

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

1. ITA No. 4056/Mum/2023 (A.Y.2012-13)
2. ITA No. 4194/Mum/2023 (A.Y.2015-16)
3. ITA No. 3676/Mum/2023 (A.Y.2016-17)
4. ITA No. 4057/Mum/2023 (A.Y.2017-18)
5. ITA No. 3677/Mum/2023 (A.Y.2018-19)

DCIT Circle – 2(3) (1),
Room No. 552, 5th Floor,
Aayakar Bhavan, M. K.
Road, Church gate,
Mumbai- 400 020.

..... Appellant

Vs.

M/s. Kotak Mahindra Bank Ltd.
27, BKC, C-27, G-Block,
Bandra East, Mumbai-400 051
PAN: AAACK4409J

..... Respondent

&

6. C.O. No. 38/Mum/2024(A.Y.2016-17)
7. ITA No. 569/Mum/2023 (A.Y.2017-18)
8. ITA No. 570/Mum/2023 (A.Y.2018-19)

M/s. Kotak Mahindra Bank Ltd.
27, BKC, C-27, G-Block,
Bandra East, Mumbai-400 051
PAN: AAACK4409J

..... Appellant

Vs.

DCIT Circle – 2(3)(1),
Room No. 552, 5th Floor,
Aayakar Bhavan, M. K.
Road, Church gate,
Mumbai- 400 020.

..... Respondent

Appellant by : Shri Biswanath Das, Ld. DR
Respondent by : Shri Farooq Irani, Ld. AR
Date of hearing : 11/07/2024
Date of pronouncement : 08/08/2024

ORDER

PER GAGAN GOYAL, A.M:

These appeals by Revenue and C.O. /appeals filed by Assessee are directed against the order of National Faceless Appeal Centre (NFAC), Delhi dated 19.07.2023, 25.08.2023, 11.07.2023, 27.01.2023 and 27.01.2023 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2012-13, 2015-16, 2016-17, 2017-18 and 2018-19 respectively.

2. The revenue has raised the following grounds in ITA No. 4056/Mum/2023 for A.Y.2012-13: -

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in considering the re-opening of the assessment is not valid since there was no new material available before the AO for re-opening the assessment without appreciating that the Hon'ble Apex Court has held in ALA Firm (19911 55 Taxman 497 (SC) and Hon'ble Gujarat High Court in Praful Chunilal Patel (1999) 23 ITR 832 (Guj.) have upheld the legal proposition that where mistake in assessment is caused by either an erroneous construction of transaction or due to its non- consideration, or caused by a mistake of law*

applicable even where there has been a complete disclosure of all relevant facts upon which a correct assessment could have been based, would not amount to being on account of change of opinion and ought to be treated as valid?"

2 *"Whether on the fact and the circumstances of the case and law, the Hon'ble ITAT was correct in allowing deduction of bad debts u/s. 36(1)(vii) of the Act when in facts assessee is claiming deduction u/s. 36(1) (viiia) of the Act and first provision to section 36(1)(vii) restricts the deduction of the same.*

3. *"Whether on the fact and the circumstances of the case and law, the Hon'ble ITAT was correct in allowing provision on standard assets of Rs. 41.36 cr. when in fact standard assets are neither bad not doubtful as required by section 36(1) (viiia) of the Act."*

4 *"On the facts and in the circumstances of the case und in law, the Ld. CIT (A) erred in deleting the disallowance of bad debts written off on account credit card business made by the AO without appreciating the fact that the credit card business is a payment service and not business of banking or money lending as defined in the Banking Regulation Act 1949."*

5. *"On the facts and in the circumstances of the case and in law, the Id. CIT(A) has not appreciated that the bad debt claim of credit card business fails on both restrictions imposed in 36(2)(i) i.e. the credit card bad debts were never taken into account for computing income, and this does not represent money lent in the ordinary course of business of banking."*

6. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of bad debts written off on account of credit card business made by the AQ without appreciating the fact and position of law that the bad debts allowable on advances made as per provisions of section 36(2)(ii) have to be done in compliance with section 36(2)(viiia) and no such deduction can be allowed if the provisioning has been made for business other than banking business."*

7 *"Whether on the facts and circumstances of the case, the Ld. CIT(A) was correct in deleting the addition of Rs. 10.48 crs being overdue interest when in facts as per the provision of Rule 6EA the interest was not overdue and RBI guidelines is independent from provision of the Act.*

3. The revenue has raised the following grounds in ITA No. 4194/Mum/2023 for AY 2015-16: -

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in considering the reopening of the assessment is not valid holding that there was no new material available before the AO for reopening the assessment without appreciating that the Hon'ble Apex Court has held in ALA Firm (1991) 55 Taxman 497 (SC) and Hon'ble Gujarat High Court has held in the case of Praful Chunilal Patel [1999] 236 ITR 832 (Guj.) that where mistake in assessment is caused by either an erroneous construction of transaction or due to its non-consideration, or caused by mistake of law, even if there has been a complete disclosure of all relevant facts upon which a correct assessment could have been based, would not amount to being on account of change of opinion and ought to be treated as valid?"*
2. *"Whether on facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the deduction u/s.80G on account of CSR expenses treating it as allowable in view of the decision of Hon'ble Jurisdictional ITAT in the case of Synergia Life Sciences Pvt. Ltd. us. CIT, for A.Y. 2020-21 dated 20.06.2023, without appreciating Explanatory Notes to Finance No.2 Act, 2014, wherein it is highlighted: -*
 - a) *CSR expenditure, being an application of income, is not incurred wholly & exclusively for the purposes of carrying on business.*
 - b) *Hence on account of C.S.R. expenditure, no deduction is allowable u/s. 37 of the Act.*
 - c) *If such expenditure as allowed as Tax Deduction u/s. 80G this could result in subsidizing 1/3rd of such expenses by the Govt., by way of tax expenditure,"*
3. *"The appellant craves the leave to add, amend, alter and/ or delete any of the grounds of appeal as above."*
4. The revenue has raised the following grounds in ITA No. 3676/Mum/2023 for AY 2016-17: -
 1. *"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance under Rule 8D(2)(ii) ignoring the facts brought out in the assessment order that interest expenses of Rs. 2271.83 Crores were attributable to earning of exempt income."*
 2. *"Whether on the facts and under the circumstance of the case in Law, the Ld. CIT (A) was justified in holding that disallowance u/s. 14A is to be restricted to the exempt*

income, whereas in Finance Act 2022, explanation to Section 14A has been inserted which provides for applicability of the said section even in the absence of exempt income, which being clarificatory in nature has retrospective effect."

3. *"On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in directing the AO to allow expenditure incurred on ESOP after verification, in accordance with the principle laid down by the Hon'ble Special Bench in the case of Biocon Ltd. (368/Bang/2010) without appreciating that the same is not an ascertained liability, contingent in nature, quantum cannot be worked out precisely and is capital in nature and hence is not allowable."*

4 *"Whether on the facts and circumstances of the case, the CIT(A) was correct in deleting the addition of Rs 10.48 crs. Being overdue interest when in facts as per the provision of Rule 6EA the interest was not overdue and RBI guidelines are independent from provision of the Act."*

5. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the Broken Period Interest is allowable on matching principles, without realizing that the same has not been incurred for realizing the interest on securities as enunciated by the Apex Court in Vijaya Bank Ltd. (57 Taxman 152) (SC).*

6. *Whether on the fact and the circumstances of the case and law, the Hon'ble ITAT was correct in allowing deduction of bad debts u/s 36(1) (vii) of the Act when in facts assessee is claiming deduction u/s. 36(1) (vii) of the Act and first provision to section 36(1) (vii) restricts the deduction of the same*

7. *Whether on the fact and the circumstances of the case and law, the Hon'ble ITAT was correct in allowing provision on standard assets of Rs. 41.36 crs. When in fact standard assets are neither bad nor doubtful as required by section 36(1) (vii) of the Act*

8. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of bad debts written off on account of credit card business made by the AO without appreciating the fact that the credit card business is a payment service and not a business of banking or money lending as defined in the Banking Regulation Act 1949.*

9. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has not appreciated that the bad debt claim of credit card business fails on both restrictions imposed in 36(2) (1) i.e. the credit card bad debts were never taken into account for*

computing income, and this does not represent money lent in the ordinary course of business banking.

10. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of bad debts written off on account of credit card business made by the on AO without appreciating the fact and position of law that the bad debts allowable on advances made as per provisions of section 36(2) (v) have to be done in compliance with section 36(2) (vii) and no such deduction can be allowed if the provisioning has been made for business other than banking business.*

11. *Whether on the facts and circumstances of the case and in law the Ld. CIT (A) erred in deleting the disallowance of interest expenses u/s. 36(1)(iii) claimed by the assessee in respect of perpetual bonds issued by it, without appreciating that the RBI as the regulatory authority of banking classifies such bonds as Tier I capital on par with equity free reserves, perpetual preference shares etc and thereby corresponding interest expenditure incurred on them till not be a revenue expenditure?"*

Whether on the facts and circumstance of the case and in law the Ld. CIT(A) erred in deleting the disallowance of interest expenses u/s 36(1) (iii) claimed by the assessee in respect of perpetual bonds issued by it, without appreciating the fact that the issue of these Innovative Perpetual Debt Instruments (IPD) do not qualify as borrowing for the purposed of section 36(1)(iii) as the right to redeem these bonds does not lie with the lender at any given point of time?"

5. The revenue has raised the following grounds in ITA No. 4057/Mum/2023 for AY 2017-18: -

1 *"On the facts and in the circumstances of the case and in law, the Ld.CIT (A) erred in directing the AO to allow expenditure incurred on ESOP after verification, in accordance with the principle laid down by the Hon'ble Special Bench in the case of Biocon Ltd. (368/Bang./2010) without appreciating that the same is not an ascertained liability, contingent in nature, quantum cannot be worked out precisely and is capital in nature and hence is not allowable."*

2 *"Whether on the facts and circumstances of the case, the CIT(A) was correct in deleting the addition of Rs 10.48 crs being overdue interest when in facts as per the provision of Rule 6EA the interest was not overdue and RBI guidelines is independent from provision of the Act."*

3 "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in holding that the Broken Period interest is allowable on matching principles, without realizing that the same has not been incurred for realizing the interest on securities as enunciated by the Apex Court in *Vijaya Bank Ltd. (57 Taxman 152) (SC)*."

4 "On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the disallowance of bad debts written off on account of credit card business made by the on AO without appreciating the fact that the credit card business is a payment service and not a business of banking or money lending as defined in the Banking Regulation Act 1949."

5 "On the facts and in the circumstances of the case and in law, the Ld.CIT (A) the Id. CIT (A) has not appreciated that the bad debt claim of credit card business fails on both restrictions imposed in 36(2)(i) i.e., The credit card bad debts were never taken into account for computing income and this does not represent money lent in the ordinary course of business of banking."

6 "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of bad debts written off on account of credit card business made by the on AO without appreciating the fact and position of law that the bad debts allowable on advances made as per provisions of section 36(2)(v) have to be done in compliance with section 36(2)(viiia) and no such deduction can be allowed if the provisioning has been made for business other than banking business."

7. "Whether on the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the disallowance of interest expenses u/s. 36(1)(iii) claimed by the assessee in respect of perpetual bonds issued by it, without appreciating that the RBI as the regulatory authority of banking classifies such bonds as Tier-1 capital on par with equity, free reserves, perpetual preference shares etc and thereby corresponding interest expenditure incurred on them will not be a revenue expenditure?"

8. "Whether on the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the disallowance of interest expenses u/s 36(1)(iii) claimed by the assessee in respect of perpetual bonds issued by it, without appreciating the fact that the issue of these Innovative Perpetual Debt Instruments (IPD) do not qualify as borrowing for the purposes of section 36(1)(iii) as the right to redeem these bonds does not lie with the lender at any given point of time?"

6. The revenue has raised the following grounds in ITA No. 3677/Mum/2023 for AY 2018-19: -

1. *Whether on the facts and in the circumstances of the case the CIT (A) erred in directing the AO to allow expenditure incurred on ESOP after verification, in accordance with the principle laid down by Hon'ble Special Bench, Bangalore in the case of Biocon Ltd. vs. DCIT (368/Bang/2010) without appreciating that the same is not an ascertained liability, contingent in nature, quantum cannot be worked out precisely and is capital in nature and hence not allowable?*

2. *Whether on the facts and circumstances of the case, the CIT(A) was correct in deleting the addition of Rs. 21.43 crs., being overdue interest when in facts as per the provisions of Rule 6EA the interest was not overdue and RBI guidelines is independent from provision of the Act.*

3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the Broken Period Interest is allowable on matching principles, without realizing that the same has not been incurred for realizing the interest on securities as enunciated by the Apex Court in Vijaya Bank Ltd. (57 Tasman 152)(SC)"*

7. The assessee has raised the following grounds of appeal in CO No. 38/Mum/2024 for AY 2016-17 arising out of ITA No. 3676/Mum/2023: -

1. *The CIT(A) erred in not deleting the entire disallowance of administrative expenses u/s. 14A of the Income Tax Act, 1961 made by AO without establishing that such expenditure was incurred for earning exempt income by the Appellant.*

2. *He further erred in computing disallowance under section 14A by applying provisions of Rule 8D of the Income Tax Rules, 1962.*

3. *He further erred in not restricting the disallowance under section 14A to the amount of Rs. 1, 82, 35,840/-, Suo Moto disallowed by the appellant in the return of income.*

4. *He further erred in disregarding the accounts of the Cross Objector and ignoring the detailed submissions made regarding the correctness of the Cross Objector's claim.*

5. *He further erred confirming invocation Rule 8D by AO without recording satisfaction by AO regarding incorrectness of the Cross-objector's claim, as Rule 8D is not automatic and recording of objective satisfaction and finding incurrence of expenditure is necessary.*

6. *He failed to appreciate and ought to have held that:*

a. having regard to the accounts, the Cross Objector has not incurred any expenditure which was directly attributable towards earning of tax-free dividend income and such disallowance cannot be made on the basis of presumptions and by applying rules mechanically.

b. there was no basis for making such an disallowance in accordance with Rule 8D(iii) to Section 14A without establishing that such expenditure was indeed incurred for earning exempt dividend income;

c. under section 14A, it is very much clear that only the expenditure which has been proved to be incurred in relation to earning of tax-free income can be disallowed and, the section cannot be extended to disallow even the expenditure which is assumed to have been incurred for earning tax free income.

d. the Cross Objector has made substantial investments in its Subsidiaries / Group Companies / JVs etc in the past which are strategic in nature, and which does not require day to day monitoring.

e. no administrative expenditure is required to be incurred for earning dividend income from mutual funds.

f. the provisions of Section 14A of the Act were applicable after recording with reasons as to why the claim of the Appellant was incorrect and there was no such finding in the Cross Objector's case.

