contained therein in case of banking company, would convince us that machinery provision provided in sub-section (2) of section 115JB of the Act, would be rendered wholly unworkable in such a situation. In a well known judgment the Supreme Court in case of Commissioner of Income-Tax, Bangalore vs B.C. Shrinivasa Setty, Vo. 128 ITR 294 = 2002-TIOL-587-SC-IT-LB, had observed that in the Income Tax Act, a charging section and the computing provisions together constitute an integrated code. In a case where the computation provision cannot apply, it would be evident that such a case was not intended to fall within the charging section. It was a case of charging a partnership firm for transfer of a capital asset in the nature of goodwill. The Supreme Court was of the opinion that it would not be possible to envisage a cost of acquisition of goodwill. Since computation of capital gain cannot be done without ascertaining the cost of acquisition, it was held that no capital gain tax can be levied. " 53. Concluded at page 12 para 21 as under:

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

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

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

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

(2) [Every assessee,-

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

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

Provided that while preparing the annual accounts including profit and loss account,- (i) the accounting policies;

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

(iii) the method and rates adopted for calculating the depreciation, shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956):

Provided further that where the company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under this

Act,-

(i) the accounting policies;

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

(iii) the method and rates adopted for calculating the depreciation, shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant previous year. "

56. Thus, the understanding of the above amendment to section 115JB is where a company which are not required u/s 211 (129) of the Companies Act to prepare their P&L account in accordance with Schedule - VI of the Companies Act, 1956 profit & loss account prepared in accordance with the provisions of their Regulatory Acts shall be taken as a basis for computing the book profit u/s 115JB.

57. *The assessee's contentions for non-applicability of 115JB provisions are:*

"(i) It is a case of Nationalized Bank, under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980.

(ii) Assessee is not a company incorporated under the Companies Act, 1956, nor recognized under section 3 of the Companies Act.

(iii) The second proviso to sub-section (1) of section 129 (earlier provision 211) of the Companies Act, 2013 is not applicable to the assessee.

(iv) Under section 11 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980 provides that "for the purposes of the Income-tax Act, 1961, every corresponding new bank shall be deemed to be Indian company and a company in which public is substantially interested".

(v) It is settled principle of law where deeming fiction is created by the legislature it has to be confined to the purpose for which it is created. CIT, Panji vs Dempo Company Limited reported in (2016) 74 TAXMAN.com 15 (SC) = 2016-TIOL-164-SC-IT. Therefore, the Income-tax Act must recognize such banking company for the purpose section 115JB in order to make the provisions applicable.

(vi) When the charging section and the computing provision together would constitute an integrated code. In case charging section does not apply then the computation section fails. CIT vs B C Shrinivas Setty 128 ITR 294 = 2002-TIOL-587-SC-IT-LB."

58. *However, the plea of the assessee with respect to nonapplicability of section 115JB to the Banking Companies was rejected by the ITAT Mumbai "B" Bench in ITA No. 1767/Mum/2019 for the A.Y. 2015-16 in the case of Bank of India vs ACIT Mumbai vide order dated 11th December, 2020.*

59. *There is no jurisdictional High Court decision or for that matter any other High Court decision against the assessee. In view of the fact that two use are possible, the view that favour the assessee may kindly be considered, more so in the case of a Nationalized Bank as held by the Hon'ble Supreme Court in the case of CIT vs Vegetable Products Ltd. 88 ITR 192 = 2002TIOL-574-SC-IT-LB."*

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

13. *We have perused submissions advanced by both sides in light of record placed before us. We note that decision of Hon'ble Delhi Tribunal in Oriental Bank(supra) has been upheld by Hon'ble Delhi High Court wherein Hon'ble High Court has categorically observed that the revenue in case of Punjab National Bank did not raise this issue which are identical to facts of the present assessee before us. **In view of the same, Ground No.4 raised by the assessee deserves to be allowed."***

9.1 In view of the above order of the Tribunal cited (supra), taking a consistent view, we allow this ground taken by the assessee.