7. *The Cross Objector prays that the AO be directed to delete the disallowance of administrative expenses of Rs. 10, 67, 21,089/-, u/s. 14A.*

8. *Without prejudice to the above, it is submitted that the disallowance u/s 14A read with Rule 8D should be restricted to Rs. 1, 82, 35,840/- as computed by the Cross Objector.*

9. *without prejudice to the above, Cross Objector prays that the AO be directed to exclude strategic Investments and Investments in unlisted companies for working out disallowance u/s. 14A.*

8. The assessee has raised the following grounds of appeal in ITA No. 569/Mum/2023 for AY 2017-18: -

GROUND NO. 1 Disallowance of Administrative Expenses of Rs. 16, 16, 63,844/- under section 14A r.w. rule 8D (2)(ii)

1. *The Commissioner of Income Tax (A)-National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as the CIT(A)) erred in confirming the disallowance made by the AO amounting to Rs. 16,16,63,844/- under section 14A by invoking the provisions of Rule 8D(2)(ii) of the Act.*

2. *He further erred in confirming the action of AO regarding invocation of the provisions of Rule 8D (2) (ii) for disallowance u/s. 14A without recording his satisfaction regarding incorrectness of the Appellant's disallowance of Rs. 1,45,68,463/- having regard to the accounts of the Appellant.*

3. *He further erred in confirming the action of AO with respect to invocation of Rule 8D, without recording his satisfaction as regards the correctness of the Appellant's claim.*

4. *He further erred in holding that the explanation inserted to section 14A by Finance Act 2022 is retrospective in nature.*

5. *He failed to appreciate and ought to have held that:*

a. having regard to the accounts, the Appellant has not incurred any expenditure which was directly attributable towards earning of tax-free dividend income and such disallowance cannot be made on the basis of presumptions and by applying rules mechanically.

b. application of formula of 1% of annual average of the monthly averages of the opening and closing balances of value of such investments is totally inequitable and this disallowance has no relation to either the exempt income or to the expenditure claimed by the Appellant.

c. There was no basis for making such an disallowance in accordance with Rule 8D(ii) to Section 14A without establishing that such expenditure was indeed incurred for earning exempt dividend income;

d. The Rule 8D (2)(ii) goes beyond the authority given to CBDT by S. 14A and Rule only determines the notional cost for holding Investments which may or may not yield an exempt income and such notional cost for holding the investment has no relationship with the actual expenditure incurred and claimed by the Appellant.

e. Under section 14A, it is very much clear that only the expenditure which has been proved to be incurred in relation to earning of tax-free income can be disallowed and, the section cannot be extended to disallow even the expenditure which is assumed to have been incurred for earning tax free Income.

f. The Appellant has made substantial investments in its Subsidiaries/ Group Companies / JVs etc in the past which are strategic in nature, and which does not require day to day monitoring.

g. No administrative expenditure is required to be incurred for earning dividend income from mutual funds.

h. the explanation inserted to section 14A by Finance Act 2022 is prospective in nature.

6. The Appellant prays that the AO be directed to delete the disallowance of administrative expenses of Rs. 16,16,63,844/- u/s. 14A r.w.rule 6D(2)(ii) of the Act.

7. Without prejudice to the above, the Appellant prays that the AO be directed to exclude strategic Investments made in subsidiary companies /JV/Unlisted companies etc. for working out disallowance u/s. 14A as it does not require any expenses on day-to-day basis.

8. Without Prejudice to the above, the Appellant, prays that the AO be directed to restrict the disallowance made under section 14A to Rs.1,45,68,463/- as disallowed by the Appellant in Return of Income

9. Without Prejudice to the above, AO be directed to restrict the disallowance u/s 14A r.w. Rule 8D (2) (ii) only w.r.t. those investments which have yielded exempt income

during the year and exclude those investments which have not yielded exempt income during the year.

GROUND NO. II - Short Deduction u/s. 36(1) (viiia) of Rs. 56.69 crores in respect of Provision for Standard Asset.

1. The CIT (A) erred in not considering provision on Standard Asset amounting to Rs. 85.95 crores (restricted to 56.69 crores) as Provision for "Bad & Doubtful Debts" u/s. 36(1) (viiia) and thereby denied deduction of Rs. 56.69 crores u/s. 36(1) (viiia) of the Act.
2. The CIT (A) erred in holding that the provision of Rs.85.95 crores (restricted to 56.69 crores) on standard assets made by the Appellant in line with the RBI Guidelines is not Provision for "Bad & Doubtful for the purpose of deduction u/s. 36(1) (viiia) and therefore cannot be included for allowing deduction under section 36(1) (viiia) of the Income- tax Act, 1961.
3. He further erred in holding that the provision for standard assets amounting to Rs. 85.95 crores (restricted to 56.69 crores) is to be excluded for determining the deduction under section 36(1) (viiia).
4. He erred in not appreciating that even in respect of assets that are classified as standard assets, a part of the debts are doubtful of recovery and accordingly qualifies for deduction under section 36(1) (viiia).
5. He failed to appreciate and ought to have held that:
 - a. the provision made on standard assets amounting to Rs.85.95 crores(restricted to 56.69 crores) is provision for bad and doubtful debts and the deduction u/s 36(1)(viiia) has been correctly claimed in return of income.
 - b. the expression provision for "bad and doubtful debts" in the substantive part of section 36(1)(viiia) encompasses in itself all provisions made which includes provision on standard asset as well.
 - c. the expression "provision for bad and doubtful debts" in section 36(1)(viiia) mean provision made for debts which are likely to become bad and doubtful and need not be confined to such provisions as have been made in respect of debts that are presently considered as bad or doubtful.

d. RBI requires banks to make provision on standard assets, considering the potential for even some of these assets to turn bad or doubtful and in such a case, the provision made on standard assets must be considered as a provision for bad and doubtful debts, not as referring to debts that have already become bad or doubtful, but as referring to debts that could become bad or doubtful.

e. Provisions on standard assets are part of overall provisioning made by the Appellant in respect of bad and doubtful debts and the provision on standard assets is in substance not different from the provisions of bad and doubtful debts.

f. Even in respect of assets that are classified as standard assets, a part of the debts are doubtful of recovery and accordingly qualifies for deduction under section 36(1)(viiia).

g. The provision of Section 36(1)(viiia) of the Act that allows a deduction to banks in respect of any provision made 'for' bad and doubtful debts and it does not restrict the allowance to provision made 'on' bad and doubtful debts.

h. Section 36(1)(viiia) does not differentiate between provision on bad assets and provision on standard assets and the deduction refers to allowable provisions of anticipated default on the loans and advances made in respect of total assets including standard assets.

i. Even in respect of assets that are classified as standard assets, a part of the debts are doubtful of recovery.

6. The Appellant, therefore, prays that Provision amounting to Rs. 85.95 crores (restricted to Rs.56.69 crores) made for Standard Asset as per RBI guidelines be held as "provision for bad and doubtful debts" as envisage u/s. 36(1) (viiia) and the AO be directed to further grant deduction of Rs.56.69 crores deduction u/s. 36(1)(viiia).

The Appellant craves leave to add, amend, alter or delete any of the above grounds of appeal as may be advised in due course.

9. The assessee has raised the following grounds of appeal in ITA No. 570/Mum/2023 for AY 2018-19: -

GROUND NO.1 - Disallowance of Administrative Expenses of Rs. 26, 61, 70,026/- under section 14A r.w.r 8D (2)(ii)

1. *The Commissioner of Income Tax (A)-National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as the CIT(A)) erred in confirming the disallowance made by the AO amounting to Rs.26,61,70,026/- under section 14A by invoking the provisions of Rule 8D(2)(ii).*
2. *He further erred in confirming the action of AO regarding Invocation of the provisions of Rule 8D(2)(ii) for disallowance u/s. 14A without recording his satisfaction regarding incorrectness of the Appellant's disallowance of Rs.2,16,33,239/- having regard to the accounts of the Appellant.*
3. *He further erred in confirming the action of AO with respect to invocation of Rule 8D, without recording his satisfaction as regards the correctness of the Appellant's claim.*
4. *He further erred in holding that the explanation Inserted to section 14A by Finance Act 2022 is retrospective in nature.*
5. *He failed to appreciate and ought to have held that:*
 - a. *having regard to the accounts, the Appellant has not incurred any expenditure which was directly attributable towards earning of tax-free dividend income and such disallowance cannot be made on the basis of presumptions and by applying rules mechanically.*
 - b. *application of formula of 1% of annual average of the monthly averages of the opening and closing balances of value of such Investments is totally inequitable and this disallowance has no relation to either the exempt income or to the expenditure claimed by the Appellant.*
 - c. *There was no basis for making such a disallowance in accordance with Rule 8D(ii) to Section 14A without establishing that such expenditure was indeed incurred for earning exempt dividend income.*
 - d. *The Rule 8D (2)(ii) goes beyond the authority given to CBDT by S. 14A and Rule only determines the notional cost for holding investments which may or may not yield an exempt income and such notional cost for holding the investment has no relationship with the actual expenditure incurred and claimed by the Appellant.*
 - e. *Under section 14A, it is very much clear that only the expenditure which has been proved to be incurred in relation to earning of tax-free income can be disallowed and, the*

section cannot be extended to disallow even the expenditure which is assumed to have been incurred for earning tax free income.

f. The Appellant has made substantial investments in its Subsidiaries / Group Companies / JVs etc in the past which are strategic in nature, and which does not require day to day monitoring.

6. No administrative expenditure is required to be incurred for earning dividend income from mutual funds.

h. the explanation inserted to section 14A by Finance Act 2022 is prospective in nature

7. The Appellant prays that the AO be directed to delete the disallowance of administrative expenses of Rs. 26,61,70,026/- u/s. 14A r.w.rule 6D(2)(ii).

8. Without prejudice to the above, the Appellant prays that the AO be directed to exclude strategic Investments made in subsidiary companies /JV/Unlisted companies etc. for working out disallowance u/s 14A as it does not require any expenses on day-to-day basis.

9. Without Prejudice to the above, the Appellant, prays that the AO be directed to restrict the disallowance made under section 14A to Rs.2,16,33,239/- as disallowed by the Appellant in Return of Income

10. Without Prejudice to the above, AO be directed to restrict the disallowance u/s 14A r.w. Rule 8D(2)(ii) only w.r.t. those investments which have yielded exempt income during the year and exclude those investments which have not yielded exempt income during the year.

GROUND NO. 2 Short Deduction u/s. 36(1) (viiia) of Rs. 112.65 crores in respect of Provision for Standard Asset.

1. The CIT (A) erred in not considering provision on Standard Asset amounting to Rs. 112.65 crores as Provision for "Bad & Doubtful Debts" u/s. 36(1) (viiia) and thereby denied deduction of Rs. 112.65 crores u/s. 36(1) (viiia).

2. The CIT (A) erred in holding that the provision of Rs.112.65 Crores on standard assets made by the Appellant in line with the RBI Guidelines is not Provision for "Bad & Doubtful Debts" for the purpose of deduction u/s 36(1) (viiia) and therefore cannot be included for allowing deduction under section 36(1) (viiia) of the Income-tax Act, 1961.

3. *He further erred in holding that the provision for standard assets amounting to Rs. 112.65 crores is to be excluded for determining the deduction under section 36(1) (viiia).*
4. *He erred in not appreciating that even in respect of assets that are classified as standard assets, a part of the debts are doubtful of recovery and accordingly qualifies for deduction under section 36(1) (viiia).*
5. *He failed to appreciate and ought to have held that:*
 - a. *the provision made on standard assets amounting to Rs.112.65 crores is provision for bad and doubtful debts and the deduction u/s 36(1) (viiia) has been correctly claimed in return of income.*
 - b. *the expression provision for "bad and doubtful debts" in the substantive part of section 36(1) (viiia) encompasses in itself all provisions made which includes provision on standard asset as well.*
 - c. *the expression "provision for bad and doubtful debts" in section 36(1) (viiia) mean provision made for debts which are likely to become bad and doubtful and need not be confined to such provisions as have been made in respect of debts that are presently considered as bad or doubtful.*
 - d. *RBI requires banks to make provision on standard assets, considering the potential for even some of these assets to turn bad or doubtful and in such a case, the provision made on standard assets must be considered as a provision for bad and doubtful debts, not as referring to debts that have already become bad or doubtful, but as referring to debts that could become bad or doubtful.*
 - e. *Provisions on standard assets are part of overall provisioning made by the Appellant in respect of bad and doubtful debts and the provision on standard assets is in substance not different from the provisions of bad and doubtful debts.*
 - f. *Even in respect of assets that are classified as standard assets, a part of the debts are doubtful of recovery and accordingly qualifies for deduction under section 36(1)(viiia).*
 - g. *The provision of Section 36(1) (viiia) of the Act that allows a deduction to banks in respect of any provision made 'for' bad and doubtful debts and it does not restrict the allowance to provision made 'on' bad and doubtful debts.*

h. Section 36(1) (viiia) does not differentiate between provision on bad assets and provision on standard assets and the deduction refers to allowable provisions of anticipated default on the loans and advances made in respect of total assets including standard assets.

i. Even in respect of assets that are classified as standard assets, a part of the debts are doubtful of recovery.

6. *The Appellant, therefore, prays that Provision amounting to Rs. 112.65 crores made for Standard Asset as per RBI guidelines be held as "provision for bad and doubtful debts" as envisage u/s. 36(1) (viiia) and AO be directed to further grant deduction of Rs.112.65 crores deduction U/s. 36(1) (viiia).*

GROUND NO.3 non-allowance of deduction on account of withdrawal of Interest of Rs. 12, 95, 87,075 u/s. 244A which was offered for tax in earlier year.

1. *The CIT(A) erred in confirming the AO's action towards deduction on account of withdrawal of Interest of Rs.12,95,87,075/- u/s. 244A which was offered for tax in earlier year.*

2. *He failed to appreciate and ought to have held that:*

a. The Appellant has offered the interest u/s. 244A of the Act for A.Y. 2012-13 in the year of receipt i.e. A.Y. 2017-18.

b. The said interest u/s. 244A of the Act for A.Y. 2012-13 was withdrawn in the A.Y. 2018-19 by the Income Tax department as reassessment proceedings resulted into demand.

c. Since the interest u/s. 244A was already offered in the earlier year withdrawal of the same is required to be reduced from the Income.

d. non-allowance of deduction on account of withdrawal of Interest u/s. 244A of the Act will amount to double taxation.

3. *The Appellant prays that the Appellant be allowed a deduction of Rs. 12,95,87,075/- being withdrawal of interest u/s. 244A of the Act which was already offered to tax in earlier year.*

4. *without prejudice to the above, consequent upon the non-allowance of deduction of withdrawal of 244A of the Act interest in earlier year, the AO is directed to allow the same in the year under consideration while arriving at taxable income of the Appellant.*

GROUND NO.4 - Enhancement of income by disallowing alleged delayed payment of employee contribution to Provident Fund (PF) & Labour Welfare Fund (LWF) u/s. 36(1) (va)

1. the CIT (A) erred in making disallowance of Rs. 16, 48,048/- u/s. 36(1) (va) in respect of alleged delayed payment of employee contribution to PF & labour welfare fund (LWF) thereby enhancing the income of Appellant.

2. The learned CIT (A) erred in exceeding his jurisdiction and in enhancing the income of the Appellant by making disallowance on issue which was not the subject matter of Appeal.

3. He failed to appreciate and ought to have held that:

a. The AO has applied his mind and had rightly not disallowed the alleged delayed payment of employee contribution towards PF and LWF since the same was deposited before filing of return of income.

b. Since there is an application of mind by the AO in the assessment proceedings, the same cannot be now relooked up by CIT(A) for enhancing the income as this in effect amounts to revision or reassessment in the appellate proceedings.

4. The Appellant prays that the enhancement made is illegal, bad in law and without jurisdiction and requires to be quashed.

GROUND NO.5 - Addition/Disallowance of employee contribution to PF Rs. 16, 16,236/- U/s. 36(1) (va)

1. The CIT (A) erred in confirming the addition/disallowance made by the CPC at Rs. 16, 16,236/- on account of alleged delayed payment of employee's contribution to PF, under section 36(1) (va) of the Income tax Act, 1961(" the Act") while processing the Intimation u/s. 143(1) without appreciating the fact the payment made before the due date of filing of return of income.

2. The CIT(A) erred in not considering that the employees contribution made to PF before the due date of filing of return but after the due date of the relevant Act are eligible for deduction, under the provisions of section 2(24) (x) read with section 36(1) (va) of the Act.