10. Last ground No.5 of the assessee's appeal is with regard to addition of book profit u/s 115JB of the Act.

10.1 Facts of the case are that The learned Assessing Officer had made various additions to book profit u/s 115JB by holding that provisions / write offs would get covered under various clauses to Explanation 1 of Section 115JB. Relying on various decisions, the assessee bank contended before the learned Commissioner of Income Tax (Appeals) that provisions / write offs are actual write offs and not provisions and hence, they cannot be added to book profit. Accepting the contentions of the assessee bank, the learned Commissioner of Income Tax (Appeals) allowed the appeal with respect to additions made to book profit u/s 115JB except for provision for restructured accounts.

11. After hearing both the parties, in view of the deciding issue on applicability of provisions of section 115JB of the Act in earlier ground in favour of the assessee, this ground is dismissed as infructuous.

12. In the result, appeal of the assessee in ITA No.1219/Bang/2019 is partly allowed.

ITA No.186/Pan/2019 (Revenue's appeal) (AY 2015-16):

13. First ground for our consideration is with regard to disallowance u/s 14A of the Act.

13.1 Facts of the case are that The CIT(A) has erroneously allowed relief on the ground that the AO failed to record non-satisfaction with regard to the correctness of the claim of the assessee, as envisaged under the provisions of section 14A has not been recorded by the AO before proceeding to make any disallowance. The ld. CIT(A) failed to notice from records that a proposal for determining and disallowing

expenditure in accordance with section 14A r w R 8D was given to the assessee vide questionnaire dated 17-02-2017. This fact has also been explicitly mentioned vide Para 1.0 of the assessment order. The CIT (A) failed to take cognizance of such a proposal given by the Assessing Officer with regard to his dissatisfaction about the correctness of the claim made by the assessee. The CIT(A) erred in not considering that this would suffice the requirement of law as per provisions of section 14A, as the same has been communicated to the assessee before completion of assessments. The CIT(A) failed to appreciate that the assessment order made u/ s 143(3) by itself being such a finding, based on the satisfaction or otherwise, of the Assessing Officer and no separate order / finding on this count is envisaged as per the provisions of law. The CIT(A) failed to appreciate that the disallowance is made after examining all the issues and the AO has also relied upon the decision of the Bombay High Court in the case of Godrej and Boyce 328 ITR 81 holding that there is a method and rationale in rule 8D for apportionment of expenditure between taxable and non taxable income. The Learned CIT(A) erred in deleting the additions made on account of expenditure relating to earning of exempted income ignoring the provisions of Section 14 r w R SD. The disallowance is made after examining all the issues and relying upon the decision of the Bombay High court in the case of Godrej and Boyce 328 ITR. The decision of the Hon'ble High Court of Karnataka in the case of Karnataka Bank for AY 2001-02 has not been accepted by the department and SLP has been admitted by the Hon'ble Supreme Court as seen from CA No.()05716/2015 and the same is pending (SLP against ITA No.675 and 657 of 2008 of HC of Karnataka)

14. After hearing both the parties, we are of the opinion that similar issue came for consideration before this Tribunal in case of Canara Bank Vs. DCIT in ITA Nos.390 & 501/Bang/2023 for the

assessment years 2016-17 & 2017-18, the Tribunal vide order dated 25.10.2023 held as under:

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

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

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

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

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

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

Provided that nothing contained in this Section shall empower the Assessing Officer either to reassess under Section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under Section 154, for any assessment year beginning on or before the 1st day of April 2001.