3. *The CIT (A) erred in not considering the fact that amendment to the provisions of Sec. 36(1) (va) of the Act, by the Finance Act, 2021 is applicable from assessment year 2020-21 onwards and thus, payments made to employees' contribution to PF beyond due date specified under the respective Act, but within due date for filing of return of income u/s. 139(1) of the Act, is an allowable deduction u/s.36(1)(va) of the Act.*

4. *He failed to appreciate and ought to have held that:*

a. the Appellant made the contribution towards PF before the due date of filing the Income tax return and hence allowable u/s. 43B

b. the employee's contribution made to PF before filing of return is eligible for deduction Under section 43B of the Act.

c. Since the Appellant had deposited employees' contribution to PF before due date of filing of Return of Income as prescribed under Act, same would be allowed under section 43B, read with sections 2(24)(x) and 36(1) (va) of the Act.

d. Till the time, the employee links the Aadhaar with UAN the, the appellant being employer has merely deducted but has not received the contribution and therefore, the amount of PF deducted from the salary is not income u/s 2(24) (x) and provision of section 2(24) (x) of the Act and corresponding provisions of section 36(1) (va) of the Act are applicable to amount deduction from the salary PF contribution in the Appellants case.

e. the provisions of section 2(24)(x) as well as provisions of section 36(1) (va) are not applicable impugned expenditure of salary, deduction under section 37 of the Act is available, as the expenditure was incurred exclusively only for the purpose of business.

f. amendment to the provisions of Sec. 36 (1) (va) of the Act, by the Finance Act, 2021 is applicable from assessment year 2020-21 onwards and thus, payments made to employees' contribution to PF beyond due date specified under the respective Act, but within due date for filing of return of income u/s. 139(1) of the Act, is an allowable deduction u/s. 36(1) (va) of the Act.

g. The Appellant prays that the addition made u/s. 36(1) (va) in respect of PF amounting to Rs. 16, 16,236/- be deleted AO be directed to allow deduction of Rs. 16, 16,236/- u/s. 43B.

5. without prejudice to the above, such adjustment / disallowance is outside scope and beyond the provisions of section 143(1) and needs to be deleted.

6. Without prejudice to the above, till the time, the employee links the Aadhaar with UAN the, the appellant being employer has merely deducted but has not received the contribution and therefore, the amount of PF deducted from the salary is not income u/s 2(24) (x) and provision of section 2(24) (x) and corresponding provisions section 36(1)(va) are not applicable to amount deduction from the salary towards PF contribution in the Appellants case.

7. without prejudice to the above, since the provisions of section 2(24) (x) as well as provisions of section 36(1) (va) of the Act are not applicable to impugned expenditure of salary, the deduction under section 37 of the Act is available, as it was incurred exclusively only for the purpose of business.

GROUND NO.6-Addition/ Disallowance of employee contribution to Labour Welfare Fund (LWF) Rs. 31, 812/- U/s. 36(1) (va)

1. The CIT (A) erred in confirming the addition/disallowance made by the CPC at Rs. 31, 812/- on account of alleged delayed payment of employee's contribution to LWF, under section 36(1) (va) of the Income tax Act, 1961 ("the Act") while processing the Intimation u/s. 143(1) without appreciating the fact the payment made before the due date of filing of return of income.

2. The CIT(A) erred in not considering that the employees contribution made to LWF before the due date of filing of return but after the due date of the relevant Act are eligible for deduction, under the provisions of section 2(24) (x) read with section 36(1)(va) of the Act.

3. The CIT (A) erred in not considering the fact that amendment to the provisions of Sec. 36(1) (va) of the Act, by the Finance Act, 2021 is applicable from A.Y. 2020-21 onwards and thus, payments made to employees' contribution to LWF beyond due date specified under the respective Act, but within due date for filing of return of income u/s. 139(1) of the Act, is an allowable deduction u/s. 36(1)(va) of the Act.

4. He failed to appreciate and ought to have held that:

a. the Appellant made the contribution towards LWF before the due date of filing the Income tax return and hence allowable u/s. 43B of the Act.

b. the employee's contribution made to LWF before filing of return is eligible for deduction Under section 43B of the Act.

C. Since the Appellant had deposited employees' contribution to LWF before due date of filing of Return of Income as prescribed under Act, same would be allowed under section 43B, read with sections 2(24)(x) and 36(1) (va) of the Act.

d. Amendment to the provisions of Sec.36 (1) (va) of the Act, by the Finance Act, 2021 is applicable from assessment year 2020-21 onwards and thus, payments made to employees' contribution to LWF beyond due date specified under the respective Act, but within due date for filing of return of income u/s. 139(1) of the Act, is an allowable deduction u/s. 36(1) (va) of the Act.

e. The Appellant prays that the addition made u/s. 36(1) (va) in respect of LWF amounting to Rs. 31,812/- be deleted and the AO be directed to allow deduction of Rs. 16, 16,236/- u/s. 43B of the Act.

5. without prejudice to the above, such adjustment / disallowance is outside scope and beyond the provisions of section 143(1) and needs to be deleted.

ITA No. 4056/Mum/2023 (A.Y.2012-13)

10. The brief facts of the case are that the assessee filed its e-return of income declaring total income at Rs. 1299, 92, 77,220/- on 13.04.2017 in response to the notice issued u/s. 148 of the Act. Thereafter, the assessee filed its letter seeking reasons for re-opening of the case vide letter dated: 20.04.2017 and filed objections against the reasons recorded for reopening vide letter dated: 15.11.2017. The objections raised by the assessee were disposed off vide office order dated: 17.11.2017. The assessee company is engaged in the business of banking services and financial activities. The reassessment was completed at a figure of Rs. 1336, 71, 84,430/- after certain disallowances/additions made.

11. The assessee being aggrieved with this order of the AO preferred an appeal before the Ld. CIT(A), NFAC-Delhi, who in turn partly allowed the appeal of the

assessee up to its satisfaction, but the Revenue being aggrieved with this order of Ld. CIT(A) preferred the present appeal before us. We have gone through the order of the AO, order of the Ld. CIT (A) and submissions of both the sides along with grounds raised before us by the Revenue.

12. First of all, we are dealing with ground no. 1 where the revenue has challenged the decision of the Ld. CIT (A). The Ld. CIT (A) in his decision vide para 5.2 quashed the proceedings initiated u/s. 148 of the Act, hence re-assessment order passed u/s. 147 of the Act declared to be invalid. If our findings on this ground goes against the revenue, rest of the grounds will become infructuous and not required any adjudication from our side.

13. For sake of clarity on the issue under consideration, we are reproducing herein below the reasons for reopening as supplied to the assessee by the AO as under:-

“The assessee M/s. Kotak Mahindra Bank Ltd. is engaged in the business of banking and financial activities. The assessee filed e-return on 29/11/2012 declaring total income of Rs. 13 03, 14, 60,270/- for A.Y. 2012-13. The assessee filed a revised return of income on 17/02/2014 declaring total income of Rs. 12,64,28,49,892/-. The assessee further revised return on 26/03/2014 declaring total income at Rs. 12 64, 11, 72,041/-. The scrutiny assessment u/s. 143(3) was completed on 30/01/2015 assessing total income of Rs. 14, 66, 12, 10,190/-.

Assessee had made provision of Rs. 25,57,00,000/- for standard assets and claimed this also as provision for bad and doubtful debts and claimed excess deduction u/s. 36(1) (viiia). The assessee made provisions towards standard asset is not against any debts which had become doubtful. Therefore provision against standard asset does not qualify for deduction u/s. 36(1) (viiia) of the Income Tax Act 1961. The assessee while claiming the said deduction considered even the provisions for standard assets as provisions made for doubtful debts. By doing so, excess deduction u/s. 36(1) (viiia) came to be claimed by the assessee to the extent of the deduction claimed or the provision for standard assets.

On perusal of the assessment record, it is seen that though assessee filed average rural advances with respect to the deduction u/s. 36(1)(viiia), the assessee has not given any explanation and details for claiming provisions made for standard assets to be the same as the provisions for doubtful debts before Assessing Officer. The assessee bank has not made true and full disclosure regarding risk assessment of a particular standard asset how it is arrived at and corresponding provision created neither in Audit Report nor at the time of scrutiny assessment. The tax Auditor has also not given qualifying remarks on standard asset in Tax Audit Report. As per Explanation 1 to section 147, mere production of books of accounts including annual report and notes to accounts does not amount to disclosure of material evidence by assessee bank without furnishing true and full details of facts regarding provisions made for individual standard asset are related to provisions made for bad and doubtful debts falling under section 36(1) (viiia) of Act. In the Honda Siel Power Products Ltd. vs. DCIT and Anr. (Del) 340 ITR 53 upheld in 340 ITR 64 (SC) that term 'failure' on the part of the assessee is not restricted only to the return or tax audit report but also covers the stage of assessment proceedings. Omission to disclose material facts during the course of assessment proceedings confers jurisdiction on the Assessing Officer to re- open the assessment. The reopening after 4 years upheld.

Further, the order u/s. 143(3) of the Act has also not dealt with the issue of how the provisions for standard assets were considered by the assessee as provisions for doubtful debts. There is nothing on record to indicate that the order has deliberated on this issue, making it very clear that the AO had not formed any opinion that provisions for standard assets could be considered as provisions for doubtful debts. It may be mentioned that the record very clearly reflects that the AO has not show caused the assessee on the issue. In view of these facts, it is clear that the AO has not dealt with the issue of provisions for standard assets being considered as provisions for doubtful debts and has not arrived at definitive fact finding. The assessee on one hand has declared these assets as standard assets as per RBI guideline and on the other hand at same time claimed deduction u/s. 36(1)(viiia) of the Act by creating provision on these assets too clubbing these assets with bad and doubtful debts. Hon'ble Apex Court in the case of Southern Technologies vs. JCIT (Appeal No.1337/2003) made it dear that RBI guidelines themselves will not decide taxability of the income under income tax provisions. In the case of Bharat Overseas Bank Ltd Vs CIT reported in 139 ITO 154 (Chennai) has held that' provision for standard assets could not be considered as provision for bad and doubtful debts. This judgement is not dealt in assessment order which concludes that AO has not form its opinion.

It is seen that the assessee by passing of all provisions as provisions for doubtful debts has even considered the provisions for standard assets as provisions for doubtful debts and has thereby claimed excess deduction without disclosing true and material fact.

Hence, I have reason to believe that Rs. 25, 57, 00,000 has escaped assessment for the A.Y. 2013-14 within the meaning of section 147 of IT Act 1961 and the same is required to

be brought to tax as well as any other income chargeable to tax which may be found to have escaped assessment as per the explanation 3 to section 147 of the IT Act, 1961.”

14. On above reasons supplied by the AO to the assessee for reopening of the matter, the submissions of the assessee before the Ld. CIT (A) are as under:-

II. The Appellant was granted deduction of Rs.197 crores u/s. 36(1) (viiia). The Appellant has also referred the note no. 3(a) to the notes to return which is reproduced below:

(a) During the F.Y. 2011-12 an amount of Rs. 5,69,95,31,435/- has been debited to in the P & L A/c details of which are as under:

<i>Particulars</i>	<i>Amount Rs</i>	<i>Amount Rs</i>
<i>Provision for diminution in the Govt. securities and stock in trade</i>	<i>(18,97,91,387/-)</i>	
<i>Provision for diminution in the value of Investments provided / written back</i>	<i>92,87,628/-</i>	
<i>Total A</i>		<i>(18,05,03,759/-)</i>
<i>Provision on NPA Including Standard Provision</i>	<i>197, 54,90,668/-</i>	
<i>Less: Provision w/ back</i>	<i>196,10,72,151/-</i>	
<i>Net Provision for NPA</i>	<i>1,44,18,518/-</i>	
<i>Bad Debts Recovery</i>	<i>(34,79,88,739/-)</i>	
<i>Bad Debts Written off</i>	<i>106,48,70,590/-</i>	<i>73,13,00,368/-</i>
<i>Income Tax for The Year</i>	<i>484,33,06,961/-</i>	
<i>Deferred Taxation</i>	<i>21,68,79,268/-</i>	
<i>Income tax of prior years</i>	<i>8,82,09,738/-</i>	
<i>Wealth Tax for The Year</i>	<i>3,38,848/-</i>	<i>514,87,34,825/-</i>
<i>Total (B)</i>		<i>588,00,35,194/-</i>
<i>Total (A) + (B)</i>		<i>569,95,31,435/-</i>

The amount of Rs. 569, 95, 31,435/- has been added back and offered to tax in the computation of total income.

iii. From the above table it is seen that the figure of Rs. 197,54,90,668/- was Including the provision on standard asset. Thus, it was clearly disclosed that NPA provision is including provision on standard assets.

iv. In fact, during the course of assessment proceedings, the AO called for details of NPA provision. The same was submitted vide letter ref no KMBL/PL/11160/2017 dated 15.11.2017 (copy of which is enclosed herewith in Page Nos. 6 to 12 of the Paper Book No. I). The said letter clearly disclosed at the end of the letter that that NPA provision of Rs. 197,54,90,668/- is including provision on standard assets.

v. The Annual accounts of the Appellant for the year ended 31st March 2012 is enclosed in Page No. 13 to 45 of the Paper Book No. 1.

vi. After considering the above submissions, the AO has worked out the deduction u/s. 36(1)(vii) of the Act amounting to Rs. 197 crores. In fact in the assessment order the following table has reproduced by the AO:

5.13 The Assessee has written off bad debts of Rs. 106, 48, 70,590/- in the profit and loss account. The balance amount in Provision for Bad & Doubtful debts Account is as under

Particulars	Amount Rs	Amount Rs
Opening Balance On 1.4.2011 (as per appeal effect order passed by CIT(A) u/s. 250 dated 11.11.2013) including rural branches		253,53,53,205/-
Less: Bad debts w/off & claimed in A.Y. 2012-13 by assessee		106,48,70,590/-
Balance Bad debt allowable to the Assessee		NIL
Balance On 31.3.2012 (before considering deduction u/s. 36(1)(vii) as worked in para below) to be c/f to A.Y. 2013-14	Total	147,04,82,615/-

vii. Therefore, the assessment proceedings are based on the details available in the notes to return and the written submissions which was filed by the Appellant itself and no new / fresh materials was gathered by the AO to form a belief that income has escaped assessment.

viii. The AO had allowed the deduction u/s. 36(1) (vii) in the original assessment proceedings, without any dispute. Despite the above, the AO has reopened the assessment and has disallowed the claim of deduction u/s. 36(1) (vii) of Rs. 14, 61, 00,000/-.

ix. Therefore, the reopening of assessment has become bad in law and should be quashed.

15. Now the issue has been decided in favour of assessee by the Ld. CIT (A) relying on the decisions of Hon'ble Bombay High Court in the case of GKN Sinter

Metals Ltd. vs. ACIT (371 ITR 225), ICICI Home Financial Ltd. vs. ACIT 25 taxmann.com 241 and Hon'ble Supreme Court in the case of ACIT vs. ICICI Securities Primary Dealership Ltd. 24 taxmann.com 310. Now the ground taken before us by the revenue is that the Ld. CIT (A) ignored the decision of Hon'ble Apex Court in the case of ALA Firm (1991) 55 Taxman 497 (SC) and Hon'ble Gujarat High Court in the case of Praful Chunnilal Patel (1999) 236 ITR 832 (Guj.). Now to adjudicate the matter, we need to discuss the judicial pronouncement relied upon by both the sides. In coming paras we will discuss the judicial pronouncement relied upon by both the parties as there is no challenge to the facts of the case and a pure question of law is involved.

[2015] 55 taxmann.com 438 (Bom.) GKN Sinter Metals Ltd. v. ACIT, Circle 2(1).

"The law on re-opening of an assessment under the Act is fairly settled. An assessment once made, is final. The Assessing Officer can re-open an assessment only in accordance with the express provisions provided in section 147/148. This is for the reason that there is a finality/sanctity attached to an assessment order. It is only on the Assessing Officer strictly satisfying the provisions of section 147 that it acquires jurisdiction to re-open an assessment. Section 147 clothes the Assessing Officer with jurisdiction to re-open an assessment on satisfaction of the following:

- (a) The Assessing Officer must have reason to believe that*
 - (b) Income chargeable to tax has escaped the assessment, and*
 - (c) In cases where the assessment sought to be reopened is beyond the period of four years from the end of the relevant assessment year, then an additional condition is to be satisfied, viz.: there must be failure on the part of the assessee to fully and truly disclose all material facts necessary for assessment. [Para 6]*
- *Admittedly in this case, the impugned notice has been issued within a period of four years from the end of the relevant assessment year, i.e. assessment year 2002-03. In such cases, the Assessing Officer would be clothed with jurisdiction to issue a notice for re-opening of an assessment if he has reason to believe that income chargeable to tax has escaped the assessment. The requirement of failure to make*

true and full disclosure as provided in the proviso to section 147 is not to be satisfied for issuing of reopening notice within the period of four years from the end of the relevant assessment year. Thus, in the absence of cumulative satisfaction of reason to believe and in the absence of any income chargeable to tax escaping assessment, the Assessing Officer is not empowered with jurisdiction to reopen an assessment. [Para 7]

- *The powers to re-open an assessment are not a power to review an order of assessment. Further, a change of opinion on the part of the Assessing Officer in issuing the reopening notice, from the opinion formed on the very issue during regular assessment proceedings would result in the same ceasing to be a reason to believe. [Para 8]*
- *Further, a notice for re-opening of an assessment would stand or fall on the basis of the reasons recorded at the time of issuing a notice for re-opening of an assessment. The reasons are required to be read as recorded by the Assessing Officer and the same cannot be improved upon either by substitution, addition or deletion.*
- *Thus, the validity of a notice for re-opening of an assessment is to be examined on the basis of the reasons recorded at the time of issuing the notice for re-opening an assessment. The impugned notice cannot be supported any additional material which does not find a place in the reasons recorded at the time while issuing the notice. [Para 9]*
- *In this case, the impugned notice has been issued within a period of four years from the end of the relevant assessment year. In such a case, the Assessing Officer acquires jurisdiction to issue the impugned notice, if he has reason to believe that income chargeable to tax has escaped assessment. The assessee submits that the objections taken by assessee that the impugned notice has been issued on mere change of opinion, has not been dealt with in the impugned order which results in the assessee's submission of change of opinion, being accepted. It must follow that there is no reason to believe on the part of the Assessing Officer that income chargeable to tax has escaped assessment. This submission is not factually correct. The order has in fact, held that there is no change of opinion in issuing the impugned notice although not supported by reasons. Therefore, the contention of the petitioner that the petition be allowed only on the above basis cannot be accepted. [Para 11]*
- *Similarly, the contention of revenue that merely because petitioner had not contested the fact of escapement of income in its objections to the reasons recorded, it must conclusively follow that the impugned notice is valid in law and this court should not interfere is not acceptable. The petitioner had in its objections*

questioned the jurisdiction of the Assessing Officer to issue the impugned notice on the ground that there was no reason to believe on the part of the Assessing Officer this on the basis of the impugned notice is a change of opinion. This is evident from the fact that the opinion on the issue of allocation of expenses for claiming deduction under section 80-IA/IB was formed during the regular assessment proceedings. As observed above, the jurisdiction to issue a notice is acquired on satisfaction of twin conditions, i.e., reason to believe and escapement of income tax in case of assessment being sought be opened within a period of less than four years from the end of assessment year. Besides, the issue of escapement of income chargeable to tax is also an issue on merits and may not in particular facts establish ex facie absence of jurisdiction.[Para 12]

- *In the present facts, the petitioner had along with its return of income filed its computation of income wherein claim for deduction under section 80-IA/IB was made. Besides the auditor's certificate as required under section 80-IA (8) to claim to deduction was also filed along with a note indicating the basis of allocation of expenditure amongst its three manufacturing units was also filed. These were all primary documents which would not normally escape examination during the scrutiny proceedings. This is also evident from the fact that during assessment proceedings, the Assessing Officer had called upon the petitioner to furnish details with regard to its claim for deduction under section 80-IA/IB including the method/manner of allocation of expenditure amongst its three manufacturing units.*
- *The petitioner by its letter submitted various details of allocation of expenses supporting its note filed along with the return of income that the expenditure had been allocated actual basis, turn over basis and time spent basis amongst the three manufacturing units. The aforesaid allocation of expenses on different basis was on the basis of the nature of expenditure. The Assessing Officer was satisfied with the petitioner's response and consequently in the assessment order under section 143(3) accepted the petitioner's claim for deduction under section 80-IA/IB of Rs.2.08 crores. This establishes that an opinion was formed in respect of allocation of expenses amongst the three manufacturing units for deduction under section 80-IA/IB while passing an order of assessment. [Para 13]*
- *Moreover in this case, it is evident from the letter addressed by the Assessing Officer to the petitioner containing the reasons recorded for issuing the impugned notice also records the fact that during the regular assessment proceedings, the petitioner has been asked to furnish details in support of the claim for deduction under section 80-IA/IB. The letter further records that the details sought for were furnished and it is now observed that there has been a disproportionate distribution of expenses between various units belonging to the petitioner for claiming deduction under section 80-IA/IB. This is a further indication of the fact that the*

Assessing Officer had during the regular assessment proceedings for assessment year 2002-03 sought information in respect of the allocation of expenses and the explanation offered by the petitioner was found to be satisfactory. This is evident from query and the petitioner's response to the same, explaining the manner of distribution of common expenses for delaying the process of claiming deduction under section 80-IA/IB. All this would indicate that Assessing Officer had formed an opinion while passing the assessment order. [Para 14]

- *Therefore, as there is a change of opinion in issuing the impugned notice having regard to the opinion formed while passing the assessment order under section 143(3), the Assessing Officer would cease to have any reason to believe. Moreover, the power to re-assess under section 147/148 is not a power to review an order of assessment passed under section 143(3). [Para 15]*
- *It is further submitted by the revenue that so far as letter issued by the Assessing Officer is concerned, same was of general nature and particulars furnished by the petitioner in response to the same are voluminous and, therefore, not indicative of any application of mind on this issue by the Assessing Officer.*
- *It was noted from records that, the Assessing Officer had raised queries with regard to the allocation for expenditure between the three manufacturing units of the petitioner which could only be raised on consideration of the claim and consequently accepted on consideration of the reply. Thus, it is not a case where the Assessing Officer overlooked/ignored the material and/or the issue which now forms the basis of issuing the impugned notice for re-opening of the assessment order for assessment year 2002-03.[Para 16]*
- *In was next contended by the revenue that in the present case, the impugned notice does not emanate from any change of opinion but on account of communication dated 15-1-2007 received by the Assessing Officer from Additional Commissioner who had assessed the petitioner to tax for the assessment year 2004-05. The aforesaid communication is not even referred to in the reasons recorded while issuing the impugned notice dated 14-3-2007. On the contrary, the communication dated 6-8-2007 which contains the reasons recorded at the time of issuing the impugned notice refers to the details furnished by the petitioner during the regular assessment proceedings and it is now observed there from that the allocation of common expenses between the three manufacturing units belonging to the petitioner is disproportionate. [Para 18]*
- *As pointed out above, it is well settled that re-opening notice has to stand or fall on the basis of the reasons recorded at the time of issuing the notice for re-opening. It is not open to the Assessing Officer to improve upon the reasons recorded at the time of issuing the notice either by adding and/or substituting the reasons by*

affidavit or otherwise. The tangible material, i.e., letter dated 15-1- 2007 on which the revenue relies upon for issuing of the notice, could have undoubtedly been the basis for issuing the impugned notice even if the same has been obtained in assessment proceedings for a subsequent assessment year provided the same was the basis of the impugned notice and so recorded in the reasons in support of the impugned notice. [Para 19]

- *In these circumstances, the reliance by the revenue upon the letter dated 15-1-2007 from the Additional Commissioner cannot be read into the reasons recorded while issuing the impugned notice. [Para 20]*
- *It was lastly contended by revenue that the impugned notice is only for re-assessment for assessment year 2002-03. At this stage, the revenue is not required to establish the case to the hilt, but only required to make out a prima facie case in support of its stand. There can be no dispute to the above proposition. It is submitted that during the course of re-assessment proceedings, the petitioner would have opportunities to satisfy the authorities that there has been no escapement of income and the allocation of the common expenses between the three manufacturing units for the purposes of claiming deduction under section 80-IA/IB is in accordance with law.*
- *However, issue being examined is whether the Assessing Officer has jurisdiction to issue the re-opening notice. Once an assessment order is being passed, it has some sanctity. If the assessment order is to be disturbed, then the Assessing Officer must strictly satisfy the condition precedent as provided under section 147/148 before he can issue a notice, seeking to re-open an assessment. In this case, as pointed out above, there has been a change of opinion on the part of the Assessing Officer in issuing a notice and, therefore, he has no reason to believe that income chargeable to tax has escaped assessment.*
- *In these circumstances, the jurisdictional requirement for issuing a notice is not satisfied and, therefore, the impugned notice and the consequent order disposing of the objections are not sustainable. [Para 21]*
- *For the reasons indicated above, the impugned notice issued under section 148 is set aside. Petition allowed."*

Case Laws Referred To:

*Export Credit Guarantee Corpn. Of India Ltd. v. Addl. CIT [2013] 350 ITR 651/30 taxmann.com 211/ [2015] 228 Taxman 28 (Mag.) (Bom); Sociedade Deformento Industrial (P.) Ltd. v. Asstt. CIT [2011] 339 ITR 595/197 Taxman 178 (Mag.) and **Prafful Chunnilal Patel v. M.J. Makwana/Asstt. CIT [1999] 236 ITR 832 (Guj.) distinguished.***

16. **Prafful Chunnilal Patel v. M. J. Makwana/Asstt. CIT [1999] 236 ITR 832 (Guj.) distinguished.** This decision is heavily relied upon by the revenue in their grounds taken before us, but it is found that the Ld. CIT (A) while relying on GKN Sinter Metals Ltd. (Decided by the Hon'ble Jurisdictional High Court), this decision of Hon'ble Gujarat High Court was considered and distinguished. Hence we are not in line with the ground taken by the revenue that **Prafful Chunnilal Patel** (supra) was not considered by the Ld. CIT (A).

[2012] 25 taxmann.com 241 (Bom.) ICICI Home Finance Co. Ltd. v. ACIT, 10(1)

"The power to reopen a completed assessment under section 147 has been bestowed on the Assessing Officer, if he has reason to believe that any income chargeable to tax has escaped assessment for any assessment year. However, this belief that income has escaped assessment has to be the reasonable belief of the Assessing Officer himself and cannot be an opinion and/or belief of some other authority. In fact, the Supreme Court in the case of Indian & Eastern Newspaper Society v. CIT [1979] 119 ITR 996/2 Taxman 197 has held that whether an assessment has escaped assessment or not must be determined by the Assessing Officer himself. The Assessing Officer cannot blindly follow the opinion of an audit authority for the purpose of arriving at a belief that income has escaped assessment. In the instant case, it would be noticed that the reasons for which the assessment is sought to be reopened are identical to the objection of the audit authority dated 29-12-2009. The reasons do not rely upon any tangible material in the audit report but merely upon an opinion and the existing material already on record. This it-self indicates that there was no independent application of mind by the Assessing Officer before he issued the impugned notice. On this ground alone, the assumption of jurisdiction by the Assessing Officer can be faulted. [Para 6]

Further the Supreme Court in the case of CIT v. Kelvinator India Ltd. [2010] 320 ITR 561/187 Taxman 312 (SC) has observed that the Assessing Officer has only power to reassess on fulfilment of certain preconditions, namely, he must have reason to believe that income has escaped assessment and that there must be tangible material to come to the conclusion that there is an escapement of income from assessment. Such reason to believe should not be on account of mere change of opinion. Therefore, where facts have been viewed during the original proceeding and an assessment order has been passed then in such cases, reopening of an assessment on the same facts without anything more would be a review and not permitted under the garb of reassessment. This would be a

mere change of opinion in the absence of any tangible material and is not sufficient to assume jurisdiction to issue the impugned notice. In fact, the Bombay High Court in the case of Idea Cellular Ltd. v. Dy. CIT [2008] 301 ITR 407 has held that once all the material with regard to particular issue is before the Assessing Officer and he chooses not to deal with the same, it cannot be said that he had not applied his mind to all the material before him. [Para 7]

Therefore, in the instant case one would have to examine the contention of the assessee that the impugned notice is without jurisdiction as the self same facts were not only before the Assessing Officer but he had also viewed the very issues on which the assessment is sought to be reopened. So far as the issue in respect of provisions claimed as deduction for arriving at taxable profit aggregating to Rs. 52.87 crores is concerned, the same was not only disclosed in the notes to account filed with the return of income but also in response to specific queries raised during the assessment proceedings. It was reiterated at the hearing that on the aforesaid account of provision, the tax had already been paid in the earlier years and the amounts were merely written back in this year to the extent they were in excess of the provisions required. So far as failure to deduct TDS on advertisement and sales promotion are concerned leading to disallowance of the entire amount of Rs. 22.48 crores under section 40(a)(ia), the same was also subject to scrutiny by the Assessing Officer during the assessment proceedings. In fact, the tax audit report submitted along with return of income clearly brings out the fact that where tax has not been deducted, then the entire amount of payment has been offered for disallowance under section 40(a) (ia). So far as the reason to reopen the assessment on the ground that the assessee had declared short term capital gains of Rs. 3.63 crores in respect of income earned out of investments had to be taxed/classified as business income is concerned, it is not disputed that the treatment given was consistent with the earlier year practice and accepted by the revenue. Further it is not disputed that the short term capital gains have been assessed to the maximum marginal rate and even if considered as business income, the tax effect would be the same. Consequently, there could be no reasonable basis to have a belief that there is any escapement of Income. [Para 8]

In the circumstances, the impugned notice issued under section 148 as well as the impugned order rejecting the objections to initiation of reopening the assessment were liable to be quashed. [Para 10]"

[1991] 55 Taxman 497 (SC) A.L.A. Firm v. Commissioner of Income-tax

This judicial pronouncement rendered by Hon'ble Apex Court was with reference to old law on section 147 of the Act. The assessment year under consideration

cannot be governed by this decision of Hon'ble Apex Court, hence reliance of the revenue is not found tenable in the present scenario.

17. Now we are reproducing the findings of the Ld. CIT (A) which are under challenge by the revenue as under:-

"I have perused the assessment order, grounds of appeal, and submission filed by the appellant. I find from the submission of the appellant that the case was reopened by the AO on the round that though the appellant had filed average rural advances with respect to the deduction u/s 36(1) (viiia), the appellant had not given any explanation and details for claiming provisions made for standard assets to be the same as the provisions for doubtful debts before the AO. The appellant has not made true and full disclosure regarding risk assessment of a particular standard asset how it is arrived at and corresponding provision created neither in Audit Report nor at the time of scrutiny assessment. The tax Auditor has also not given qualifying remarks on standard asset in Tax Audit Report. As per Explanation 1 to section 147, mere production of books of accounts including annual report and notes to accounts does not amount to disclosure of material evidence by appellant without furnishing true and full details of facts regarding provisions made for individual standard asset are related to provisions made for bad and doubtful debts falling under section 36(1)(viiia) of the Act. The AO by relying on the decision of Hon'ble Delhi High Court in the case of Honda Siel Power Products Ltd vs. DCIT and Anr. Which is upheld by the Hon'ble Supreme Court of India concluded that failure on the part of the assessee is not restricted only to the return or tax audit report but also covers the stage of assessment proceedings. Omission to disclose material facts during the course of assessment proceedings confers jurisdiction on the AO to re-open the assessment after 4 years. The AO further observed that the original order u/s 143(3) also not dealt with the issue of how the provisions for standard assets were considered by the assessee as provisions for doubtful debts. There is nothing on record to indicate that the order has deliberated on this issue, making it very clear that the AO had not formed any opinion that provisions for standard assets could be considered as provisions for doubtful debts. In view of the above facts, the AO had re-opened the assessment.

During the course of appellate proceedings, the appellant has submitted that the AO has relooked the records and evidence already produced by the appellant and there is no new material was available with the AO for re-opening the assessment. The appellant has relied upon the decisions of Hon'ble Jurisdictional Bombay High Court in the case of

GKN Sinter Metals Ltd s. ACIT (371 ITR 225) and in the case of ICICI Home Finance Ltd vs. ACIT reported in 25 Taxmann.com 241. The appellant has also relied upon the decision of Hon'ble Supreme Court of India in the case of ACIT vs. ICICI Securities Primary Dealership Ltd (24 taxmann.com 310). The appellant has also submitted that reopening is nothing but change of opinion.