9. From perusal of Section 14A of the Act, it is evident that for the purposes of computing the total income under this chapter, no deduction shall be allowed in respect of the expenditure incurred by the assessee in relation of the income which does not form part of his total income under the Act. The expenditure, the return of investment and cost of requisition are distinct concepts. Therefore the word 'incurred' in Section 14A of the Act have to be read in the context of the scheme of the Act and if so read, it is clear that it disallows certain expenditures incurred to earn exempt income from being deducted from other incomes which is includable in

the total income for the purposes of chargeability to the Lax. It is equally well settled that expenditure is a pay out. In order to attract applicability of section 14,4 of the Act, there has to be a pay out and return of investment or a pay back is not such a debit item. [See: WALFORT SHARE AND STOCK BROKERS (P) LTD SUPRA as well as M.4XOP INVESTMENTS LTD SUPRA]. In the instant case, the assessee has admittedly not incurred any expenditure. This case pertains to income on dividend, which by no stretch of imagination can be treated to be an expenditure to attract the provisions of Section 14A of the Act. In view of aforesaid enunciation of law by the Supreme Court, the first substantial question of law framed by this court is answered in favour of the assessee and against the revenue.

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

5. *In this regard, a memo is also filed by the learned counsel for the appellant, which reads as under:*

"MEMO ON BEHALF OF THE APPELLANT

The appellant respectfully submits that in view of the substantial questions of law 2 and 4 having been covered in favour of the assessee in the earlier orders in assessee's own case, it is submitted that substantial questions of law 1 and 3 become academic and need not be answered by this Hon'ble Court.

Therefore, it is most humbly prayed that this Hon'ble Court may be pleased to take the memo on record and pass appropriate orders in the interests of justice and equity."

6. *As per the Memo, question Nos.1 & 3 would only be treated as academic and hence, not answered. in view of the same, in terms of the*

order dated 31.01.2020, the substantial questions of law Nos.2 & 4 are answered in favour of the assessee and in terms of the aforesaid judgment.”

6.1 Respectfully following the above judgment, we decide the issue in the above terms of the judgment. The ld. DR has submitted that the Hon'ble Apex court has admitted the SLP filed by the revenue but the status of the same could not be furnished by the ld. DR, accordingly, we are bound by the order of the Jurisdictional High Court .”

14.1 In view of this, we dismiss the above ground taken by the revenue on disallowance u/s 14A of the Act.

15. Next ground No.3.1 and 3.4 of the revenue's appeals are with regard to disallowance u/s 36(1)(vii)(a) of the Act on computation under Rule 6ABA and ground Nos.3.2 & 3.3 are with regard to disallowance u/s 36(1)(viii) on classification of rural branches.

15.1 Facts of the case are that the CIT(A) erred in allowing the claim of provision for bad and doubtful debts relating to rural advances. The CIT(A) failed to appreciate the fact that the computation of Average Aggregate advances is erroneously worked and not in accordance with rule 6ABA of Income tax rules, 1961. The CIT(A) failed to appreciate the fact that the details of rural branches was examined and it was held that the assessee has not classified rural branches correctly as per population and also that the definition of a revenue village was incorrectly stated. The CIT(A) has erred in not appreciating the ratio of the decision of Hon'ble High Court of Kerala in the case of Lord Krishna Bank which considered the urban agglomeration and defined revenue village for the purposes of a rural branch. The CIT(A) failed to appreciate the fact that the advances made during the year are only eligible for deduction and not the advances outstanding, as it amounts to repetitive and duplicate claims during every subsequent year.

16. We have heard the rival submissions and perused the materials available on record. With regard to disallowance u/s 36(1)(vii)(a) of the Act on computation under Rule 6ABA, this issue came for consideration before this Tribunal in ITA Nos.390 &

501/Bang/2023 for the assessment years 2016-17 & 2017-18 dated 25.10.2023 wherein held as under:

“17. After considering the rival submissions, we find that this issue was considered by this Tribunal in the latest judgement in assessee’s own case for AYs 2014-15 & 2015-16 in ITA Nos.388 & 389/Bang/2023 by order dated 26.09.2023 and it was held as under:-

“9. After considering rival contentions, we note that the issue of allowance u/s. 36(1)(viiia) has been settled by the Hon’ble jurisdictional High Court of Karnataka in the case of CIT, LTU v. Canara Bank, [2023] 147 taxmann.com 171 (Karnataka)[05-12-2022] in which it has been held as under:-