*I have perused the facts of the case and submission filed by the appellant and arguments made during VC. I find from the reasons recorded by the AO which are reproduced by the appellant in its submission that the appellant has not made true and full disclosure regarding risk assessment of a particular standard asset how it is arrived at and corresponding provision created neither in Audit Report nor at the time of scrutiny assessment. The tax Auditor has also not given qualifying remarks on standard asset in Tax Audit Report. The AO further observed that the original order u/s 143(3) also not dealt with the issue of how the provisions for standard assets were considered by the assessee as provisions for doubtful debts. There is nothing on record to indicate that the order has deliberated on this issue, making it very clear that the AO had not formed any opinion that provisions for standard assets could be considered as provisions for doubtful debts. In view of the above factual observation of the AO, I of the considered view that the re-opening is not change of opinion. However, the contention of the appellant that there is no new material based on which the re-opening of the assessment is done is found to be acceptable. Considering the decisions of Hon'ble Jurisdictional Bombay High Court in the case of GKN Sinter Metals Ltd s. ACIT (371 ITR 225) and in the case of ICICI Home Finance Ltd vs. ACIT reported in 25 Taxmann.com 241 and the decision of Hon'ble Supreme Court of India in the case of ACIT vs. ICICI Securities Primary Dealership Ltd (24 taxmann.com 310), I find that the re-opening of the assessment is not valid since there was no new material available before the AO for re-opening the assessment. **Thus the ground raised by the appellant is allowed.**"*

18. In the light of above facts and a thorough discussion on judicial pronouncements relied upon by both the parties, we are of the firm view that the decision of the Ld. CIT (A) is sustainable both in law and in facts. We are not in infirmity with the ground taken by the revenue and not inclined to interfere in the order of the Ld. CIT (A). **Hence ground no. 1 raised by the revenue is dismissed**

and other grounds being on merits of the case became infructuous in view of the fact that reassessment order passed u/s. 147 of the Act itself is not valid.

19. In the result, appeal of the revenue is dismissed.

ITA No. 4194/Mum/2023 (A.Y.2015-16)

20. Matter of this year is similar in technical terms to what we have discussed and decided in ITA No. 4056/Mum/2023 (supra), although on merits facts are different. In this year also, we are deciding ground no. 1 before going into the merits of the case where the revenue has challenged the decision of the Ld. CIT (A). The Ld. CIT (A) in his decision vide para 5.2 quashed the proceedings initiated u/s. 148 of the Act, hence re-assessment order passed u/s. 147 of the Act declared to be invalid. If our findings on this ground goes against the revenue, rest of the grounds will become infructuous and not required any adjudication from our side.

21. We have gone through the order of AO alongwith reasons for reopening supplied to the assessee, order of the Ld. CIT (A) and submissions of both the sides alongwith grounds taken by the revenue before us. It is observed that facts of this year are also akin to the ITA No. 4056/Mum/2023; hence without repetition in this year also, we are in agreement with the order of Ld. CIT (A). **Hence ground no. 1 raised by the revenue is dismissed without any further decision on merits of the case as the reassessment proceedings itself is bad in law.**

22. In the result, appeal of the revenue is dismissed.

ITA No. 3676/Mum/2023 (A.Y.2016-17)**C.O. No. 38/Mum/2024(A.Y.2016-17)**

23. Ground no. 1 raised by the revenue has already been discussed elaborately on various occasions by the Coordinate Benches in favour of the assessee. Through this ground the revenue has challenged the decision of Ld. CIT (A) wherein he deleted the disallowance made by the AO under Rule 8D(2)(ii) r.w.s. 14A of the Act. The relevant findings of the Tribunal on similar issue we will discuss later in this order for reference. During the year under consideration, assessee has investments capable of yielding exempt income at Rs. 1195.04 crores whereas the own funds as on 01.04.2015 was Rs. 14,141.09 crores and Rs. 23,959.06 crores as on 31.03.2015. The assessee company has earned exempted income to the tune of Rs. 48.04 crores.

24. The coordinate Benches in the assessee's own cases viz Kotak Mahindra Bank Ltd v. ACIT (ITA No. 3267-3268-3269/Mum/2019), ACIT v Kotak Mahindra Bank Ltd (ITA no. 781-782/Mum/2018), PCIT v KMBL in (ITA No. 1681 of 2018 AY 2008-09), PCIT v KMBL in (ITA No. 1126 of 2018 AY 2011-12) and PCIT v KMBL in (ITA No. 1288 of 2018 AY 09-10) held as under:

ITA Nos. 781 & 782/Mum/2018 (Assessment year: 2013-14 & 2014-15)

"We have considered the submissions of both the representatives and perused the orders of the lower authorities. We have also deliberated on various case laws relied by ld. lower authorities and the Ld. AR for the assessee. Ground No. 1 relates to deleting the interest disallowance under Rule 8D (2)(ii). during the assessment the AO noted that the assessee has earned exempt income of Rs. 9.97 Crore. The assessee made suo moto disallowance of Rs. 22, 38,426/-. The working of the assessee was not accepted by AO. The worked out the disallowance at Rs. 28, 02, 45,208/- as given in para 4.5 on pages 18 of his order. the AO

worked out disallowance under Rule 8D(2)(ii) of Rs. 26,01,60,853/- and Rs. 2,00,84,355/- under Rule 8D(2)(iii). However, he set off the suo moto disallowance carried out by the assessee from the disallowance worked out by him and made a net disallowance of Rs.27,80,06,782/-. On appeal, the Ld.CIT(A) deleted the disallowance under Rule 8D(2)(ii) with the following observations:- "6.4 I have carefully considered the facts of the case, discussion of the AO in the impugned order as well as oral contentions and written submissions of the appellant. The appellant is a banking company and carries on the banking business as provided in the Banking Regulation Act, 1949. The appellant has various subsidiary companies, which are in the business of life insurance, stock broking, asset management, NBFC etc. Besides investment in subsidiary company, it has also made certain investments in shares of other companies, investment in venture capital funds etc. During the year under appeal, the AO has disallowed 5 ITA No.781&782/M/2018 Kotak Mahindra Bank Ltd expenditure U/S.14A by invoking Rule 8D(2)(ii) & 8D(2)(iii) and has made the disallowance of Rs. 28, 02,45,2087- (Rs. 26,01, 60,8537- and Rs. 2, 00,84,3557-). The appellant, on the other hand, has disallowed Rs. Nil under rule 8D (2)(ii) and Rs. 22, 38,4267- under rule 8D(2)(iii). The appellant itself has disallowed a sum of Rs. 22, 38,4267/- in the return of income u/s.14A r.w.s.8D (2) (iii). Once the AO is not satisfied with the correctness of the suo moto disallowance of the assessee, invocation of rule 8D is mandatory. The AO has elaborately discussed the reasons as to why he is not satisfied with the correctness of disallowance made by the assessee with which I fully agree. The same has been briefly discussed in para 6.2 above. Hence, the contention of the appellant that the AO has mechanically invoked rule 8D is not correct and the same is rejected, Having held as above, let us now proceed to discuss the quantum of disallowance required u/s. 14A 6.5 As stated earlier, the appellant has disallowed Rs. 22, 38,4267- u/s. 14A r.w.r. 8D. For this purpose, the appellant had excluded the investment made in subsidiary companies, which according to the appellant are strategic in nature. As far as disallowance under clause (ii) of Rule 8D(2) is concerned, it is the submission of the appellant that it has its own funds to the extent of Rs. 9, 446.95 Crores as against the investment generating /capable of generating exempt income at Rs. 453.53 Crores. In the appellant's own case for A.Y. 2008-09 to 2011-12 in ITA No.1657/Mum/2012, the ITAT has given relief to the appellant in respect of disallowance of interest expenditure u/s. 14A of the Act. Further in the factual position of availability of its own funds far in excess of investment which have or could yield exempt income, the decision of the Hon'ble Bombay High Court in the case of HDFC Bank Ltd vs. DCIT (Supra) comes into play and accordingly there cannot be any disallowance of interest made u/s. 14A of the Act. In the facts and circumstances of the case and respectfully following decisions of the Hon'ble TAT in

appellant's own case for A.Y. 2008-09 to 2011-12 and decision of the Hon'ble Bombay High Court in the case of HDFC Bank Ltd. vs. DCIT (Supra), the disallowance made by the AO under clause (ii) of Rule 8D (2) Of the Rule u/s. 14A of the Act is directed to be deleted. Ground No. 1 is accordingly, allowed." The Ld. DR present for the revenue heavily relied upon the order of the assessing officer. The Ld.AR for the assessee, on the other hand, submitted that the issue is squarely covered in favour of the assessee by the decision of the Tribunal in assessee's own case in ITA Nos. 1657, 1629/Mum/2012; 3491, 3592, 3593, 6394, 6217/M/2013 for AYs 2008- 09 to 2011-12. Further, relying upon the following judgements, has submitted that when own funds are more than the amount of investments made for earning tax free dividends, no disallowance u/s. 14A is warranted. He also submitted that when the investments are made in view of having strategic interest, no disallowance could be made. The following are the decisions, the Ld. Counsel relied upon: - 1. HDFC Bank Ltd vs. DCIT (2016) 383 ITR 529 (Bom) 2. CIT vs. HDFC Bank Ltd (2016) 383 ITR 529 (Bom) 3. CIT vs. Reliance Utilities & Power Ltd (2009) 313 ITR 340 (Bom) 4. CIT vs. Bombay Oil Industries Ltd 23014) 42 Taxmann.com 440 (Bom) 5. CIT vs. Reliance Industries Ltd CA No. 10 of 2010 (SLP(c) no.37/2010 6. PCIT vs. Sintex Industries Ltd (2018) 255 Taxman 171 (SC) 7. PCIT vs Sintex Industries Ltd (2017) 82 taxmann.com 171 (Guj) 8. DCIT vs. Bennet Coleman & Co Ltd ITA No.1951/M/2016 9. DCIT vs. Ageis Logistic Ltd ITA No.1945/M/2016 10.ITO vs. Sankalp Corporate Services P Ltd ITA No.1951/M/2016 7 ITA No.781&782/M/2018 Kotak Mahindra Bank Ltd 11.Wartsila India Ltd vs. ACIT ITA No.5002/M/2013 12.ACIT vs. Godrej Agrovot Ltd ITA No.5002/M/2013 13.ACIT vs. Jindal Drugs Ltd ITA No.1694/M/2017 14.Joy Beauty Care (P) Ltd vs. DCIT ITA No.1694/M/2017 15.Essel Mining & Industries Ltd vs. DCIT ITA No.856/Kol/2017 16.Essel Mining & Industries Ltd vs. DCIT ITA No.1694/M/2017 17.Integrated Coal Mining Ltd vs. DCIT ITA No.786/Kol/2013 18.DCIT vs. Garware Polyester Ltd ITA No.5757/M/2017 7. We have considered the rival submissions and perused the material placed before us. We find that the issue is squarely covered in favour of the assessee by the decision of the Tribunal cited supra in assessee's own case for AYs 2008-09 to 2011-12. The Tribunal, by following the decisions of the Tribunal in the cases of Premier Finance & Leasing Co. Ltd (ITA No.1655/Mum/2013 for AY 2008-09 & others dated 25- 05-2016 and Aditya Birla Nuvo Ltd (ITA No.8427/ & 8483/Mum/2010 (order dated 17.09.2014) decided the issue in favour of the assessee. The facts and circumstances of the issue under consideration are stated to be identical except for figures. Therefore, consistent with the decision already arrived at by the Tribunal; we uphold the order of the CIT (A). Ground 1 of the revenue fails.

25. In view of the above decisions rendered by Coordinate Benches in assessee's own case (relying upon the various judicial pronouncements of various Hon'ble High Courts and Supreme Court), we respectfully follow the same and **ground no. 1 raised by the revenue is dismissed as the revenue is not able to differentiate the earlier decisions of Coordinate Benches in favour of assessee. In above terms the order of Ld. CIT (A) is sustained and ground raised by the revenue is dismissed.**

26. Ground no. 2 raised by the revenue and ground no. 1 to 9 raised by the assessee are interlinked and issue involved is identical i.e. disallowance u/s. 14A of the Act r.w. Rule 8D. It is observed that the AO made additions u/s. 14A r.w. Rule 8D (2)(iii) Amounting to Rs. 10, 67, 21,089/-. The assessee raised the grounds before the Ld. CIT (A) with reference to disallowance under Rule 8D(2)(iii) that assessee has suo moto worked out a disallowance of Rs. 1,82,35,840/-. Whereas the AO made a disallowance of Rs. 10, 67, 21,089/-. Against this order of AO, the Ld. CIT (A) restricted the addition to the tune of Rs. 3, 60, 19,074/- relying on the decision of the Spl. Bench in the case of Vireet Investment Pvt. Ltd.

27. The assessee relied upon the decision of Hon'ble Bombay High Court in the case of PCIT-2 vs. Bombay Stock Exchange Ltd. (2020) 113 taxmann.com 303 and Maxopp Investment Ltd. vs. CIT 402 ITR 640 (SC) before the Coordinate Bench in ITA No. 1783-1784-1785/Mum/2023 and the Coordinate Bench held as under:-

"The assessee also relied on the decision of the Hon'ble Supreme Court in the case of Maxopp Investments Ltd. Vs. CIT (2018) [91 taxmann.com 154 (SC)] and submitted that the securities which are held as stock in trade by the assessee should not be considered for disallowance under section 14A r.w.r.8D. The AO accepted the said contention of the

assessee that the disallowance under section 14A cannot be applied on securities held as stock in trade. However, with regard to strategic investments made by the assessee in its subsidiaries, the AO invoked the provisions of section 14A r.w.r. 8D. The AO made disallowance under section 14A r.w.r. 8D (2)(ii) And also 8D (2)(iii) As per the below table:

3. Accordingly, the AO had arrived at disallowance of Rs. 29, 42, 64,233/-. Aggrieved, the assessee filed further appeal before the CIT (A). Before the CIT(A), the assessee had contended both the disallowance made under Rule 8D(2)(iii) and 8D(2)(ii). With regard to disallowance under section 14A r.w.r. 8D (2)(ii) The assessee submitted that, assessee's own funds are sufficient and therefore, no is warranted. With regard to disallowance made by the AO under Rule 8D (2)(ii), the CIT (A) has given a detailed finding and gave relief to the assessee stating that when the assessee is having sufficient own funds no disallowance shall be warranted. With regard to 8D(2)(iii) the CIT(A) by relying on assessee's own case in ITA No. 374/Mum/2012 for AY 2008-09 held that for the purpose of disallowance under Rule 8D(2)(iii) the disallowance should be restricted to only those investments yielding exempt income. Against the decision of the CIT (A), the assessee is before the Tribunal contending that the plea of the assessee before the CIT (A) was to restrict the disallowance to the suo-moto disallowance offered by the assessee and the said relief has not been considered by the CIT (A). 4. The Id. AR with regard to the plea that disallowance should be restricted to the suo-moto disallowance, submitted that the assessee has investments which are in the nature of stock in trade and also are strategic investments made in subsidiaries. The Id. AR drew our attention to the financial statements of the assessee to submit that there has not been any movement in the investments made in subsidiaries as per the financial statements for the year ended 31.03.2016 (page 10 of PB). The Id. AR further submitted that the assessee has followed a scientific method to arrive at the suo-moto disallowance which has been certified by the Accountant of the assessee which has not been considered by the AO (page 85 to 142 of PB). The Id. AR also submitted that since the assessee has invested in subsidiaries for strategic purposes, the cost of the senior officers of the company who are involved in making the strategic decision and since these strategic decision are taken during the board meeting, the cost involved in conducting the board meeting or considered for the purpose of arriving at the suo-moto disallowance. The Id. AR drew our attention to the relevant part of the Accountant's report which explains the manner in which the suo-moto disallowance is arrived in assessee's case as extracted below: "6.4. Part D: Disallowance of administrative/ managerial expenses in respect of strategic investments The Hon'ble Supreme Court in the case of Maxopp Investment Ltd (supra) in the context of recording of satisfaction has held that having regard to the language of Section 14A(2) of the Act, read

with Rule 8D of the Rules, before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, satisfaction would have to be recorded to this effect.

Attribution of Top Managerial Expenses

Step 1: The detailed workings are attached as Annexure 5 to this report. In these workings, we have identified from the recorded minutes of the Board meeting of the HDFCBL's agendas pertaining to subsidiary companies. These agendas include adoption of the accounts, evaluation of the progress of the subsidiary companies, additional infusion of capital, if any for the year under consideration and several other items.

Step 2: Thereafter, we proceed to identify the total cost incurred in the Board meeting. The total cost includes sitting fees paid to non-executive directors, salary cost of the executive directors and other employees (deputed on the Board of the subsidiary companies of the HDFCBL) pertaining to the date of the Board meeting, secretarial cost for conducting the Board meeting, rental charges in case where meeting is conducted outside the HDFCBL's owned premises, travel cost of all the directors which has been incurred for the purpose of this Board meeting and other expenses which are incurred for the purpose of the Board meeting.

Step 3: The total cost of conducting the Board meeting has been identified for every meeting which the Bank has conducted. After identifying the total cost, the Bank counts the total agenda discussed in the Board meeting. The total agenda pertaining to the subsidiary companies is also identified. The ratio of the agenda pertaining to the subsidiary companies in proportion to the total agendas is applied to the total cost incurred for the particular Board meeting. This amount is attributed as disallowance for the purpose of section 14A of the Act. For instance, if the total cost incurred for conducting the Board meeting is Rs. 10 lakhs and out of the total 20 agendas in the Board meeting, 5 agendas pertain to subsidiary associate and joint venture companies, 1/4th i.e. (5/20) cost of the Board meeting viz., Rs. 2.5 lakhs would be attributed as amount to be disallowed under section 14A of the Act.

Employees engaged on Board of Subsidiary Companies HDFC Bank has identified that they have the following employees which are on the Board of the subsidiary companies:

Sr. No.	Name of the employee	Subsidiary Company	Designation (director)
1	Mr. Abhay Aima	HDFC Securities Ltd	Non-Executive
2	Mr. Dhiraj Relli	HDFC Securities Ltd	Non-Executive
3	Mr. Aseem Dhuru	HDFC Securities Ltd	Non-Executive
4	Mr. Kaizad Bhaarucha	HDB Financial Services Ltd	Non-Executive
5	Mr. Anil Jaggia	HDB Financial Services Ltd	Non-Executive
6	Mr. Jimmy Tata	International Asset Reconstruction Co Ltd	Non-Executive
7	ADFC Pvt. Ltd.		Non-Executive

The aforesaid employees are on the payrolls of HDFCBL as group head of one

department of the other or they hold position as key managerial personnel (KMPs). These employees/ KMPs also attend the Board meeting of HDFCBL. The total salary [cost-to-company (CTC)] is identified. These employees are paid salaries even on the days when they have attended the Board meeting of the subsidiary companies. Therefore, the cost of such days has been identified by dividing the total CTC with 365 days i.e. the entire year. Such per day cost of all the employees has been attributed for the purpose of disallowance u/s. 14A of the Act. Further, these employees have also attended the Board meeting of HDFCBL. The cost per day for attending the Board meeting is identified and the same is thereafter allocated in the ratio of agenda pertaining to the subsidiary companies and the total agenda.” 5. The Id. AR also took the Bench through the actual calculation workings which are done as per the process stated above. To summarise that the assessee has used a scientific method in order to arrive at the suo-moto disallowance, the Id. AR submitted that the lower authorities have completely ignored the suo-moto disallowance working done by the assessee and has proceeded to arrive at the disallowance under section 14A r.w.r. 8D(2)(iii). The Id. AR also raised a legal contention that the AO while invoking the provisions of section 14A r.w.r. 8D (2)(iii) did not record any satisfaction. The Id. AR further submitted that the AO while arriving at the disallowance did not record any findings as to why the suo-moto disallowance calculated by the assessee is not correct thereby failed to record any satisfaction. The Id. AR in this regard relied on the decision of the Co-ordinate Bench in the case of Aditya Birla Finance Ltd. Vs. ACIT (83 taxmann.com 85) where the Tribunal has accepted similar accountant report and held that the disallowance should be restricted to the suo-moto disallowance. The relevant findings of the co-ordinate bench are as extracted below: “3.28 In the light of the foregoing discussion, we find that neither the Ld. Assessing Officer nor the Ld. Commissioner of Income Tax (Appeal) pointed out any defect in the accounts of the assessee, therefore, the ratio laid down in the case of Britania Industries Ltd. v. Dy CIT [IT Appeal No.390 (Kol.) of 2013, dated 2-3- 2016], Rapiakos Brett & Co. Ltd. v. Addl. CIT(A) [IT Appeal No. 7490 (Mum.) of 2013, dated 10-11-2016] supports the case of the assessee. The ratio laid down in Fedex Finance (P) Ltd. v. Dy. CIT [IT Appeal Nos. 1067 & 1073 (Mum.) of 2013] and White Water Mass Media v. ACIT [IT Appeal No. 2963(Mum.) of 2013] supports the case of the assessee. It is also noted that during assessment proceedings, the report of the accountant, specifying the basis for calculating the amount disallowable u/s 14A of the Act was submitted by the assessee and the Ld. Assessing Officer without rejecting the report mechanically applied Rule-D and computed the amount of disallowance, which cannot be said to be justified. At best, the disallowance may be restricted as suo-moto made by the assessee. Thus, no further disallowance was required to be made.” 6. Therefore, the Id. AR submitted that on

this count also the disallowance made by the AO as confirmed by the CIT (A) without recording satisfaction is bad in law. 7. We have heard the parties and perused the material on record. During the course of assessment, the AO made disallowance under section 14A by applying Rule 8D (2)(ii) And 8D (2)(iii). The CIT(A) gave relief to the assessee to the extent of disallowance made under section 8D(2)(ii) accepting the contention of the assessee that the own funds are employed for making strategic investment in subsidiaries and therefore, no disallowance was warranted towards interest expenses. With regard to disallowance under Rule 8D(2)(iii) though the assessee has raised the contention before the CIT(A) that the disallowance, if any should be restricted the suo-moto disallowance made by the assessee before the AO, it is noticed that the CIT(A) has relied on the order of the Co-ordinate Bench in assessee's own case for AY 2008-09 to hold that no disallowance under Rule 8D(2)(ii) is warranted and also that for the purpose of Rule 8D(2)(iii) only those investments yielding exempt income should be considered for the purpose of disallowance. The CIT (A) had not given any finding with regard to the plea of the assessee that the disallowance should be restricted to the suo-moto disallowance made by the assessee. The contention of the assessee in this regard is twofold. One the suo-moto disallowance has been arrived at on the basis of a scientific method wherein all the relevant costs incurred towards strategic investments in subsidiaries have been considered and proportionate disallowance is arrived at. The alternate contention of the assessee is that the AO failed to record satisfaction before invoking the provisions of section 14A. 8. on the first contention of the assessee, we noticed that the assessee has followed a scientific method as explained in the Accountant's report which is extracted in the earlier part of this order for arriving at the disallowance under section 14A. From the perusal of the financial statements, it is also noticed there no movement in the investment made in the subsidiaries and therefore, there is merit in the contention of the Id. AR that only the cost pertaining to the Board meeting where strategic decisions are taken with regard to investments in subsidiaries and the proportionate costs of those employees in the company who involving the decisions have been considered for the purpose of disallowance under section 14A and that the said method is appropriate. 9. on the contention that the AO has not recorded any satisfaction, it is relevant to take note of the following observations of the AO before he proceeded to compute the disallowance under section 14A. "3.3 Excluding stock-in-trade from the total investment, the strategic investment for the assessee as on 31.03 2015 was Rs. 2853,16,62,252/- and as on 31.03.2016 was Rs. 2853,56,41,425/ Hence, the average value of investment is Rs. 2853,36,51,839/- These investments cannot be managed without inherent expenses since no investments can be made without market analysis and expertise The assessee could

not have got the market expertise and the necessary staff for free and has to necessarily incur expenditure. It is not possible without sufficient expertise as to selection of securities and timely swaps. With increase in technicalities involved in market operations the assessee is bound to have expert advice and necessary staff to act in a time bound manner for proper investments. The assessee would be in receipt of various daily reports, fortnightly reports and monthly reports at regular intervals so that the assessee can take informed decisions regarding deployment / redemption of their investments in various schemes. These inputs have costs in terms of substantial time as well as cost on account of conveyance, travelling, telephone / mobile bills, stationery etc. It is difficult to ascertain such cost in quantitative terms. However the cost on approximate basis has to be considered for the purpose of disallowance. Hence I am satisfied that the disallowance under Section 14A as per Rule BD has to be made.” 10. From the above observations of the AO, it is clear that though the AO is stating that the assessee would have incurred many indirect expenses towards investments in subsidiaries he has not mentioned anything adverse with regard to the way in which the assessee has computed the suo-moto disallowance. Considering the fact that the investments made are in subsidiaries companies and that there is no movements in the investments during the year under consideration. We do not see merit in the findings given by the AO that the assessee should have incurred indirect expenses such as market report, telephone stationary, etc. for the purpose of investments. We are also of the view that the observations of the AO as extracted above cannot be considered to be recording of satisfaction, since the AO has not stated anything as to why the calculation of suo-moto disallowance is not acceptable by the AO and why he is not satisfied about the correctness of the said calculation. Therefore, there is merit in the alternate contention of the assessee that the AO has invoked section 14A without recording satisfaction and therefore, bad in law. The Hon'ble Supreme Court in the case of Maxopp Investments (supra) while considering the similar issue and have given a finding that the AO needs to record satisfaction that having regard to the kind of the assessee suo-moto disallowance under section 14A is not correct. In view of these discussions and considering the judicial pronouncements, we are of the view that the AO is not correct in invoking the provisions of section 14A without recording any satisfaction as to why the suo-moto disallowance computed by the assessee is not correct. Accordingly, we delete the disallowance made by the AO and direct the AO to restrict the disallowance to the suo-moto disallowance made by the assessee. It is ordered accordingly.”

28. As the issue raised by the revenue in ground no. 2 with reference to disallowance u/s 14A r.w.r. 8D(2)(iii) and the grounds of the assessee 1 to 9 raised

in CO are squarely covered in the decision of the Coordinate Bench discussed (supra), we have thoroughly gone through the orders of authorities below and the decision of Coordinate Bench reproduced (supra), we do not find any strength in the ground of revenue and respectfully following the detail finding of the Coordinate Bench, **we dismiss the ground NO. 2 raised by the revenue and allowed ground nos. 1 to 9 raised by the assessee in its C.O.**

29. Ground no. 3 raised by the revenue pertains to the disallowance made by the AO amounting to Rs. 415,74,56,787/- under the head ESOP expenses. This issue is recurring in nature and has been decided in favour of assessee in A.Y. 2009-10 to 2014-15. We observe that facts of this year are similar to the other years decided in favour of assessee. For reference, we are reproducing the decision of Coordinate Bench in assessee's own case as under:-

ITA Nos. 781 & 782/Mum/2018 (Assessment year: 2013-14 & 2014-15)

"15. Ground No. 4 pertains to ESOP expenses. The assessing officer disallowed an amount of Rs. 89,51,07,154/- being ESOP expenses on the ground that (i) ESOP discounts are incurred in relation to issue of shares to employees; they are not relatable to profits and gains arising or accruing from a business / trade; the Apex Court in the case of Punjab State Industrial Development Corpn Ltd (1997) 225 ITR 792 (SC) and Brooke Bond India Ltd (1997) 225 ITR 798 (SC) have held that expenditure resulting in increase in capital is not allowable deduction even if such expenditure may incidentally help in business of the company; (ii) ESOP discount does not diminish trading / business receipts of the issuing company. The company does not suffer any pecuniary detriment. To claim a charge against income, it should inflict a detriment to the financial position. ESOP is a voluntary scheme launched by the employers to issue shares to employees. The intention is to only give a stake to the employees in the organization; (iii) This discount is not incurred towards satisfaction of any trade liability as the employees have not given up anything to procure such ESOP;(iv) Share premiums obtained on issue of shares are items of capital receipt. When such premium is forgone, it cannot be claimed as an expenditure wholly and

exclusively laid out or expended for the purpose of the trade; (v) There is not any specific provision for such deduction from sections 30 to 36 of the Income-tax Act. So, the residuary section 37 only comes to play and the primary condition for allowance under this section is the existence of business. As elaborated in the above points, there is neither any real expenditure at the stage of grant or otherwise, nor the 14 expenditure if at all any, can be qualified as Revenue in nature. The CBDT circular No.9/2007 dated 20-12-2007 has clearly provided that where ESOPs are purchased by the Company, and then issued to the employees then the same is allowed; else it is not expenditure. For this proposition, the AO relied upon the decision of Ranbaxy Laboratories Ltd vs. ACIT [124 TTJ 771 (2009) (Delhi Tribunal). Further, in giving its judgment, the Delhi Tribunal held that the issue of shares at below market price does not result into incurring any expenditure; rather it results into short receipt of share premium which the assessee was otherwise entitled to. The receipt of share premium is not taxable and hence any short receipt of such premium will only be a notional loss and not actual loss for which no liability is incurred and such notional losses are not allowable under the provisions of the Income Tax Act, 1961. Further, reference was made to section 37 of the IT Act which requires that there should be an expenditure incurred by the assessee; however, a benefit or income foregone cannot be considered as expenditure. The Tribunal was of the view that the assessee has not incurred any expenditure but merely received lesser amount of share premium. The assessing officer further stated that above judgment has been heavily relied on in the recent judgment pronounced by Mumbai Tribunal in the case of M/s. VIP Industries Ltd (2010 TIOI 654). The 15 AO also stated that another judgment that deserves a mention here is the case of Lowry (Inspector of Taxes) Vs Consolidated African Selection Trust Ltd (1940) 8 FTR (Suppl) 88 (HL) in which the House of Lords held that the difference between the market price and amount recovered from the employees cannot be allowed as deductible expenditure. The assessing officer further observed that assessee's reliance on the Madras High Court Judgment of M/s.PVP Ventures was distinguishable on facts. The primary issue of allowability of ESOP expenses as a substitute of employee remuneration was the subject matter of the judgment and deducibility of such expense on the grounds enumerated above was not decided upon by the Hon'ble Court. On appeal, the Ld.CIT(A) decided the issue in favour of the assessee by following Bangalore Special Bench decision of the Tribunal in the case of Biocon Ltd (Appeal No.368/Bang/2010). 16. before us, the Ld. DR heavily relied upon the order of assessing office. On the other hand the Ld.AR of the assessee placed his reliance on the following precedents and submitted that the Ld.CIT(A) was justified in allowing the ground of the assessee by placing authority on Bangalore Special Bench decision of the Tribunal in the case of Biocon Ltd (supra):- 1. Kotak

Mahindra Bank Ltd. 89 taxmann.com 223 (ITA No. 698/M/16). 2. DCIT v. Kotak Mahindra Bank Ltd. ITA No. 2817/M/16 & 38/M/18. 3. Biocon Ltd. v. DCIT 144 ITD 21 (Bang) (SB). 4. DCIT v. Avendus Capital P. Ltd. ITA No. 5679/M/2015. 5. CIT v. PVP Ventures Ltd. v. 211 Taxman 554 (Mad). 6. S.S.I. Ltd. v. DCIT 2005-TIOL-30-ITAT-MAD. 7. Goldman Sachs India Securities P. Ltd. v. ACIT ITA No. 1428/Mum/2017. 8. DCIT v. Magma Fincorp Ltd. ITA No. 946/Kol/2017 17. We have considered the submissions of both the parties and perused the record. We have noted the AO disallowed the ESOP as we have recorded in para 15 above. However, the Id. CIT (A) allowed relief to the assessee by following the order of his predecessor in assessee's own case for AY 2009-10, dated 12.11.2015 and for AY 2012-13 dated 19.01.2016. The Id. CIT (A) also relied on the decision of Special Bench of Bangalore Tribunal in Biocon Ltd (supra). We have further noted that the order of Id CIT(A) in appeal for A.Y. 2009-10 & 2012-13 has been affirmed by Tribunal in ITA No. 698/Mum/2016 Dated 20.12.2017 and in ITA No.2817/mum/2016 dated 28.02.2018, thus, we do not find any reason for interfering with the order of Id CIT(A), which we affirm. In the result this ground of appeal is dismissed."