“6. Insofar as question No. 4 is concerned, advertng to section 36(1)(viiia) of the Income-tax Act, 1961, Shri Aravind submitted that the word used in the statute is aggregate average advances "made" by the rural branches. To quote an example, he submitted that for A.Y. is 2013-14 (F.Y. 2012-13) if the bad debt as on 31-3-2012 is considered to be as Rs. 1 Crore by virtue of making provisions subsequently, the assessee will be entitled for double benefit because provisions in respect of 10% of the bad debt of provisions of Rs. 1 Crore towards bad debt was already made as on 31-3-2012. Therefore, if the same amount is carried forward for the next F.Y., the assessee will be entitled for the double benefit because it would be making a provision for Rs. 1 Crore in addition to the 10% to the bad debt made in the relevant F.Y.

7. Shri Suryanarayana, advertng to the Para 7 of the impugned order, submitted that in identical circumstances, in assessee's own case, the assessee had made provision in similar manner as made in A.Y. 201314. A co-ordinate bench of the Tribunal had accepted the provision made by the assessee benefit in Canara Bank v. Jt. CIT [2018] 99 taxmann.com 357/[2017] 60 ITR (Trib.) 1 (Bengaluru - Trib.). He further submitted that the said order has been followed by the Tribunal in Vijaya Bank v. Jt. CIT [IT Appeal Nos. 915 & 845 (Bang.) of 2017, dated 5-1-2018] and the said method of making provision has been approved by the Calcutta High Court in Uttarbanga Kshetriya Gramin Bank case.

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

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

"7.2 Before us, the learned Authorised Representative for the assessee reiterated the submission that the language of Rule 6ABA is very clear and does not mandate that only incremental advances has to be considered and nothing can be read into it as has been done by the authorities below. It was submitted that this issue has been considered and decided in favour of the assessee by the co-ordinate bench of this

Tribunal in the case of Canara Bank v. JCIT (2017) 60 ITR (Trib) 1 [ITAT (Bang)]"

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

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

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

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

10. Respectfully following the above judgment of the jurisdictional High Court, we hold that while calculating average aggregate advances of rural branches under section 36(1)(viia), both advance outstanding as well as fresh advances are to be considered. Ground No.3 is allowed."

17.1 Following the above decision, we hold that the while calculating average aggregate advances of rural branches under section 36(1)(viia), both advance outstanding as well as fresh advances are to be considered. We further note that AO has reverted a clear factual finding in the assessment order that population in these 37 branches exceeded ten thousand as per Census 2011. Before that CIT (A) the assessee could not produce credible evidence. Considering the totality of facts, we remit this issue to the CIT(A) for verification of population of 2011 Census of 37 branches and the assessee is directed to produce the documentary evidence in support of its claim.

Accordingly this ground is partly allowed for statistical purpose."

16.1 In view of this, the issue relating to computation of deduction u/s 36(1)(vii)(a) of the Act under Rule 6ABA i.e. ground No.3.1 & 3.4 is decided in favour of assessee as discussed in the order cited (supra) in para 17 of that above order.

16.2 Further, with regard to classification of Rural branches in ground Nos.3.2 & 3.3 is remitted back to the file of Id. AO as discussed in above order cited (supra) in para 17.1 to the file of Id. AO for reconsideration.

17. Next ground No.4 is with regard to disallowance u/s 40(a)(ia) of the Act at Rs.28,63,76,769/-.

17.1 Facts of the case are that the CIT(A) erred in deleting the addition made on account of payment to NFS network towards ATM usage charges and payments to cash tree network towards ATM usage charges, on which no tax was deducted by the assessee. The CIT(A) erred in not considering the fact that the assessee bank pays a certain amount of fee per transaction run on National Financial Switch (NFS), through inter connectivity between banks switchers thereby enabling customers to utilize any ATM of a connected bank. This service provided by the NPCI comes under definition and explanation provided Under Section 194J and accordingly liable for TDS. The CIT(A) erred in not appreciating the fact that Section 40(a)(ia) encompasses all those payments liable for TDS Under Chapter XVII-B and failure to adhere to the TDS provisions would attract disallowance u/ s. 40(a)(ia). So when the A.O has given a finding that the payments are to be subjected to TDS, such payments would get covered U/ s. 40(A)(ia). The CIT(A). erred in deleting the disallowance made u/ s 40(a)(ia) on the payments made to NPCL, when the decision of the CIT(A) on this point has not been accepted by the department and an appeal has been filed by the department before the Hon High Court of Karnataka in the case of M/S Corporation Bank for the AY 2011-12 & 2012-13, which is pending as on date.

18. After hearing both the parties, we are of the opinion that this issue came for consideration before this Tribunal in case of Canara Bank (erstwhile Syndicate Bank) in ITA No.1884/Bang/2018 & ITA No.236/Panaji/2018 dated 27.12.2021 wherein held as under:

“10. The next issue contested by the revenue is the relief granted by Ld CIT(A) in respect of disallowance made u/s 40(a)(ia) of the Act. The AO noticed that the assessee has paid a sum of Rs.70,96,04,943/- as ATM usage charges to M/s National Payment Corporation of India (NPCI) without deduction of tax at source as required u/s 194C or 194J or 194H. He further noticed that the certificate was obtained from an Accountant under first proviso to sec. 201(1) for a sum of Rs.3,01,18,976/-. Accordingly, the AO disallowed the balance amount of Rs.67,94,85,967/- u/s 40(a)(ia) of the Act.

10.1 The Ld CIT(A) noticed that the Hon'ble Supreme Court has considered the nature of payment made to Stock exchange by the brokers as transaction charges for use of facility offered by the Stock exchange in the case of Kotak Securities Ltd (2016)(285 CTR 63). It was held that the services made available was the facility of standard faceless screen rendered and the authenticity of the transactions. It was noticed that these services were made available to all and not fall under the category of exclusive service. Accordingly, it was held that the TDS is not required to be deducted treating as technical service u/s 194J of the Act. The Ld CIT(A) also noticed that the Bangalore bench of Tribunal has held in the case of Corporation Bank (ITA Nos.1264 & 1352 (Bang)/2013) that similar kind of payment made cannot be considered as Commission or Brokerage warranting deduction of tax at source u/s 194H of the Act. The Ld CIT(A) held that the above said decision shall apply to the facts of the present case also. He further held that the AO did not specify the section under which the TDS is liable to be deducted by the assessee. Accordingly he deleted the disallowance.

10.2 We heard the parties on this issue and perused the record. We notice that the Ld CIT(A) has rendered his decision following the ratio of decision rendered by Hon'ble Supreme Court in the case of Kotak Securities Ltd (supra) and also the decision rendered by coordinate bench in the case of Corporation Bank (supra). Hence we do not find any reason to interfere with his order passed on this issue.”

18.1 In view of the above order of Tribunal, we decide the issue in favour of the assessee.

19. Next groundNo.5 is with regard to provision of wage arrears of Rs.180 crores.

19.1 Facts of the case are that the learned CIT(A) erred in allowing claim in respect of Provision for wage arrears while computing income under regular provision which is against the decision rendered in the case of CIT V/ s Indian Overseas Bank in 151 ITR 466 (Mad). The Learned CIT(A) ought to have accepted that the decision of the Hon ITAT in the assessee's own case for the AY 2009-10 in ITA No 709 & 998/ B/ 2012 was not accepted by the department and an appeal was filed by the department before the Hon High Court of Karnataka and the appeal is pending as on date.

20. After hearing both the parties, we are of the opinion that similar issue came for consideration in the case of Bank of Baroda in ITA Nos.2480 & 3081/Mum/2015 the Tribunal vide order dated 17.2.2017 held as under:

5. *Up on careful consideration we find that this tribunal in assessee's own case in ITA number 4619 and 4873/M/2012 for assessment year 2008- 09 has adjudicated identical issue as under;*

"Ground Nos.3.1 & 3.2 relate to the disallowance of provision towards liability arising on account of wage revision payable to employees. According to the assessee the provision made for excess payment of wages payable to the employees was towards the ascertained liability. It was submitted that after every five years, charges are revised as per the policy and agreement reached with the unions. Therefore, the wage revision for the year under consideration was must and certain. However, the negotiation was going on with the union and the agreement was signed with the union only. The Ld. CIT(A), however, rejected the claim on ground that it was a contingent liability. He held that no agreement was signed by the assessee during the year under consideration, hence the assessee was not entitled to create provision for the wage revision. Being aggrieved, the assessee has come in appeal before us.

The Ld. A.R. of the assessee, at the outset, has submitted that the issue is squarely covered by the decision of the coordinate bench of the Tribunal in the case of "Tata Communications Ltd. vs. DCIT" ITA Nos.3062 & 34381M/2003 vide order dated 05.12.12 wherein the Bank of Baroda ITA no.2480 & 3081/Mum./2015 Tribunal has taken a view that in case of salary/wage revision, what is

important is not the date of signing the agreement nor the date of approval granted by the DRE, what is important is the effective (late of commencement. The Tribunal, while relying upon the decision of the Hon'ble Supreme Court in the ease of "[Bharat Earth vs. CIT](#)" 245 ITR 428, held that in such a case the incurring of liability was certain and the same could also be estimated with reasonable certainty, although, the actual quantification may not be possible. In the case in hand also as per the agreement and the policy, the wage revision was certain and it could have been reasonably estimated also. Hence, the provision made by the assessee towards wage revision was allowable. Respectfully following the decision of the coordinate bench of the Tribunal in the case of "[Tata Communications Ltd.](#)" (supra), this issue is accordingly decided in favour of the assessee and the AO is directed to allow the claim of the provision on account of wage revision."

6. Since it is undisputed that the facts for assessment year 2008-09 and assessment year 2009-10 are identical, following the aforesaid precedent we set aside the order's of authorities below on this issue. Hence this issue is decided in favour of the assessee and against the revenue.

20.1 In view of the above order of the Tribunal, we inclined to decide the issue in favour of the assessee. This ground of revenue is rejected.

21. Next ground No.6 is with regard to Adjustments to book profits and Computation of Income u/ s 115 JB of the Act.

21.1 Facts of the case are that the CIT(A) erred in directing other adjustments to MAT which is not in accordance the provisions of section 115JB of the Act. The learned CIT(A) erred in allowing the same to be adjusted for MAT purposes which is not in accordance with provisions and intent of law.

21.2 With regard to disallowance of Amount debited under provisions & contingencies for NPA of Rs. 1618,51,84,413/- the CIT(A) erred in directing adjustment of provision for NPA for the purposes of working out Book profits as the very nature of Provision does not change with the reduction from the asset. The CIT(A) failed

to consider the fact that the Provision for NPA is part of "Provisions and contingencies" which is added back in the computation of regular income and the assessee has voluntarily added back the same in the computation of income under a regular provisions as well as for the purpose of working book profits. The Learned CIT(A) erred in deleting the addition made u/ s 14 A under the provisions—of Sec 115 JB of IT Act on the ground that the said addition made was deleted by him under the normal provisions of IT Act. However, the department has preferred appeal on the above deletion under the normal Provision of IT Act. Consequently, an appeal is also preferred on the above deletion of addition made u/ s 14 A under the provision of Sec 115 JB of IT Act. The CIT(A) erred in deleting the addition made u/ s 14 A of Rs. 75,61,01,000/- made on account of expenditure relating to earning of exempted income ignoring the provisions of Section 14A r w R 8D. The CIT(A) ought to have appreciated that the disallowance is made after examining all the issues and relying upon the decision of the Bombay High court in the case of Godrej and Boyce 328 1TR. The disallowance is made under normal provisions of income tax Act and also u/ s 115 JB of IT Act. The CIT(A) erred in deleting the addition in respect of wage arrears of Rs.180 crores. The Learned CIT(A) erred in deleting the addition made in respect of provision for wage arrears on the ground that the said addition made was deleted by him under the normal provisions of IT Act. However, the department has preferred appeal on the above deletion under the normal provision of IT Act. Consequently, an appeal is also been preferred on the above deletion of addition made in respect of wage arrears under the provision of Sec 115 JB of IT Act. The learned CIT(A) erred in allowing claim in respect of Provision for wage arrears of Rs. 180 Crores while computing income under regular provisions as well as for the purpose of working out book profits, which is against the decision rendered in the case of CIT V/ s Indian Overseas Bank in 151 ITR 466 (Mad). The Learned CIT(A)

ought to have considered that the decision of the Hon ITAT in the assessee's own case for the AY 2009-10 in ITA No 709 & 998/ B/ 2012 was not accepted by the department and an appeal was filed by the department before the Hon High Court of Karnataka and the appeal is pending as on date.

22. After hearing both the parties, we are of the opinion that provisions of section 115JB of the Act is not applicable so as to compute the book profit in view of the order of the Tribunal in case of Canara Bank in ITA Nos.391 & 392/Bang/2023 for the assessment years 2019-20 dated 22.12.2023 wherein the Tribunal considered the similar issue and held as under:

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

The Ld.AR submitted that, the assessee does not fall within definition of banking company as defined under Companies Act, 1956 and therefore it is not covered by proviso to section 211(2) of the Companies Act. The Ld. AR thus submitted that provisions of s. 115JB are not applicable to assessee. In support of this submission, he placed reliance on decision of Hon'ble Delhi High Court in the case of CIT v Punjab National Bank Ltd. (successor of erstwhile Oriental Bank of Commerce) in ITA 594/2023 by order dated 20/10/2023, wherein the question of law considered by the court is proposed in question (e) has been dismissed. The said order of Hon'ble Delhi High Court in the case of CIT v Punjab National Bank Ltd. (successor of erstwhile Oriental Bank of Commerce) (supra) is placed at page 35-37 of the PB. The Ld.AR further relied on decision of Hon'ble Delhi Tribunal in the case of Oriental Bank of Commerce v. ACIT reported in [2022] TIOL 331 ITAT-DEL. The Ld.AR submitted that, the provisions of section 115JB, as it stood prior to its amendment by virtue of Finance Act, 2012, would not be applicable to a banking company. He submitted that coordinate Bench of Delhi Tribunal considered this issue by observing as under:-

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

- Canara Bank vs JCIT, LTU in ITA No. 530/Bng/2010 & other dtd. 30.03.2016 = 2016-TIOL-1120-HC-P&H-IT*
- M/s. Canara Bank vs CIT(LTU) In ITA No. 305/Bang/2011 dtd. 18.06.2012*
- Krung Thai Bank PCI vs Joint Director of Income Tax (ITAT) (Mumbai) in ITA No.3390/Mum/09 dtd. 30.09.2010 reported in (2010) 45 DTR 218*

- *Union Bank of India vs ACIT, LTU (ITAT) (Mumbai) in ITA Nos.4702 to 4706/Mum/2010 dtd. 30.06.2011*
- *Indian Bank vs Addl. CIT (ITAT) (Chennai) in ITA No.469/Mds/2010 dtd. 03.08.2011*
- *Union Bank of India (ITAT Mumbai) in ITA Nos. 4155 to 4161 of 2011 dtd. 27.03.2012*

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

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

"This legal dichotomy emerging from the provisions of subsection (2) of Section 115JB particularly having regard to the first proviso contained therein in case of banking company, would convince us that machinery provision provided in sub-section (2) of section 115JB of the Act, would be rendered wholly unworkable in such a situation. In a well known judgment the Supreme Court in case of Commissioner of Income-Tax, Bangalore vs B.C. Shrinivasa Setty, Vo. 128 ITR 294 = 2002-TIOL-587-SC-IT-LB, had observed that in the Income Tax Act, a charging section and the computing provisions together constitute an integrated code. In a case where the computation provision cannot apply, it would be evident that such a case was not intended to fall within the charging section. It was a case of charging a partnership firm for transfer of a capital asset in the nature of goodwill. The Supreme Court was of the opinion that it would not be possible to envisage a cost of acquisition of goodwill. Since computation of capital gain cannot be done without ascertaining the cost of acquisition, it was held that no capital gain tax can be levied. " 53. Concluded at page 12 para 21 as under:

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

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

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

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

(2) [Every assessee,-

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

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

Provided that while preparing the annual accounts including profit and loss account,- (i) the accounting policies;

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

(iii) the method and rates adopted for calculating the depreciation, shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956):

Provided further that where the company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under this

Act,-

(i) the accounting policies;

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

(iii) the method and rates adopted for calculating the depreciation, shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant previous year. "

56. Thus, the understanding of the above amendment to section 115JB is where a company which are not required u/s 211 (129) of the Companies Act to prepare their P&L account in accordance with Schedule - VI of the Companies Act, 1956 profit & loss account prepared in accordance with the provisions of their Regulatory Acts shall be taken as a basis for computing the book profit u/s 115JB.

57. *The assessee's contentions for non-applicability of 115JB provisions are:*

"(i) It is a case of Nationalized Bank, under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980.

(ii) Assessee is not a company incorporated under the Companies Act, 1956, nor recognized under section 3 of the Companies Act.

(iii) The second proviso to sub-section (1) of section 129 (earlier provision 211) of the Companies Act, 2013 is not applicable to the assessee.

(iv) Under section 11 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980 provides that "for the purposes of the Income-tax Act, 1961, every corresponding new bank shall be deemed to be Indian company and a company in which public is substantially interested".

(v) It is settled principle of law where deeming fiction is created by the legislature it has to be confined to the purpose for which it is created. CIT, Panji vs Dempo Company Limited reported in (2016) 74 TAXMAN.com 15 (SC) = 2016-TIOL-164-SC-IT. Therefore, the Income-tax Act must recognize such banking company for the purpose section 115JB in order to make the provisions applicable.

(vi) When the charging section and the computing provision together would constitute an integrated code. In case charging section does not apply then the computation section fails. CIT vs B C Shrinivas Setty 128 ITR 294 = 2002-TIOL-587-SC-IT-LB."

58. *However, the plea of the assessee with respect to nonapplicability of section 115JB to the Banking Companies was rejected by the ITAT Mumbai "B" Bench in ITA No. 1767/Mum/2019 for the A.Y. 2015-16 in the case of Bank of India vs ACIT Mumbai vide order dated 11th December, 2020.*

59. *There is no jurisdictional High Court decision or for that matter any other High Court decision against the assessee. In view of the fact that two use are possible, the view that favour the assessee may kindly be considered, more so in the case of a Nationalized Bank as held by the Hon'ble Supreme Court in the case of CIT vs Vegetable Products Ltd. 88 ITR 192 = 2002TIOL-574-SC-IT-LB."*

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

13. *We have perused submissions advanced by both sides in light of record placed before us. We note that decision of Hon'ble Delhi Tribunal in Oriental Bank(supra) has been upheld by Hon'ble Delhi High Court wherein Hon'ble High Court has categorically observed that the revenue in case of Punjab National Bank did not raise this issue which are identical to facts of the present assessee before us. **In view of the same, Ground No.4 raised by the assessee deserves to be allowed."***

22.1 In view of the above, we dismiss this ground taken by the revenue

23. In the result, appeal of the revenue in ITA No.186/Panaji/2019 is partly allowed for statistical purposes.

Order pronounced in the open court on 8th Aug, 2024

Sd/-
(Keshav Dubey)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 8th Aug, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.