30. In view of the above, as the issue is recurring in nature and the Ld. DR is not able to differentiate the findings of the Coordinate Benches with the facts and law of this year, we do not have any hesitation in following the findings of Coordinate Bench in this year also. Resultantly, ground no. 3 raised by the revenue is dismissed.

31. Ground no. 4 raised by the revenue pertains to addition of interest income under section 43D r.w.r. 6EA amounting to Rs. 10.48 crores. This issue is recurring in nature and has been decided in favour of assessee as well as other banks also. We observe that facts of this year are similar to the other years decided in favour of assessee. For reference, we are reproducing the decision of Coordinate Bench in assessee's own case as under:-

"GROUND 4 : INTEREST ON NPA UNDER SECTION 43D READ WITH RULE 6EA

16. during the course of assessment, Assessing Officer observed that in the case of banks, provision of section 43D of the Act to allow them to offer interest in respect of NPAs on receipt basis. The guidelines of RBI also specify the non performing assets in respect of which the income cannot be recognized on accrual basis. The assessee has computed income in respect of NPAs on the basis of RBI guidelines. The Assessing Officer further stated that the advances (NPAs) in respect of which banks are at liberty to offer interest on cash basis are specified in Rule 6EA of the I.T. Rules, 1962. As per rule 6EA, interest is not to be offered for taxation with respect to advances which have become NPA for a period of 180 days or more. However, as per the guidelines of RBI, interest is not to be recognized on NPAs if they have become non-performing for a period of 90 days or more. Therefore, Assessing Officer was of the view that provisions of Rule 6EA read with section 43D are very clear that irregularity of the nature referred in Rule 6EA should be noticed for a period of six months or more. The Assessing Officer also observed that as per guidelines of RBI, non 9 Kotak Mahindra Bank Ltd performing assets are recognized for a default of 3 months or more, however, as per the I.T. Rules, the period of 3 months has not been recognized anywhere. Therefore, the Assessing Officer has not accepted the interest derecognized by the assessee and made an addition of Rs. 5, 15, 36,039/- by estimating the interest income from 91 to 180 days.

17. Aggrieved, assessee filed appeal before the Ld.CIT (A). Ld.CIT (A) has dismissed the appeal of the assessee.

18. During the course of appellate proceedings before us, the Ld. Counsel, at the outset, contended that similar issue on identical facts has been adjudicated by the Hon'ble ITAT, Mumbai Bench in the case of ICICI Bank Limits vs. ACIT vide ITA No.3215/Mum/2019 dated 22/08/2022.

19. On the other hand, Ld. DR supported the orders of lower authorities.

20. with the assistance of Ld. representatives of the parties, we have gone through the order of the co-ordinate bench in the case of ICICI Bank Limited cited supra. The relevant operating part of the decision is reproduced as under:-

6. Heard both the sides and perused the material on record. The assessee has recognized the amount of interest attributable on sticky advances as NPA for a period of 90 days or more as per the guidelines issued by the RBI in accordance with Sec. 43D of the Act. However, the A.O was of the view that as per Rule 6E, interest is not to be offered for taxation with respect to advances which become Non

Performing Assets for a period of 180 days or more. With the assistance of Id. representative we have perused the decision of ITAT, Mumbai in the case of Union Bank of India VS. ACIT, 16 taxman.com 304 wherein on identical issue and similar facts held that bank had no option but follow the RBI guidelines to make a provision for unrealized interest on the NPA by debiting profit and loss account. In the case of DCIT Vs. Karur Vysya Bank ITA No. 2433 & 2467 of ITAT Chennai dated 29.03.2017 held that it becomes necessary to read down such rules so that it is in consonance with the RBI regulation or prudential norms for recognizing income.

In Royal Bank of Scotland vs. DCIT vide ITA No. 477/Kol/2015 ITAT Kolkata held as under:

“2.6 We have heard the rival submissions and perused the materials available on record including the detailed paper book filed by the assessee. The facts stated hereinabove remain undisputed and hence the same are not reiterated for the sake of brevity. It is not in dispute before the lower authorities that the loan accounts had become sticky and doubtful of recovery. The only contention of the revenue is that section 43D of the Act read with Rule 6BA of the Rules permits accounting of interest income on receipt basis only if the loan account had become overdue for more than six months, whereas in the instant case, it is more than three months but less than six months as on 31.3.2010. The loan account becoming overdue and becoming sticky was never disputed. The next issue is whether the prudential norms of RBI for income recognition would override the provisions of the IT Act. This issue has been addressed by the Hon'ble Supreme Court in the case of Southern Technologies Ltd supra in the context of allowability of deduction towards 'Provision for NPA. We find that the same decision clearly stated that the interest income on NPA accounts should not be recognized on accrual basis which is in line with RBI prudential norms for income recognition. This fine distinction has been duly considered in the decision of the Hon'ble Delhi High Court in the case of CIT vs. Vasisth Chay Vyapar Ltd supra. When the account becoming NPA is not disputed by the revenue, the recognition of income is to be done only on receipt basis which is in consonance with the real income theory. In these circumstances and respectfully following the decisions of Hon'ble Delhi High Court in 330 ITR 440 and various other decisions referred to supra, we hold that the interest income on NPA accounts should not be assessed on mercantile basis and the same is to be taxed only on receipt basis. Accordingly, the grounds raised by the assessee are allowed.”

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

“43D. Notwithstanding anything to the contrary contained in any other provision of this Act,- a) in the case of a public financial institution or a scheduled bank or "[a cooperative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank or] a State financial corporation or a State industrial investment corporation "[or a deposit taking non-banking financial company or a systemically important non-deposit taking non-banking financial company] the income by way of interest" in relation to such categories of bad or doubtful debts as may be prescribed" having regard to the guidelines issued by the Reserve Bank of India in relation to such debts, (b) in the case of a public company, the income by way of interest" in relation to such categories of bad or doubtful debts as may be prescribed having regard to the guidelines issued by the National Housing Bank in relation to such debts, shall be chargeable to tax in the previous year in which it is credited by the public financial institution or the scheduled bank or "[a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank or] the State financial corporation or the State industrial investment corporation or "[a deposit taking non-banking financial company or a systemically important non-deposit taking non-banking financial company or] the public company to its profit and loss account for that year or as the case may be, in which it is actually received by that institution or bank or corporation or company, whichever is earlier.

“It is categorically provided in the provisions of section 43D that income by way of interest in relation to bad and doubtful debts to be prescribed in accordance with guidelines issued by the RBI. The section 43D was introduced by the Finance Act, 1991 as per the section the category of bad and doubtful debts to be prescribed in the Income Tax Rules having regard to the guidelines issued by the RBI in relation to such debts. In 1992 the Rules 6E was framed and as per RBI guidelines the norms for categorization of advances as NPA were those advances which remained over due for more than 6 months. The RBI has revised the guideline from time to time and made changes in the period of overdue of advances for categorization of NPA. During the year under consideration the RBI has reduced the period to 90 days for categorization of interest on sticky loan as NPA, however, similar changes was not made to Rule 6EA. After considering the provisions of Sec. 43D and judicial findings as supra we consider that norms for categorization of bad and doubtful debts had to

be prescribed considering the guidelines issued by the RBI. Therefore, the Id. CIT(A) is not justified in substituting the limit for recognizing of interest on account of NPA to 180 days from 90 days in view of the clear provisions of Sec. 43D(a) that in the case of public financial institutions or schedule bank or a state financial corporation or a State Industrial Investment Corporation, the income by way of interest in relation to such categories of bad and doubtful debt as may be prescribed having regard to the guidelines issued by the RBI in relation to such debts. Therefore, both the ground of appeals of the assessee is allowed.”

21. Respectfully following the decision of co-ordinate bench as referred above, we direct the Assessing Officer to allow the claim of deduction under section 43D r.w.r. 6EA of I.T. Rules in respect of interest on NPAs.

32. In view of the above, as the issue is recurring in nature and the Ld. DR is not able to differentiate the findings of the Coordinate Benches with the facts and law of this year, we do not have any hesitation in following the findings of Coordinate Bench in this year also. Resultantly, ground no. 4 raised by the revenue is dismissed.

33. Ground no. 5 raised by the revenue pertains to disallowance of broken period interest. This issue is recurring in nature and has been decided in favour of assessee as well as other banks also. We observe that facts of this year are similar to the other years decided in favour of assessee. For reference, we are reproducing the decision of Coordinate Bench in assessee's own case as under:-

“GROUND 3 : ALLOWING OF BROKEN PERIOD INTEREST

39. During the course of assessment, the assessee was asked to explain why the broken period interest on HTM (held to maturity) should not be treated as capital expenditure. The assessee made a detailed submission which has been reproduced by the Assessing Officer in para 10.2 of the assessment order wherein the assessee had also relied on the decision of the Bombay High Court in the case of American Express vs CIT 258 ITR 601 (Bom). The assessee has also relied on the various other decisions of the Tribunal.

However, the Assessing Officer has not agreed with the submission of the assessee and held that the broken period interest is not allowable on investment as the same constitutes capital expenditure. The assessee filed appeal before the Ld.CIT (A). The Ld.CIT (A) allowed the claim of the assessee.

40. During the course of appellate proceedings before us, the Ld. Counsel submitted that identical issue on similar facts in the case of the assessee has been adjudicated by ITAT, Mumbai in ITAs No.781 & 782/Mum/2018.

41. On the other hand, the Ld. DR supported the order of the Assessing Officer.

42. The relevant paragraph of the decision of the Tribunal is as under:-

“14. We have considered the submissions of the parties and perused the order of lower authorities and the various case laws relied by the Ld. AR for the assessee. During the assessment the AO required the details of the broken period interest expenses. The assessee furnished such interest on broken period expenses of Rs. 88, 41, 69,624/-. The AO disallowed the same holding that the securities are held till the maturity which constitute the investment of the bank and cannot be considered as stock in trade. Before Id CIT (A) the assessee contended that all the investments were made in accordance with RBI guidelines. The closing balance has been shown in the balance sheet. The interest income on Government securities and the profit / loss has been offered in the return of income for the current year. Similar treatment is consistently offered by the assessee in earlier years. The assessee also relied on the CBDT Circular No.18/2015 dated 02.11.2015. The Ld CIT(A) accepted the contention of the assessee granted relied to the assessee by relying on the CBDT circular and on the decision of Hon'ble Supreme Court in CIT Vs Citi Bank NA in Civil Appeal No.1549 of 2006) and Bombay High Court in American Express International Banking Corporation vs. CIT (125 Taxman 488 Bom). We have noted that this issue is also covered in favour of the assessee, hence, we affirm the order of the Ld. CIT (A) and accordingly dismissed the ground of appeal raised by the revenue.”

43. Following the decision of the co-ordinate bench as above, we do not find any infirmity in the order of the Ld.CIT (A). Therefore, the ground raised by the Revenue is dismissed.”

34. In view of the above, as the issue is recurring in nature and the Ld. DR is not able to differentiate the findings of the Coordinate Benches with the facts and law of this year, we do not have any hesitation in following the findings of Coordinate

Bench in this year also. **Resultantly, ground no. 5 raised by the revenue is dismissed.**

35. Ground no. 6 & 7 raised by the revenue pertains to bad and doubtful debt u/s. 36(1) (viiia) of the Act. This issue is recurring in nature and has been decided in favour of assessee as well as other banks also. We observe that facts of this year are similar to the other years decided in favour of assessee. For reference, we are reproducing the decision of Coordinate Bench in assessee's own case as under:-

"Ground 2: Provision for Standard Asset qua deduction under section 36(1) (viiia)

3. During the course of assessment, the Assessing Officer noted that assessee bank has claimed deduction for provisions under section 36(1)(viiia) of the Act in respect of bad and doubtful debts, though is available in respect of 7.5% of the total income and 10% of the rural branches. The assessee bank has created provisions in respect of following categories of assets-

i) Standard Assets;

ii) Doubtful Assets; and

iii) Losses

4. The Assessing Officer stated that though the deduction under section 36(1) (viiia) is available only in respect of provisions for bad and doubtful debts; however, the assessee bank had claimed deduction in respect of provisions for even the standard assets. The Assessing Officer was of the view that no provision is required for standard assets as the standard assets are not included in the categories of standard and doubtful assets. The provision on standard and doubtful assets can only be claimed as provision for bad and doubtful debts. On query, the assessee explained that provisions on standard assets are part of overall provision made by the assessee in respect of bad and doubtful debts. It was also submitted that Reserve Bank of India has required banks to make provisions in respect of bad and doubtful debts in order to strengthen their financial position. It is also explained that provision on standard assets are part of overall provision made by the assessee in respect of bad and doubtful debts. The provision on standard asset is, in substance, not different from the provisions for bad and doubtful debts. The Assessing Officer has not agreed with the contention of the assessee and stated that section 36(1) (vii) and section 36(1) (viiia) deal with allowance of deduction for bad debt, which have been written off in the books of account and in

the case of bank "provisions for bad and doubtful debts". All these deductions are clearly linked with the bad and doubtful debts. In view of this, the Assessing Officer has reduced the deduction, allowed no provision for bad and doubtful debts insofar as the provisions pertained to standard assets.

5. Aggrieved, assessee filed appeal before the Ld. CIT (A). The Ld. CIT (A) has dismissed the ground of the assessee reiterating the facts mentioned by the Assessing Officer.

6. During the course of appellate proceedings before us, at the outset, the Ld. Counsel contended that similar issue on identical facts has been adjudicated by the ITAT, Mumbai Bench in the case of State Bank of India vs. DCIT vide ITA No.3644/Mum/2016 dated 03rd February, 2020.

7. On the other hand, the Ld. DR supported the orders of lower authorities.

8. with the assistance of Ld. Representatives, we have gone through the decision of ITAT, Mumbai Bench in the case of State Bank of India vs. DCIT (supra). The relevant operating part of the decision is reproduced as under:-

71. We have noted the facts that the assessee has claimed that provision for standard assets should be taken into consideration for computing the deduction under section 36(1)(viiia) of the Act. The assessee has also filed the details vide note 17 and Annexure 6 to the revised return of income on pages 8, 9 and 20 of Paper Book – 1 filed by assessee. As per the provisions of section 36(1)(viiia) of the Act, a bank is eligible to avail deduction in respect of provision made for bad and doubtful debts, of an amount not exceeding 7.5% of total income and 10% of the aggregate average advances made by the rural branches of the bank. The provision is created by the assessee on the basis of RBI Guidelines. The assessee is required to create provision on non-performing assets on the basis of the classification of assets into the four prescribed categories i.e. loss assets, doubtful assets, substandard assets and standard assets [refer para 5.1.2 of the RBI Guidelines].

72. the Revenue before us emphasized that the provision for standard assets is not same as provision for bad and doubtful debts and the same is contingent in nature, since it is created only out of abundant caution. We noted from the provisions that the assessee is required to make a provision on all its debts ranging from 0.25% to 100% depending upon the categorization of the loan in terms of the guidelines issued by RBI. The provision on debts made by the assessee is in line with the RBI guidelines and section 36(1) (viiia) of the Act does not have a requirement that the provision for debts should be in respect of specified debts only. Section 36(1)(viiia) of the Act provides for a deduction to the bank in respect of 'any provision made for bad and doubtful debts' subject to certain ceiling. It does not specify the methodology for calculation of provision for bad and doubtful debts. The banks are required to make provision for bad and doubtful debts in accordance with the RBI guidelines. All the loan assets are initially classified as 'Standard'. Later on depending upon

the problems arising, if any, and symptoms of sickness shown including delays in the repayment of the principal and interest, deterioration of security, etc., they may be shifted to other categories. A provision made on any loan assets is a provision for 'bad and doubtful debts' irrespective of the category in which the loan falls. This is to provide for the inherent risk of loan losses which the bank may suffer in subsequent years.

73. We noted from the provision of Section 36(1) (viiia) of the Act that the same allows a deduction to banks in respect of any provision made 'for' bad and doubtful debts. It does not restrict the allowance to provision made 'on' bad and doubtful debts. Even in respect of assets that are classified as standard assets, a part of the debts are doubtful of recovery. The fact that a provision is made for standard assets by itself indicates that a part of the standard assets are doubtful of recovery. Accordingly, the entire provision made by the assessee, including in respect of standard assets, is for bad and doubtful debts as envisaged by section 36(1)(viiia) of the Act. Thus, in light of above, the assessee is eligible to claim deduction under section 36(1) (viiia) of the Act even in respect of the provision made for standard assets. This issue was considered by the ITAT in assessment year 2006-07 in ITA 3145/Mum/2009 dated 6.09.2016, in an appeal against the revision order of the CIT passed under section 263 of the Act, wherein it is held as under:

"So, however, we may also clarify that we are in principle in agreement that a provision for bad and doubtful debts cannot include that against standard assets i.e. which the bank" (assessee) itself regards as good for receipt and, therefore with the decision by the tribunal in Bharat Overseas Bank Ltd. (supra) relied upon by the Revenue. A provision by definition a charge against profits, while that in respect of an asset, considered good, would be more in the nature of an appropriation of profit i.e. a reserve. This is precisely what the Tribunal in Bharat Overseas Bank Ltd. (supra) means when it states of the deduction being not in the nature of a standard allowance. No contrary judgement by the Tribunal or a higher court has even otherwise been brought to our notice. At the same time, the provision as per RBI guidelines – which are contended to have been followed / adopted, provide for the minimum provision, and the bank is free to make a higher provision, i.e., than that prescribed by the RBI norms. Provisioning, it may be noted, is a management function, made reflecting its risk assessment qua different assets. If therefore, the assessee bank is able to satisfy the assessing authority that the provision as made is justified with reference to the debts considered by it as bad and doubtful, we see no reason as to why the same cannot be allowed. The matter is accordingly restored back to the file of the A.O. for fresh determination by issuing definite findings of fact. Even as the primary onus would be on the assessee, the A.O. cannot substitute his own judgement with regard to the risk assessment qua a particular asset and, correspondingly, the provision in its respect. His purview would be to examine the

reasonableness of the assessee's claim in light of the facts and circumstances qua each asset/s in respect of which provision is made. In arriving at our decision, we have taken a holistic view of the matter, placing due emphasis on the words 'provision' preceding the words 'for bad and doubtful debts' as well as the words 'not exceeding' occurring in the section, and which stand highlighted for the purpose. We decide accordingly."

74. In view of the above discussion, arguments of both the sides, we are of the view that the assessee is eligible for claim of deduction u/s 36(1) (viiia) of the Act on standard assets and this issue is covered by Tribunal's decision in assessee's own case for AY 2006-07 in ITA No.3145/Mum/2004 vide order dated 06.09.2016. Hence, we allow this issue of assessee's appeal."

9. In view of the decision of the co-ordinate bench as referred above, the issue in appeal in the case of the assessee is squarely covered by the said decision. Therefore, following the decision of the co-ordinate bench, we direct the Assessing Officer to allow the claim of deduction of the assessee under section 36(1) (viiia) in respect of standard assets. This ground of appeal of the assessee is allowed.

36. In view of the above, as the issue is recurring in nature and the Ld. DR is not able to differentiate the findings of the Coordinate Benches with the facts and law of this year, we do not have any hesitation in following the findings of Coordinate Bench in this year also. **Resultantly, ground no. 6 & 7 raised by the revenue are dismissed.**

37. Ground no. 8 to 10 raised by the revenue pertains to disallowance of bad debts written off on account of credit card business. This issue is recurring in nature and has been decided in favour of assessee as well as other banks also. We observe that facts of this year are similar to the other years decided in favour of assessee. For reference, we are reproducing the decision of Coordinate Bench in assessee's own case as under:-

"GROUND 3: DISALLOWANCE OF BAD DEBTS PERTAINING TO CREDIT CARDS

10. During the course of assessment, the Assessing Officer noticed that assessee has shown bad debt of Rs. 3,97,01,560/- from credit card business as bad debt under section 36(1)(vii) of the Act. On query, the assessee explained that the credit card business is undertaken within the purview of banking licence issued by the Reserve Bank of India and that even debt fall under section 6(2) of Banking Regulations Act and this being part of their banking business or alternatively, even if treated as money lending business, the write off is allowable under section 36(1)(vii) of the Act. The assessee further submitted that section 36(1)(vii) read with section 36(2) provided that any bad debt or part thereof would be allowed as deduction if the same represent money lent in the ordinary course of business of banking or money lending which is carried on by the assessee. However, the Assessing Officer has not agreed with the submission of the assessee. He was of the view that assessee was a banking company and credit card business was different from banking business. The Assessing Officer further stated that credit card business was a payment service and not a business of banking or money lending as defined in the Banking Regulations Act, 1949. After referring to the order passed by the PCIT-2, Mumbai under section 263 in the case of ICICI Bank, the Assessing Officer has disallowed the bad debt claimed pertaining to credit card business of the assessee bank.

11. Aggrieved, assessee filed appeal before the Ld.CIT (A). The Ld.CIT (A) has dismissed the appeal of the assessee.

12. During the course of appellate proceedings before us, the Ld. Counsel submitted that identical issue on similar facts has been adjudicated by the ITAT, Mumbai Benches in the case of ICICI Bank Ltd vide order in ITA No.1112/Mum/2022 for A.Y. 2011-12 vide order dated 14th December, 2022.

13. On the other hand, the Ld. DR supported the orders of lower authorities. 14. With the assistance of Ld. Representatives of the parties, we have gone through the order of the co-ordinate bench in the case of ICICI Bank Limited cited supra. The relevant operating part of the decision is reproduced as under:-

“6. We heard the parties and perused the record. In order to buttress the submission that credit card business is also a part of banking business, the Ld A.R took us through the circulars issued by RBI:-

(a) Circular No.: FSC.BC.120/24.01.011/2000-01 dated May 12, 2001 states that “Credit card debt is an unsecured line of credit.”

(b) Master Circular No.: BOD.No.FSD.BC.16/24.01011/2010-11 dated July 1, 2010 issued on credit card operations states as under with regard to charging of interest on outstanding credit card dues:-

“3. Interest rates and other charges: - Credit card dues are in the nature of non-priority sector personal loans and as such upto June 30, 2010, banks were free to determine the rate of interest on credit card dues

It can be noticed that the RBI itself states that the credit card dues are in the nature of unsecured loans or non-priority sector personal loans. When it is considered as a form of giving “loans”, it cannot be said that the credit card business does not form part of banking business. Hence it is a case of lending money in the ordinary course of business of money lending. Accordingly, it satisfies the condition prescribed u/s 36(2) of the Act and hence the same is allowable as deduction u/s 36(1) (vii) of the Act as “bad debts”, as it is written off in the books of account as bad. Accordingly, we do not find any infirmity in the decision taken by Ld. CIT (A) on this issue.”

15. Respectfully following the decision of co-ordinate bench as referred above, we direct the Assessing Officer to allow the claim of deduction under section 36(1)(vii) read with section 36(2) in respect of bad debts claimed on credit cards.

38. In view of the above, as the issue is recurring in nature and the Ld. DR is not able to differentiate the findings of the Coordinate Benches with the facts and law of this year, we do not have any hesitation in following the findings of Coordinate Bench in this year also. **Resultantly, ground no. 8 to 10 raised by the revenue is dismissed.**

39. Ground no. 11 raised by the revenue pertains to disallowance of interest u/s. 36(1) (ii) in respect of perpetual bond. This issue is recurring in nature and has been decided in favour of assessee as well as other banks also in ITA No. 3215/Mum/2019 in the case of ICICI vs. ACIT. We observe that facts of this year are similar to the other years decided in favour of assessee. For reference, we are reproducing the decision of Coordinate Bench as under:-

“10. Heard both the sides and perused the material on record. The A.O has disallowed the claim of interest made u/s 36(1)(iii) by treating the perpetual bond as equity in nature. In support of his finding the A.O has placed reliance on the observation of the Pr. CIT made in the order u/s 263 in the case of the assessee for A.Y. 2013-14. These observations are as under:

(i) Perpetual bond with no maturity date;

(ii) Right to redeem that assessee not with the Investors;

(iii) Showing in the balance sheet as debt or borrowings.

However, it is observed that A.O has failed to controvert the undisputed fact that assessee has issued innovative perpetual debt instruments (IPDI) which carry a fixed rate of interest. The holder of these instruments had no right in management of the assessee bank. The assessee had paid interest to the bond holder after deducting tax at source. We have also perused the schedule 4 of the balance sheet placed in the paper book wherein at serial no. (vi) Innovative Perpetual Debt Instruments was placed under the head borrowings. The interest payment on these debt instruments was paid before computing profit of the assessee bank. We have also perused the detail of the redemption of perpetual debt instrument made by the assessee placed in the paper book reproduced as under:

Sr. No. Series Allotment date of redemption Principle amount Interest for the period FY. 2009-10

1. DAG06RRB 09.08.2006 09.08.2016 Rs. 233, 00, 00,000 23, 53, 30,000

2. DSP06RRB 13.09.2006 13.09.2016 RS. 550, 00, 00,000 54, 89, 00,000 ITA Nos. 3215 & 3864/Mum/2019 ICICI Bank Ltd. Vs. The ACIT-2(3) (2) 16

3. DJA07RB1 15.01.2007 30.04.2017 Rs. 18, 00, 00,000 1, 79, 63,998

4. DJA08RB1 10.01.2008 30.04.2018 Rs. 500, 00, 00,000 50, 75, 00,000 5. BHSTN7.25% 24.06.2006 31.10.2016 USD 34, 00, 00,000 1,16,68,81,013 2,47,65,45,011

It is further noticed that the assessee had demonstrated from the submission that these debt instruments were also redeemed. We also find that facts of the case of Pepsu Road Transport Corporation vs. CIT 130 ITR 18 (P & H) relied upon by the Id. D.R. are distinguishable from the case of the assessee. In that case the capital was not borrowed but the same was provided by the Government as per the provisions of the Road Transport Corporation Act, 1950 whereas in the case of the assessee bank it had borrowed the money from the lenders. Similarly the fact of the case of Bank of India vs. ACIT vide 122 taxman.com 247 (Mum ITAT) are also distinguishable from the case of the assessee. In that case the revenue had not discussed about the terms on which perpetual bond were issued. Therefore, the issue was remained back to the Id. CIT (A) for fresh adjudication. We have also perused the decision of Kerala Road Transport Corporation vs. ITO 34 TTJ 101 Cochin, ITAT, wherein held that payment of interest was not made to the corporation but it was the payment made to the third parties. In the light of the above facts and circumstances merely that RBI recognizes to treat the said debt instruments as additional Tier/Capital would not change the nature of Innovative Perpetual Debt Instruments which were of the nature of long term borrowings and the interest paid was debited to the profit and loss account. These debt

instruments were also redeemed on different dates as discussed supra in this order, therefore, we don't find any reason to interfere in the decision of Id. CIT(A), accordingly, this ground of appeal of the revenue is dismissed."

40. In view of the above, as the issue is recurring in nature and the Ld. DR is not able to differentiate the findings of the Coordinate Benches with the facts and law of this year, we do not have any hesitation in following the findings of Coordinate Bench in this year also. **Resultantly, ground no. 11 raised by the revenue is dismissed.**

41. **In the result, the ITA No. 3676/Mum/2023 (A.Y.2016-17) filed by the revenue is dismissed and C.O. No. 38/Mum/2024(A.Y.2016-17) filed by the assessee is allowed.**

ITA No. 4057/Mum/2023 (A.Y.2017-18)

ITA No. 569/Mum/2023 (A.Y.2017-18)

42. Ground no. 1 raised by the revenue has already been discussed and dismissed as ground no. 3 vide ITA No. 3676/Mum/2023 for A.Y. 2016-17, as the facts of this year and law applicable is similar. Our findings (supra), applicable mutatis mutandis here also. In the result, ground no. 1 raised by the revenue is dismissed.

43. Ground no. 2 raised by the revenue has already been discussed and dismissed as ground no. 4 vide ITA No. 3676/Mum/2023 for A.Y. 2016-17, as the facts of this year and law applicable is similar. Our findings (supra), applicable mutatis mutandis here also. In the result, ground no. 2 raised by the revenue is dismissed.

44. Ground no. 3 raised by the revenue has already been discussed and dismissed as ground no. 5 vide ITA No. 3676/Mum/2023 for A.Y. 2016-17, as the facts of this year and law applicable is similar. Our findings (supra), applicable mutatis mutandis here also. In the result, ground no. 3 raised by the revenue is dismissed.

45. Ground no. 4 to 6 raised by the revenue has already been discussed and dismissed as ground no. 8 to 10 vide ITA No. 3676/Mum/2023 for A.Y. 2016-17, as the facts of this year and law applicable is similar. Our findings (supra), applicable mutatis mutandis here also. In the result, ground no. 4 to 6 raised by the revenue is dismissed.

46. Ground no. 7 to 8 raised by the revenue has already been discussed and dismissed as ground no. 11 & 12 vide ITA No. 3676/Mum/2023 for A.Y. 2016-17, as the facts of this year and law applicable is similar. Our findings (supra), applicable mutatis mutandis here also. In the result, ground nos. 7 to 8 raised by the revenue is dismissed.

47. In the result the appeal filed by the revenue in ITA No. 4057/Mum/2023 is dismissed.

48. Ground no. 1 raised by the assessee has already been discussed and dismissed as ground no. 2 vide ITA No. 3676/Mum/2023 for A.Y. 2016-17, as the facts of this year and law applicable is similar. Our findings (supra), applicable mutatis mutandis here also. In the result, ground nos. 1 raised by the assessee is allowed.

49. Ground no. 2 raised by the assessee has already been discussed and dismissed as ground no. 6 & 7 vide ITA No. 3676/Mum/2023 for A.Y. 2016-17, as the facts of this year and law applicable is similar. Our findings (supra), applicable mutatis mutandis here also. In the result, ground nos. 2 raised by the assessee is allowed.

50. In the result the appeal filed by the assessee in ITA No. 569/Mum/2023 is allowed.

ITA No. 3677/Mum/2023 (A.Y.2018-19)

ITA No. 570/Mum/2023 (A.Y.2018-19)

51. Ground no. 1, 2 & 3 raised by the revenue has already been discussed and dismissed as ground no. 3, 4 & 5 respectively vide ITA No. 3676/Mum/2023 for A.Y. 2016-17, as the facts of this year and law applicable is similar. Our findings (supra), applicable mutatis mutandis here also. In the result, ground no. 1, 2 & 3 raised by the revenue are dismissed.

52. Ground no. 1 raised by the revenue has already been discussed and dismissed as ground no. 3 vide ITA No. 3676/Mum/2023 for A.Y. 2016-17, as the facts of this year and law applicable is similar. Our findings (supra), applicable mutatis mutandis here also. In the result, ground no. 1 raised by the revenue is dismissed.

53. In the result the appeal filed by the revenue in ITA No. 3677/Mum/2023 is dismissed.

54. Ground no. 1 raised by the assessee has already been discussed and dismissed as ground no. 2 vide ITA No. 3676/Mum/2023 for A.Y. 2016-17, as the facts of this year and law applicable is similar. Our findings (supra), applicable mutatis mutandis here also. In the result, ground nos. 1 raised by the assessee is allowed.

55. Ground no. 2 raised by the assessee has already been discussed and dismissed as ground no. 6 & 7 vide ITA No. 3676/Mum/2023 for A.Y. 2016-17, as the facts of this year and law applicable is similar. Our findings (supra), applicable mutatis mutandis here also. In the result, ground nos. 2 raised by the assessee is allowed.

56. Ground no. 3 raised by the assessee is infructuous as this is an alternative claim raised as substantive claim has already been allowed by Ld. CIT(A) in A.Y. 2017-18 i.e. in the year of grant of interest and not in the year of withdrawal.

57. Ground no. 4 to 6 has not been pressed, therefore dismissed.

58. In the result the appeal filed by the assessee in ITA No. 569/Mum/2023 is allowed.

59. In the net result all the appeals filed by the revenue are dismissed and all the appeals and CO filed by the assessee are allowed.

Order pronounced in the open court on 8th day of August, 2024.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 08/08/2024

Dhananjay, Sr. PS

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai