

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'B' Bench, Hyderabad**

**Before Shri Manjunatha, G. Accountant Member**  
**AND**  
**Shri K. Narasimha Chary, Judicial Member**

आ.अपी.सं / **ITA No.1018/Hyd/2017**  
(निर्धारण वर्ष/Assessment Year: 2012-13)

Andhra Bank Hyderabad PAN:AABCA7375C (Appellant)	Vs.	Dy. C. I. T. Circle 1(1) Hyderabad (Respondent)
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आ.अपी.सं / **ITA No.1230/Hyd/2017**  
(निर्धारण वर्ष/Assessment Year: 2012-13 )

Dy. C. I. T. Circle 1(1) Hyderabad (Appellant)	Vs.	Andhra Bank Hyderabad PAN:AABCA7375C (Respondent)
निर्धारिती द्वारा/Assessee by:		Shri Ananthan, CA
राजस्व द्वारा/Revenue by::		Shri Kumar Pranav, CIT(DR)
सुनवाई की तारीख/Date of hearing:		02/07/2024
घोषणा की तारीख/Pronouncement:		28/08/2024

**आदेश/ORDER**

**Per Manjunatha, G. A.M**

These cross appeals filed by the assessee, as well as the Revenue, are directed against the order dated 16/02/2016 of

the learned CIT (A)-1, Hyderabad and pertains to A.Y.2012-13. Since, facts are identical and issues are common, for the sake of convenience, the appeals filed by the assessee as well as the Revenue are being heard together and are being disposed off by this common order.

2. The assessee has raised the following grounds of appeal in ITA No.1018/Hyd/2017:

*"1. The Order of the Commissioner of Income Tax (Appeals) - 1, Hyderabad dated 16-12-2016 is erroneous and contrary to law and facts of the case.*

*2 The Commissioner of Income tax (Appeals) erred in law in confirming the action of the Assessing Officer wherein he stated that the excess provision unutilized is not required by the assessee and hence, written back Rs.844,33,34,197/- considering it as income.*

*2.1. The Commissioner of income tax (Appeals) failed to appreciate the fact that there is no provision in the Income Tax Act under which such provision can be considered as income.*

*2.2. The Commissioner of Income tax (Appeals) erred in not following the decision of the Hon'ble Tribunal in the Appellant bank's own case for the Assessment year 2011-12.*

*2.3. The Commissioner of Income tax (Appeals) erred in confirming the disallowance by the learned Assessing Officer relying on facts which are not applicable to the issue under appeal.*

*3. The Commissioner of Income tax (Appeals) erred in law in confirming the action of the Assessing Officer in disallowing Rs.265,71,57, 198/- out of deduction of Rs.847,40,27,692/ claimed by the Appellant under Section 36(1)(viii) of the Act stating it to be excess claim towards provision for bad and doubtful debts.*

3.1 *The Commissioner of Income tax (Appeals) ought to have seen that under Section 36(1)(viii) of the Act, amount not exceeding seven and one-half percent of the total income and an amount not exceeding ten per cent of the aggregate average advances made by the rural branches of the Bank is allowable as deduction on account of bad and doubtful debts in computing its total income.*

3.2 *Without prejudice to the above, the CIT(A) failed to appreciate the fact that Assessing Officer erred in considering only Rs.581,68,70,494/- as provision made for bad and doubtful debts made by the Appellant in its books against provision of Rs.785,63,70,494/- made in the books.*

4. *The Commissioner of Income tax (Appeals) erred in law in upholding the action of Assessing Officer in considering Rs.21,21,73,183/- as income, being the amount received under Agriculture Debt Relief from Government of India.*

4.1. *The Commissioner of Income tax (Appeals) failed to appreciate the fact that the amount of Rs.21,21,73,183/- received under Agriculture Debt Waiver Scheme represents only recovery out of balance due to the Appellant by Government and no income accrued to the Appellant by virtue of the said receipt from Government of India. Hence, it is not a Revenue Receipt.*

4.2. *Further, the Commissioner of Income tax (Appeals) failed to appreciate the fact that the aforesaid amount did not represent any write off previously made in the books and hence, no deduction u/s 36(1)(vi) has been claimed by the appellant at any point of time for this amount.*

4.3. *The order of the learned Commissioner of Income tax (Appeals) is based on surmises and conjunctures.*

5 *The Commissioner of Income tax (Appeals) erred in law in upholding the action of Assessing Officer in disallowing Rs.2,06,73,094/- being the amount recovered from Bad Debts Written off which were not allowed as deduction u/s 36(1)(vii).*

5.1 *The Commissioner of Income tax (Appeals) failed to appreciate the fact that unless the deduction is allowed u/s 36(1)(vii), the recovery cannot be taxed u/s 41(4).*

6. *The Commissioner of Income tax (Appeals) erred in law in upholding the action of Assessing Officer in considering Rs.21,97,59,646/- of interest credited by the LIC in leave encashment scheme as income of the appellant.*

6.1. *The Commissioner of Income tax (Appeals) failed to appreciate the fact that when only the net amount of premium paid by the assessee to the LIC i.e. gross amount of premium payable less interest accrued to the assessee from the scheme is allowed as deduction instead of the gross amount of premium payable, addition of the interest amount of Rs.21,97,59,646/- as income is indirectly leading to taxation of the same amount twice.*

6.2. *Without prejudice to the above and alternatively, the amount of Rs.21,97,59,646/ treated as income be allowed as deduction as the same is contributed back to the fund.*

7. *The Commissioner of Income tax (Appeals) erred in law in upholding the action of Assessing Officer in disallowing Rs.2,14,14,040/- u/s 14A of the Act.*

7.1. *The Commissioner of Income tax (Appeals) failed to appreciate the fact that no disallowance can be made u/s 14A since the investments are stock in trade.*

7.2. *Without prejudice to the above, the Commissioner of Income tax (Appeals) failed to appreciate the fact that the Assessing Officer erred in invoking Rule 8D in the absence of any finding that Rs. 14,85,960/- disallowed by the assessee itself is not correct and the assessee has incurred expenditure of more than this amount.*

7.3. *The Commissioner of Income tax (Appeals) failed to appreciate the fact that the learned Assessing Officer has not fulfilled the conditions laid down u/s 14A before invoking the Rule 8D.*

8. *The Commissioner of Income tax (Appeals) erred in law in upholding the action of Assessing Officer in disallowing Rs.166,35,33,701/- being the claim made by the*

*Appellant bank u/s 36(1)(vii) in respect of the bad debts written off by the non-rural branches.*

*8.1. The Commissioner of Income tax (Appeals) failed to appreciate the fact that the debts written off by the non-rural branches are allowable u/s 36(1)(vii). The deduction allowed under Section 36(1)(viia) is on account of rural branch advances and has no application in respect of bad debts written off in non-rural branches.*

*8.2. The Commissioner of Income tax (Appeals) erred in not following the decision of the Hon'ble Supreme Court in this regard.*

*For all of the above and such other grounds as may be urged at the time of hearing it is most respectfully prayed that this Hon'ble Tribunal may be pleased to direct the respondent herein to allow the claims of the Appellant.”*

3. The brief facts of the case are that the appellant is a PSU Bank and engaged in the business of banking. The appellant is governed by the Banking Companies (Regulation Act, 1949) and Regulations from RBI. The appellant filed its return of income for the A.Y 2012-13 on 27.09.2012 declaring total income of Rs.1253,12,47,762/-, which was later revised to Rs.1215,63,87,340/- by filing the revised return on 31.03.2014. The case has been taken up for scrutiny and the assessment has been completed u/s 143(3) of the Act on 12.02.2015 and determined the total income at Rs.3353,64,99,140/-.

4. The assessee carried the matter in appeal before the learned CIT (A) and challenged the additions/ disallowances made by the Assessing Officer. The learned CIT (A) for the reasons

stated in their appellate order dated 16.12.2016 partly allowed the appeal filed by the assessee.

5. Aggrieved by the order of the learned CIT (A), the assessee, as well as the Revenue, is in appeal before the Tribunal.

6. The first issue that came up for our consideration from Ground No.2 of assessee's appeal is addition of opening balance of provision for bad and doubtful debts u/s 36(1)(viia) of the I.T. Act, 1961 at Rs.844,33,34,197/-. During the course of assesment proceedings, the Assessing Officer noticed that the opening balance of the provision for rural bad and doubtful debts u/s 36(1)(viia) was at Rs.690,97,31,364/- and the amount of rural bad debts written off for the A.Y 2012-13 was Rs.3,06,93,495/-. The Assessing Officer further noted that the deduction u/s 36(1)(viia) of the Act was allowable in respect of any provision for bad and doubtful debts for the amounts not exceeding 7 ½ % of the total income and 10% of the aggregate average advances made by the Rural Branches of the Bank. As per the above section, deduction was available every year depending upon the aggregate average advances made by the Branches at the end of every year and on the total income of that year. The Assessing Officer further noted that the assessee is making excess provision u/s 36(1)(viia) every year, however, claiming deduction towards bad debts at very low amount and continuing unutilized provisions for unlimited period. Therefore, by following AS-29, which deals with provision

and liabilities, has made addition towards excess provision in opening balance of provision for bad and doubtful debts u/s 36(1)(viia) for Rs.844,33,34,197/-.

7. On appeal, the learned CIT (A) confirmed the addition made by the Assessing Officer.

8. The learned Counsel for the assessee submitted that this issue is covered in favour of the assessee by the decision of the ITAT, Hyderabad Benches in appellant's own case for the A.Y 2011-12 in ITA No.42/Hyd/2015 and ITA No.31/Hyd/2015 dated 24.04.2015, where an identical issue has been considered by the Tribunal and after considering the relevant provisions of the Act, held that there is no provision under the Act to tax unutilized amount of provision u/s 36(1)(viia) of the Act for bad and doubtful debts. Therefore, he submitted that the additions made by the Assessing Officer should be deleted.

9. The learned DR, on the other hand, supporting the order of the learned CIT (A) submitted that the appellant is keep on making provision every year, but while claiming deduction towards rural debt write off, very meagre amount has been claimed by adjusting against the provision. The appellant is carrying forward unutilized provision to subsequent years for unlimited period without there being any actual utilization. Therefore, the Assessing Officer and the learned CIT (A) by

following AS-29 which clearly deals with provision for liabilities and subsequent utilization has taxed unutilized provision for bad and doubtful debts and their order should be upheld.

10. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. As per provisions of section 36(1)(viiia) of the Act, provision for bad and doubtful debt is made for the amounts not exceeding 7 ½ % of the total income and 10% of the aggregate average advances made by the rural branches of a Bank in computing total income. Deduction u/s 36(1)(viiia) is not governed by provisions made in the books of account of the assessee, but purely on the basis of statutory provision as contained u/s 36(1)(viiia) of the I.T. Act, 1961. The assessee is making provision for bad and doubtful debts accounts as per prudential norms and guidelines issued by the RBI. However, while computing total income, deduction has been claimed as per section 36(1)(viiia) of the Act. Therefore, in the process, there is unutilized provision for bad and doubtful accounts in the books of account of the assessee. However, if any advance/loan given by rural branches become bad, such advances are to be debited to such provision account to the extent of balance available and excess, if any, should be debited to the P&L Account. In case of excess provision available as per books, section 36(1)(viiia) did not have any time limit for utilization of such provision. If no bad debt arises on account of rural advances, provision created u/s 36(1)(viiia) is to

be carried forward from year to year and whenever bad debt on account of rural advances arises, such bad debts are to be set off against the balance in provision made for rural advances/loan, but cannot be claimed/allowed as deduction by debiting to P&L account. In the present case, provision made as per section 36(1)(viia) is more, whereas write off of actual bad debt in respect of rural advance is less. Thus, there is excess provision u/s 36(1)(viia) and the same needs to be carried forward to the subsequent A.Ys. Therefore, in our considered view, the Assessing Officer and the learned CIT (A) erred in making addition towards the amount lying in provision for bad and doubtful account u/s 36(1)(viia) of the Act for Rs.844,33,34,197/-.

11. We, further note that this issue is squarely covered in favour of the assessee by the decision of the ITAT, Hyderabad Benches in appellant's own case in ITA Nos.42 and 31/Hyd/2015 dated 24.04.2015 for the A.Y 2011-12, where under identical set of facts, the Tribunal held as under:

*21. Having regard to the rival contentions, we find that the ground on which the AO has made the disallowances is different from the ground on which the CIT (A) has confirmed the addition. Thus, it is seen that there is no appreciation of facts by the CIT (A). Therefore, the order of the CIT (A) is set aside. Coming to the order of the AO, we find that the assessee has made a provision u/s 36(1)(viia) in accordance with the provisions of the Act and if the assessee is not able to set off the provisions during the relevant A.Y, it is entitled to carry it forward subject to the maximum provision allowed under section 36(1)(viia) and there is no time limit fixed for such utilization. There is no provision in the Act to bring the unutilized provision to tax during the year. The reliance of the AO on AS 29 is also misplaced. In view of the same, we set*

*aside the order of the AO also on this issue and the assessee's ground of appeal is allowed.”*

12. In view of the matter and by following the decision of the Coordinate Bench of Hyderabad for A.Y 2011-12, we direct the Assessing Officer to delete the addition made towards opening balance of provision of bad and doubtful debt u/s 36(1)(viia) of the I.T. Act, 1961.

13. The next issue that came up for our consideration from Ground No.3.1 of assessee's appeal is disallowance of bad debts u/s 36(1)(viia) for Rs.265,71,57,198/-. The Assessing Officer noticed from the revised computation of income that the provision for bad and doubtful debts u/s 36(1)(viia) shown at Rs.847,40,27,692/-. However, as per the balance sheet it was claimed at Rs.581,68,70,494/-. The Assessing Officer by following the Board's Circular No.17/2018 dated 26.11.2018 coupled with provisions of section 36(2)(v) of the Act, restricted the provision for bad and doubtful debts u/s 36(1)(viia) to the extent of actual provision created in the books of account. Therefore, the excess provision claimed in the revised computation of total income to the extent of Rs.265,71,57,198/- (Rs.847,40,27,692 – Rs.581,68,70,494) is disallowed and added back to the total income.

14. On appeal, the learned CIT (A) confirmed the addition made by the Assessing Officer by following the decision of the

ITAT Hyderabad Benches in appellant's own case for A.Y 2007-08 in ITA No.167/Hyd/2014 dated 29.5.2014.

15. The learned Counsel for the assessee submitted that this issue is covered against the assessee by the decision of the ITAT, Hyderabad Benches in appellant's own case for the A.Y 2007-08. However, he further submitted that the alternative ground taken by the assessee regarding allowing deduction as per provision accrued and debited to P&L Account of Rs.785,63,70,495/- should be allowed. Therefore, he submitted that to verify the facts, the matter should be set aside to the file of the Assessing Officer.

16. The learned DR, on the other hand, supporting the order of the learned CIT (A) submitted that the issue is squarely covered in favour of the Revenue by the decision of the ITAT Hyderabad Benches in appellant's own case for the A.Y 2007-08. The learned CIT (A) by following the order of the ITAT, has upheld the addition made by the Assessing Officer and thus, the order of the learned CIT (A) should be sustained.

17. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. As regards Ground No.3.1 of assessee's appeal with regard to additions towards disallowance of excess deduction claimed u/s 36(1)(viiia) for Rs.265,71,57,198/-, we find that the issue is

squarely covered against the assessee by the decision of the ITAT Hyderabad Benches in appellant's own case for the A.Y 2007-08 in ITA No.167/Hyd/2014. The Coordinate Bench of the Tribunal after considering relevant facts and by following certain judicial precedents held as under:

28. During the year under consideration, the AO noted that assessee made a provision for bad and doubtful debts Rs. 97,48,84,948/- and also made a provision of Rs. 49,90,24,000/- towards standard assets. It was noticed that while claiming the deduction u/s 36(1)(viiia) of the Act, the assessee had claimed a sum total of provision for bad and doubtful debts and provision for standard assets i.e. Rs. 147,39,08,948/-. The assessee revised the return on 25/03/2009 claiming a total income of Rs. 470,31,79,129/-, which is the same figure as in the original return. However, in the computation statement, it claimed higher deduction u/s 36(1)(viiia) of the Act i.e. a deduction of Rs. 334,43,19,444/- which is the maximum deduction allowable under the head provision for doubtful debts as per the computation provided in the Act. Even though assessee claimed a higher deduction u/s 36(1)(viiia) in the computation sheet enclosed with the return, its reflection is not seen in the total income figure reported in the revised return. Therefore, the claim of higher deduction in the computation sheet enclosed to the revised return was ignored on technical grounds by the AO. He also held that even on the merits of the case, the claim of maximum permissible deduction as per formula in section 36(1)(viiia) is related to the provision made in the books of account, since without making any provision in the books of account, the assessee cannot claim the maximum permissible deduction. Therefore, the AO rejected the computation of income annexed to the revised return both on technical grounds and merits of the case. In view of the above observations, the AO disallowed Rs. 49,90,24,000/- on account of provision for standard assets u/s 36(1)(viiia) by noting that the ITAT, Hyderabad upheld the action of the AO on this issue vide its order dated 22/05/2009 in respect of ATs 2001-02 to 2004-05 in assessee's own case.

29. On appeal, before the CIT(A) the assessee contended that the AO ought to have seen the deduction u/s 36(1)(viiia) allowable on account of bad and doubtful debts to the extent of seven & one half percent of the total income and an amount not exceeding 10% of the aggregate average advances made by rural branches of a bank in computing its total income, irrespective of the provision made in its books of account and therefore the deduction for bad and doubtful debts of Rs. 334,43,19,444/- should have been allowed instead of Rs. 97,48,84,948/- while completing the assessment. The assessee relied on Hon'ble Bangalore Bench of ITAT in the case of Syndicate Bank Vs. DCIT, 78 ITD 103 which has been applied in the case of Vijaya Bank by the same bench of ITAT and similar view taken by the Hon'ble Karnataka High Court in the case of DCIT Vs. Karnataka Bank Ltd., 175 Taxman 325.

30. After considering the submissions of the assessee, the CIT(A) discussed and examined the issue with CBDT Instruction No.17/2008, case laws relied upon by the assessee and with the provisions of section 36(1)(viiia). Thereafter, the CIT(A) following the decision of the Hon'ble P&H High Court in the case of State Bank of Patiala Vs. CIT, 272 ITR 54 held that the AO is justified in allowing the provision made of Rs. 97,48,84,948 u/s 36(1)(viiia) of the Act and disallowing the claim of Rs. 334,43,19,444/-.

31. Aggrieved, the assessee is in appeal before us.

32. The learned counsel for the assessee relied upon the following cases in support of assessee's case:

1. Syndicate Bank Vs. DCIT [2001] 78 ITD 103 (Bang.)
2. ACIT Vs. Vijaya Bank in ITA Nos. 150 & 151/Bang/2004 order dt. 9th June, 2006.

However, the learned counsel fairly admitted that the ITAT "A" Bench in the case of Syndicate Bank for AY 2006-07 and 2007-08 in ITA Nos. 668 & 669 and 708 & 709/Bang/2010, order dated

19/06/2013, did not allow the issue consequent to the decision of the Hon'ble P&H High Court in the case of State Bank of Patiala, 272 ITR 54.

33. The learned DR, on the other hand, relied on the orders of the Revenue authorities.

34. We have considered the rival submissions and perused the record. In fact this is the first year in which the issue has arisen as the provision made by the assessee in its books of account is less than the amount allowable u/s 36(1)(viiia) of the IT Act. The learned CIT(A) after considering the provisions of law as well as the actual provision made by the assessee for bad and doubtful debts, ultimately concluded vide paras 6.9 and 6.10 in his order as under:

"6.9 If the intention of the legislature is that deduction should not be linked to the provision made in the accounts, the language of the section will not have the wording 'in respect of any provision for bad and doubtful debts made', instead it would have stated that the scheduled bank would be entitled to a deduction of an amount which is an aggregate of 7.5% of the total income and 10% of the aggregate average advances made by the rural branches without reference to any provision. Therefore, I am of the opinion that any provision in the section refers to any provision made in the accounts of the assessee bank and debited the amount of such debt or part of the debt in that previous year to the provision for bad and doubtful debts account made under that clause. Reliance is placed on the decision of the Hon'ble High Court of P&H in the case of State Bank of Patiala Vs. CIT 272 ITR 54 where it has been held that it is necessary to make a provision for bad and doubtful debts in the account books in the same previous year in which such provision is claimed as deduction u/s 36(1)(viiia). Therefore, it is held that deduction is available only to the extent of the provision made in the books and accordingly the deduction for provisions of bad and doubtful debts as computed u/s 36(1)(viiia) is restricted to the amount provided by the appellant in its books and the AO is justified in allowing the provision made of Rs. 97,48,84,948/- u/s 36(1)(viiia) of IT Act and disallowing the claim of Rs. 334,43,19,444/-.

6.10 However, if the returned income is taken at Rs. 288,27,68,633/- as directed in para 5.5 then the AO will have to add back the amount of Rs. 230,94,34,490 (Rs. 334,43,19,444 - Rs. 97,48,84,946) in the computation."

35. Since the CIT(A) followed the decision of the Hon'ble High Court of P&H in case of State Bank of Patiala (supra), we do not find any reason to differ from the order of the CIT(A). Moreover, the coordinate bench of ITAT, Bangalore in case of Syndicate Bank (supra) has analysed the issue and concluded as under:

"48. As far as Gr.No.3 raised by the Revenue in the original grounds of appeal is concerned, the AO disallowed the entire claim for deduction of Rs.503,49,00,000/- on the following ground.

a) The provision for bad and doubtful debts in respect of rural advances was created by debit to profit and loss account of only a sum of Rs.295,55,54,682 whereas the claim for deduction actually made u/s.36(1)(viiia) of the Act was a sum of Rs.503,49,00,000/-. The AO was of the view that as laid down by the Hon'ble Punjab and Haryana High Court in the case of State Bank of Patiala Vs. CIT 272 ITR 53 (P & H), claim for deduction u/s.36(1)(viiia) of the Act cannot be greater than the amount debited to the profit and loss account as provision. The AO therefore proposed to disallow a sum of Rs.207,93,45,318 (Difference between Rs.503,49,00,000 and Rs.295,55,54,682).

b) Apart from the above the AO also disallowed the sum of Rs.295,55,54,682 out of Rs.503,49,00,000 claimed as deduction u/s.36(1)(viiia) of the Act. The reasons given for disallowing claim for deduction of Rs.295,55,54,682/- u/s.36(1)(viiia) of the Act by the AO was that there was already credit balance in the PBDD as on 1.04.2005 Balance B/F was Rs. 912,57,47,169. According

to the AO 10% of AARA can be created as provision each year provided there is no brought forward balance as on the first day of the previous year in the PBDD account. 10% of the AARA as admitted by the Assessee as per revised census of 2001 was 352.53 crores. According to the AO even if Bad debts written off of Rs.179,21,88,992 is reduced still the balance in the PBDD account was Rs.733,35,58,177/-. Since the balance so available in PBDD account was more than 10% of AARA, the AO held that deduction on the basis of new provision of Rs.295,55,54,682/- cannot be allowed. In this regard the AO referred to the contention of the Assessee which was to the effect that in each year the Assessee can create 10% of AARA and concluded that the expression "not exceeding ten percent of the aggregate average advances" used in Sec.36(1)(vii) of the Act cannot mean that provision can be created each year irrespective of the available balance in the PBDD account. The AO also referred to a situation where there is no claim for bad debts in a year even then the Assessee will be entitled to claim deduction by way of PBDD which according to the AO would not be the intention of the legislature. The AO thus refused to allow the claim of the Assessee for deduction of 10% of AARA.

49. The CIT(A) deleted the addition made by the AO by following the decision of the decision of the ITAT in Assessee's own case reported in 78 ITD 103 wherein it was held that irrespective of the debit to the profit and loss account on account of provision for bad and doubtful debts (PBDD), an Assessee is entitled to 10% of the AARA as deduction u/s.36(1)(vii) of the Act. The relevant observations of the Tribunal in the aforesaid decision was as follows:

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

50. In the appeal before the Tribunal, in Ground No.3 of the original grounds of appeal, the Revenue has challenged the order of CIT(A) in so far as it relates to the deletion of a sum of Rs.207,83,45,338 which is the difference between Rs.503,49,00,000 and Rs.295,55,54,682. The learned DR relied on the decision of the ITAT Bangalore Bench in the case of Canara Bank in ITA No.58/Bang/2004 dated 9.6.2006. In the aforesaid decision this Bench considered the decision of the ITAT in the case of Syndicate Bank 78 ITD 103(Bang) and the decision of the Hon'ble Punjab and Haryana High Court in the case of State Bank of Patiala (supra) and held that the decision rendered by the Hon'ble High Court has to be followed. The above decision is the decision brought to our notice on the issue rendered after the decision in Assessee's own case. Judicial discipline demands that we follow the later decision which has considered both the decisions on the issue. We therefore respectfully following the decision of the Tribunal in the case of Canara Bank (supra), allow Gr.No.3 raised by the Revenue and hold that disallowance to the extent of Rs.207,83,45,338/- be restored. Thus Gr.No.3 raised by the revenue is allowed."

36. Respectfully following the principles laid down as above, we uphold the order of the CIT(A) and reject the assessee's ground.

18. In this view of the matter and by following the decision of the Hyderabad Bench of the ITAT in the appellant's own case,

we are inclined to uphold the findings of the learned CIT (A) and reject the ground taken by the assessee on this issue.

19. In so far as the alternative ground taken by the assessee in light of actual provision for bad and doubtful debts made in its books of account, we find that the learned Counsel for the assessee submitted that the learned CIT (A) erred in considering an amount of Rs.581,68,70,494/- as provision made for bad and doubtful debts as against the actual provision for bad and doubtful debts made by the appellant in its books of account for Rs.785,63,70,494/-. The facts are not clear. The Assessing Officer observed that as per note on accounts under Schedule 18 at point 10.1 on page 81 of the Annual Report, it was stated that the amount claimed as per the balance sheet is Rs.581.68 crores whereas the appellant claims that it has made a provision for Rs.785.63 crores. The facts are not clear and needs further verification from the Assessing Officer. Therefore, we set aside the alternative ground taken by the assessee in Ground No.3.2 of grounds of appeal to the file of the Assessing Officer for the limited purpose of verifying the claim of the assessee and decide the issue in accordance with law.

20. The next issue that came up for our consideration from Ground No.4 of assessee's appeal is addition towards amounts received under agricultural debt relief scheme for Rs.21,21,73,183/-.

21. During the financial year 2007-08, the Govt. of India has formulated a scheme called agricultural rural debt relief scheme 2008, where govt. has agreed to pass on relief to the farmers. In terms of the above scheme, appellant claims amount received from Govt. of India towards debt relief passed on to the farmers for Rs.151,80,40,961/-. Out of the same, the appellant received Rs.130,58,67,778/- during the financial year 2010-11. The balance amount of Rs.21,21,73,183/- was shown as amount receivable from Govt. of India as on 1/4/2011 and during the financial year 2011-12 relevant to A.Y 2012-13, the appellant had received an amount of Rs.21,21,73,183/-, but not credited to P&L Account. The Assessing Officer made addition of Rs.21,21,73,183/- on the ground that the recovery or grant from state or central govt. for the amount written off previously towards debt waiver scheme should be treated as income by crediting the same to the P&L Account.

22. On appeal, the learned CIT (A) confirmed the addition made by the Assessing Officer.

23. The learned Counsel for the assessee submitted that the learned CIT (A) erred in sustaining the addition made towards the amount received from Govt. of India towards debt waiver scheme without appreciating the fact that the appellant did not claim deduction towards any write off of said debts previously for

any A.Ys. Therefore, when the appellant has not claimed deduction towards bad debts towards the amount received from Govt. of India for debt waiver scheme, the same cannot be taxed when the amount is received from the Govt. of India. Therefore, he submitted that the addition made by the Assessing Officer should be deleted.

24. The learned DR, on the other hand, supporting the orders of the learned CIT (A) submitted that any debt relief scheme provided by the Govt. are compensatory in nature to allow the benefit to the Banks in respect of write off loans and advances given to farmers which are became bad and doubtful debts. Therefore, once the scheme itself says that the Govt. of India has given relief to Banks on account of loans and advances given to farmers, the appellant cannot claim that it has not claimed deduction towards bad debts in respect said debts in earlier A.Ys. Therefore, he submitted that the amount received from the Govt. of India towards debt waiver scheme is liable for tax in the hands of the assessee as its income and thus, the Assessing Officer and the learned CIT (A) has rightly made addition, and their order should be upheld.

25. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. Admittedly, the Govt. of India has formulated a scheme called agricultural rural debt waiver relief scheme 2008. Under

the said scheme, the appellant has received sum of Rs.21,21,73,183/- from Govt. of India as compensation for waiver of loans given to farmers. In the normal understanding of any person, any amount received from the State or Central Govt. in the form of a grant to compensate any person should be in the nature income. Generally, debt waiver scheme is given by the State or Central Govt. considering the necessity of providing such scheme depending upon the Bankers inability to recovery loan from farmers and such schemes are provided considering the nature of loans, the outstanding period of loans in the books of account of any Bank. In other words, generally debt waiver scheme is provided in a situation where the Banks are unable to recover loans after a long period and the Banks have written of the said debts in their books of account. In the present case, the appellant bank has not provided the scheme document to verify the terms & conditions of the scheme. The appellant claims that it has not claimed deduction towards loans & advances given to farmers as bad debts in earlier years which represent the amount received from Govt. of India towards loan waiver scheme. In case the appellant did not claim deduction on write off the loans and advances as bad debt in earlier A. Ys, then the recovery of said loans either from the borrowers or from any state or central govt. under the scheme of debt waiver, cannot be taxed as income, because the appellant has not claimed any deduction towards said loans and advances while computing total income. To this extent, we agree with the arguments advanced by the learned

Counsel for the assessee. But facts need to be verified with reference to the books of account of the assessee and the scheme document provided by the Govt. of India. Therefore, we set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to verify the claim of the assessee in light of agricultural rural debt relief scheme 2008 formulated by Govt. of India and also claim of the assessee that it has not taken any benefit by claiming deduction towards bad and doubtful debts on loans and advances given to farmers in earlier A.Ys.

26. The next issue that came up for our consideration from Ground No.5 of assessee's appeal is with regard to the recovery from bad debts written off amounting to Rs.2,06,73,094/-. The Assessing Officer noticed that the appellant has recovered an amount of Rs.37,17,10,951/- as recovery from rural and non-rural branches out of bad debts written off and claimed as deduction which include an amount of Rs.2,06,73,094/- being the amount recovered from bad debts written off which were not allowed as deduction u/s 36(1)(vii) of the I.T. Act, 1961. The appellant claims that unless deduction is claimed u/s 36(1)(vii), the recovery cannot be taxed u/s 41(4) of the I.T. Act, 1961. The Assessing Officer however, was not convinced with the explanation furnished by the assessee and according to the Assessing Officer, the appellant could not file relevant evidence to prove that it has not claimed deduction towards write off bad and doubtful debts to the extent of

Rs.2,06,73,094/- which represent the amount recovered out of bad debts written off during the impugned A.Y.

27. The learned Counsel for the assessee submitted that the appellant has placed all evidence including the relevant statement of total income from A.Y 2001-02 to 2004-05 and argued that the recovery from debts written off from the above period to the extent of 2,06,73,094/-, was neither claimed nor allowed as deduction. Therefore, he submitted that the matter may be set aside to the file of the Assessing Officer for verification and decide the issue in accordance with law.

28. The learned DR fairly agreed that this issue may be set aside to the file of the Assessing Officer for further verification and to decide the issue in accordance with law.

29. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The appellant claims that it has recovered Rs.2,06,73,094/- from bad debt account in respect of the period from 2001-02 to 2004-05, but the same was not claimed nor allowed as deduction in above A.Ys. If the claim of the assessee is correct that the deduction is not allowed u/s 36(1)(vii), then recovery from bad debts written off cannot be taxed u/s 41(4) of the I.T. Act, 1961. The facts need to be verified to ascertain the claim of the assessee that it has not claimed deduction towards

bad debts when the provision was made for the A.Y 2000-01 to 2004-05. Therefore, we set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to verify the claim of the assessee and decide the issue in accordance with law.

30. The next issue that came up for our consideration from Ground No.6 of assessee's appeal is addition towards accrued interest on contribution made to LIC towards leave encashment scheme for Rs.21,97,59,646/-. The appellant has entered into a contract with LIC to create fund for leave encashment scheme of employees of the Banks. As per the scheme, the appellant contribute the amount towards the scheme on the basis of actuarial valuation towards leave encashment liability of employees and the LIC maintains the fund meant for group leave encashment scheme. During the financial year 2011-12, as per P&L Account, the appellant has debited Rs.39,30,20,910/- as expenses towards encashment of leave and claimed that the said amount has been paid to LIC towards group leave encashment scheme. The Assessing Officer further noted that as per the LIC document, the actual payment to employees during the year was Rs.32,69,687,301/-. Thus, the Assessing Officer opined that the appellant has made an excess contribution of Rs.6,60,52,609/-. The Assessing Officer further noted that the appellant has received interest on leave encashment fund from LIC for Rs.21,97,59,646/-, but the same has not been offered to tax. Therefore, the Assessing Officer by taking note of relevant

facts including the provisions of section 36(1)(v) r.w.s. 43B(f), disallowed a sum of Rs.6,60,52,609/- towards contribution to fund and also made addition towards interest income of Rs.21,97,59,646/- credited by the LIC.

31. On appeal, the learned CIT (A) deleted the addition made by the Assessing Officer towards excess contribution of Rs.6,60,52,609/- by following the decision of the ITAT Hyderabad Benches in appellant's own case for A.Y 2008-09 and 2010-11, but sustained addition made by the Assessing Officer towards interest credited by LIC on the ground that interest received from LIC is taxable as income of the appellant.

32. The learned Counsel for the assessee submitted that the learned CIT (A) is erred in upholding the addition made by the Assessing Officer towards interest credited by the LIC on leave encashment scheme account as income of the appellant without appreciating the fact that when the appellant has paid net premium to the LIC i.e. gross amount of premium payable, less interest accrued to the assessee from the scheme, then interest accrued on said fund partakes the nature of contribution towards leave encashment scheme and same needs to be allowed as deduction. The learned Counsel for the assessee further submitted that without prejudice to the above, alternatively interest credited by the LIC should be treated as contribution

back to the fund towards leave entitlement of the employees of the appellant Bank.

33. The learned DR, on the other hand, supporting the order of the learned CIT (A) submitted that the interest received by the appellant towards group leave encashment scheme should be offered to tax as income of the appellant. The contribution, if any, to the scheme should be paid on actuarial valuation. Therefore, the argument of the assessee that interest credited by LIC partake the nature of contribution is incorrect. Therefore, he submitted that the addition made by the Assessing Officer and sustained by the learned CIT (A) should be upheld.

34. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. Payment towards leave encashment is deductible on actual payment basis in terms of 43B(f) of the Act, and further, contribution to any fund maintained by the assessee with 3<sup>rd</sup> service providers like LIC should be allowed on actuarial valuation basis. Further, any income including interest accrued on such contribution should be in the nature of income of either assessee or the fund. In case, the fund has separately assessed to tax, the interest credited by Banks should be considered in the hands of the fund and taxability of said interest income should be examined in light of any exemption provided to the said fund under the I.T. Act, 1961. If there is any exemption, then it cannot

be taxed in the hands of the fund. In case, the appellant is maintaining the fund and there is no separate entity as such, then interest accrued on said fund would definitely become income of the appellant. Therefore, the issue of contribution to fund towards leave encashment and interest credited by LIC on said fund needs to be separately addressed.

35. As regards contribution to group leave encashment fund, the appellant claims that it has contributed sum of Rs.39,30,20,910/- and said contribution is based on actuarial valuation of leave encashment liability. If the claim of the assessee is correct, then deduction should be allowed towards actual contribution towards fund irrespective of fact that actual disbursement of said fund is less or more. Therefore, to this extent, we do not agree with the Assessing Officer and thus, the findings given by the learned CIT (A) to delete addition of Rs.6,60,52,609/- towards contribution to LIC group leave encashment scheme is upheld.

36. In so far as the interest credited by LIC is concerned, there is no dispute with regard to the fact that LIC credited Rs.21,97,59,646/- as interest towards said fund. Interest income is taxable. There is no dispute on this position. The assessee claims that it has contributed net amount after deducting interest accrued on said fund and thus, interest credited by LIC on said fund partakes the nature of contribution. Although, we may not

appreciate the method of accounting followed by the assessee on this aspect, but going by the substance of the assessee, if the claim of the assessee is correct that the actuarial valuation of contribution to said fund is higher and it has contributed only net amount after reducing interest accrued on said fund and credited by LIC, then separate addition cannot be made towards interest credited by the LIC. In case, actuarial valuation of contribution to said fund is fully debited by the assessee into P&L Account i.e. Rs.39,30,20,910/-, then interest income of Rs.21,97,59,646/- should be taxed separately. Facts need to be verified in light of the claim of the assessee. Therefore, we set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to verify the claim of the assessee and decide the issue in accordance with our findings given herein above.

37. The next issue that came up for our consideration from Ground No.7 of assessee's appeal is addition towards disallowance u/s 14A r.w.rule 8D of I.T. Rules, 1962. During the financial year relevant to A.Y 2012-13, the appellant has earned dividend income of Rs.8,56,70,661/- and claimed exempt u/s 10(34) of the I.T. Act, 1961. The assessee has made Suo motto disallowance of expenditure relatable to exempt income of Rs.14,85,960/- u/s 14A of the I.T. Act, 1961. The Assessing Officer did not accept the disallowance of expenditure computed by the assessee and according to the Assessing Officer, the disallowance contemplated u/s 14A of the I.T. Act, 1961 should

be computed in terms of prescribed procedure provided under Rule 8D of I.T. Rules, 1962. Therefore, by taking note of relevant facts, has computed disallowance u/s 14A of the Act for Rs.2,14,14,040/- @ 0.5% on average value of investment.

38. On appeal, the learned CIT (A) sustained the additions made by the Assessing Officer.

39. The learned Counsel for the assessee submitted that the investments by any bank in shares and securities are in the nature of stock-in-trade and further investment in securities is part of business activities of the assessee and thus, there cannot be any disallowance towards expenditure u/s 14A r.w.r 8D of IT Rules, 1962. The learned Counsel for the assessee further submitted that this is squarely covered in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of Maxopp Investments Ltd vs. CIT reported in (2018) 402 ITR 640 (S.C). He, therefore, submitted that addition made by the AO should be deleted.

40. The learned DR, on the other hand, supporting order of the learned CIT (A) submitted that this issue is covered in favour of the Department by the decision of the ITAT, in appellant's own case for the earlier A.Ys, where the Tribunal upheld computation of disallowances made by the Assessing

Officer @ 2% exempt income. Therefore, the order of the learned CIT (A) should be upheld.

41. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The assessee has earned dividend income of Rs.8,56,70,661/- and claimed exempt u/s 10(34) of the I.T. Act, 1961. The assessee had also made Suo motto disallowance u/s 14A of the Act for Rs.14,85,960/-. The Assessing Officer did not accept disallowances computed by the assessee and further applied Rule 8D of IT Rules, 1962 and computed total disallowance of Rs.2,14,14,040/- under Rule 8D(2)(iii) by applying 0.5% of average value of investment. The assessee contended that the shares held by the Bank in the ordinary course of its business is in the nature of stock-in-trade and any profit derived from said activity is assessable under income from business/profession and thus, question of invoking provisions of section 14A r.w.r 8D of IT Rules, 1962 to compute disallowances of expenses relatable to exempt income does not arise.

42. We have gone through the reasons given by the Assessing Officer and the learned CIT (A) to uphold the addition towards disallowance of expenditure u/s 14A of the Act, r.w.r 8D of IT Rules, 1962, in light of argument of the learned Counsel for the assessee along with certain judicial precedents, including the decision of the Hon'ble Supreme Court in the case of Maxopp

Investments Ltd vs. CIT (Supra). The Hon'ble Supreme Court has discussed this issue at length in the case of Maxopp Investments Ltd vs. CIT (Supra) in Paras 36 to 41 and more particularly in Para No.39, where it is clearly discussed the issue of applicability of provisions of section 14A r.w.r 8D in case of dividend income earned by any assessee on investment held as stock-in-trade. The Hon'ble Supreme Court after considering relevant facts held that in those cases where shares are held as stock-in-trade, the main purpose is to trade in those shares and earn profits therefrom. However, we are not concerned with those profits which would naturally be treated as income under the head profits and gain from business and profession. What happens is that in the process when the shares are held as stock-in-trade, certain dividend income is also earned, though incidentally which is also income. However, by virtue of section 10(34) of the I.T. Act, 1961, this dividend income is not to be included in the total income and is exempt from tax. This triggers the applicability of section 14A of the Act which is based on the theory of apportionment of expenditure between taxable and non-taxable income as held in Walfort Shares and Stock vs. CIT(Supra). Therefore, to that extent depending upon facts of each case, the expenditure incurred in acquiring those shares will have to be apportioned. The sum and substance of the findings of the Hon'ble Supreme Court is that, once there is a dividend income from shares held as stock-in-trade which is claimed as exempt by virtue of section 10(34) of the I.T. Act, 1961, then the expenditure incurred relating to said

income should be apportioned. For better understanding, the relevant finding of the Hon'ble Supreme Court is reproduced hereunder:

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

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

*38) From this, Punjab and Haryana High Court pointed out that this circular carves out a distinction between ‘stock-in-trade’ and ‘investment’ and provides that if the motive behind purchase and sale of shares is to earn profit, then the same would be treated as trading profit and if the object is to derive income by way of dividend then the profit would be said to have accrued from investment. To this extent, the High Court may be correct. At the same time, we do not agree with the test of dominant intention applied by the Punjab and Haryana High Court, which we*

*have already discarded. In that event, the question is as to on what basis those cases are to be decided where the shares of other companies are purchased by the assessee as 'stock-in-trade' and not as 'investment'. We proceed to discuss this aspect hereinafter.*

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

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

*therefore, different from the case like Maxopp Investment Ltd. where the assessee would continue to hold those shares as it wants to retain control over the investee company. In that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee. In contrast, where the shares are held as stock-in-trade, this may not be necessarily a situation. The main purpose is to liquidate those shares whenever the share price goes up in order to earn profits. In the result, the appeals filed by the Revenue challenging the judgment of the Punjab and Haryana High Court in State Bank of Patiala also fail, though law in this respect has been clarified hereinabove.*

*41) Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that 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, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO.”*

43. In the present case, the assessee contended that although the Hon'ble Supreme Court upheld the theory of apportionment of expenditure towards taxable and non-taxable income, but said findings is in the context of facts of the case of Maxopp Investments Ltd vs. CIT (Supra), whereas in Para 40 of the said judgment, it has upheld the decision of the Hon'ble Punjab & Haryana High Court in the case of State Bank Patiala vs. CIT(supra), where the ratio was that provisions of section 14A

r.w.r 8D is not applicable when shares are held as stock-in-trade by a Bank. Although, the Hon'ble Supreme Court has upheld the decision of the Hon'ble Punjab & Haryana High Court and applicability of section 14A r.w.r 8D and the Assessing Officer has applied the provisions of section 14A and restricted the disallowance to the amount which was claimed as exempt, however, the learned CIT (A) disallowed the entire deduction of expenditure. That view of the learned CIT (A) was clearly untenable as rightly set aside by the ITAT. Therefore, on fact, Punjab & Haryana High Court has arrived at a correct conclusion by affirming the view of the ITAT. In other words, even in case before the Hon'ble Punjab & Haryana High Court, the issue was applicability of provisions of section 14A r.w.r 8D of the I.T. Act, 1961 and the same has been affirmed by the Hon'ble Supreme Court. The appellant claims that in view of the discussion of the Hon'ble Supreme Court in Para 41 of the judgment, provisions of section 14A r.w.r 8D is not applicable when shares are held as stock-in-trade by a Bank. Although we are unable to agree with the said argument of the learned Counsel for the assessee, but to give another opportunity to the assessee to explain its case before the Assessing Officer in light of the decision of the Hon'ble Supreme Court in the case of Maxopp Investments Ltd vs. CIT (Supra), State Bank Patiala vs. CIT (Supra), PCIT vs. Punjab Sindh Bank and other decisions relied upon by the assessee, we set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to reexamine the issue in light of our

discussion given herein above and also the decisions cited by the assessee and considered by us.

44. The next issue that came up for our consideration from Ground No.8 of assessee's appeal is deduction towards bad debts written off in respect of non-rural branches u/s 36(1)(vii) of the Act for Rs.166,35,33,701/-. The Assessing Officer noticed from the computation of income that the assessee has claimed bad debts written off in respect of non-rural debts written off at Rs.166,35,33,701/-. It was submitted that those amount was claimed in view of the Hon'ble Supreme Court decision in the case of Catholic Syrian Bank Ltd vs CIT (2012) 343 ITR 270 (SC). The Assessing Officer did not accept the explanation of the assessee and according to the Assessing Officer, in the same judgment it was held that the claim of bad debts made u/s 36(1)(vii) should be limited to claim made u/s 36(1)(viia) and the overall claim of the assessee shall be subject to provisions of section 36(2)(v) of the Act. Since the assessee has already availed benefit u/s 36(1)(viia) for both creation of provision and actual written off of debts, further deduction for a write off non-rural bad debts cannot be accepted and thus, disallowed Rs.166,35,33,701/- towards deduction claimed in respect of bad debts written off for non-rural debts.

45. On appeal, the learned CIT (A) sustained the addition made by the Assessing Officer.

46. The learned Counsel for the assessee submitted that the learned CIT (A) is erred in sustaining addition made by the Assessing Officer towards bad debts written off pertains to non-rural branches u/s 36(1)(vii) without appreciating fact that the Hon'ble Supreme Court in Para 45 in the case of Catholic Syrian Bank Ltd vs. CIT (Supra) very clearly explained the position of deduction towards provision for bad debts u/s 36(1)(viia) and deduction towards bad debt written off u/s 36(1)(vii). Therefore, the learned CIT (A) is clearly erred in sustaining additions made by the Assessing Officer.

47. The learned DR, on the other hand, supporting the orders of the learned CIT (A) submitted that the law is clear in as much as after insertion of Explanation (2) by the Finance Act 2013 w.e.f. A.Y 2013-14 for the purpose of proviso to clause (vii) of section 36(1) and 36(2)(v) of the Act, the account referred to therein shall be only one account in respect of provision for bad and doubtful debts debited u/s 36(1)(viia) and such account which related to all types of advance including advance made by rural branches, therefore, the appellant is erred in once again relying upon the decision of the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd vs. CIT (Supra) which was rendered before the amendment. The learned CIT (A) after considering the relevant facts has rightly sustained the addition made by the Assessing Officer and their order should be upheld.

48. We have heard both parties, perused the material available on record and gone through the orders of the authorities below. The appellant has claimed deduction towards bad debts written off in respect of non-rural branches for Rs.166,35,33,701/- without reducing from said written off from credit balance available in provision for bad and doubtful debts created u/s 36(1)(viia) in respect of rural branches. The Assessing Officer did not accept the contention of the assessee on the ground that after insertion of Explanation (2) to provisions of sub-section (vii) of section 36(1), the account referred to therein shall be one account for all the advances including advances made by the rural branches of an assessee bank. It is the contention of the assessee that even after insertion of Explanation 2 to proviso to sub clause (vii) of section 36(1), the ratio laid down by the Hon'ble Supreme Court holds good, because the Hon'ble Apex Court has clearly explained the law in respect of deduction towards provision for bad & doubtful debts u/s 36(1)(viia) of the Act and deduction towards bad debts written off u/s 36(1)(viia) and as per the ratio laid down by the Hon'ble Supreme Court, the scheduled commercial banks would continue to get full benefit of write off of irrecoverable debts u/s 36(1)(vii) in addition to the benefit of deduction for provision for bad & doubtful debts u/s 36(1)(viia). We find that the Hon'ble Supreme Court in Para 45 of their order has explained the position of law in respect of deduction towards provision for bad & doubtful debts and actual write off of bad

debts u/s 36(1)(viia) and 36(1)(vii). The Hon'ble Supreme Court very categorially held that the scheduled commercial bank would continue to get the full benefit of write off of bad debts u/s 36(1)(vii) in addition to the benefit of deduction for the provision for bad & doubtful debts u/s 36(1)(viia). The Hon'ble Supreme Court has also taken support from circular issued by the CBDT while rendering its judgment and observed that the apprehension of the Revenue with regard to the double deduction i.e. one at stage of provision and another at the stage of actual write off and further, the excess, if any, of the write off over the amount outstanding to the credit of the account created under clause (viia) is taken care by insertion of proviso. The relevant finding of the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd vs. CIT (Supra) is as under:

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

36(1)(vii) relating to allowance of the bad debt(s). In other words, the scheduled commercial banks would continue to get the full benefit of the write off of the irrecoverable debt(s) under Section 36(1)(vii) in addition to the benefit of deduction for the provision made for bad and doubtful debt(s) under Section 36(1)(viii). A reading of the Circulars issued by CBDT indicates that normally a deduction for bad debt(s) can be allowed only if the debt is written off in the books as bad debt(s). No deduction is allowable in respect of a mere provision for bad and doubtful debt(s). But in the case of rural advances, a deduction would be allowed even in respect of a mere provision without insisting on an actual write off. However, this may result in double allowance in the sense that in respect of same rural advance the bank may get allowance on the basis of clause (viii) and also on the basis of actual write off under clause (vii). This situation is taken care of by the proviso to clause (vii) which limits the allowance on the basis of the actual write off to the excess, if any, of the write off over the amount standing to the credit of the account created under clause (viii). However, the Revenue disputes the position that the proviso to clause (vii) refers only to rural advances. It says that there are no such words in the proviso which indicates that the proviso apply only to rural advances. We find no merit in the objection raised by the Revenue. Firstly, CBDT itself has recognized the position that a bank would be entitled to both the deduction, one under clause (vii) on the basis of actual write off and another, on the basis of clause (viii) in respect of a mere provision. Further, to prevent double deduction, the proviso to clause (vii) was inserted which says that in respect of bad debt(s) arising out of rural advances, the deduction on account of actual write off would be limited to the excess of the amount written off over the amount of the provision allowed under clause (viii). Thus, the proviso to clause (vii) stood introduced in order to protect the Revenue. It would be meaningless to invoke the said proviso where there is no threat of double deduction. In case of rural advances, which are covered by the provisions of clause (viii), there would be no such double deduction. The proviso limits its application to the case of a bank to which clause (viii) applies. Clause (viii) applies only to rural advances. This has been explained by the Circulars issued by CBDT. Thus, the proviso indicates that it is limited in its application to bad debt(s) arising out of rural advances of a bank. It follows that if the amount of bad debt(s) actually written off in the accounts of the bank represents only debt(s) arising

*out of urban advances, the allowance thereof in the assessment is not affected, controlled or limited in any way by the proviso to clause (vii).*

*46. Accordingly, the above question is answered in the affirmative, i.e., in favour of the assessee(s). For the above reasons, I agree that the appeals filed by the assessees stand allowed and the appeals filed by the Revenue stand dismissed with no order as to costs.”*

49. In this view of the matter and by respectfully following the decision of the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd vs. CIT (Supra), we direct the Assessing Officer to delete the addition made towards bad debts written off in respect of non-rural branches u/s 36(1)(vii) of the I.T. Act, 1961 for Rs.166,35,33,701/-.

50. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

### **ITA No1230/Hyd/2017 (Revenue)**

51. The Revenue raised the following grounds:

*“(i) The Learned CIT(Appeals) erred in deleting the addition made by the Assessing Officer on account of disallowance of broken period interest of Rs. 58,60, 19,013/-paid by the assessee bank at the time of purchase of HTM (Held to Maturity) securities.*

*(ii). The Learned CIT (Appeals) ought to have considered that HTM securities are (ü) held as permanent investments by the assessee bank and broken period interest paid at the time of acquisition of these securities form integral part of the cost of the securities and cannot be separated from the face value of securities and allowed as revenue expenditure under the I. T. Act.*

(iii) *The Learned CIT(Appeals) erred in deleting the addition made by the Assessing Officer on account of disallowance of reversal of unrealized interest of Rs. 62,44,22,051/- on NPAs.*

(iv) *The Learned CIT(Appeals) ought to have appreciated that the assessee bank had neither set off said unrealized interest against provision for bad and doubtful debts account nor written off as irrecoverable in the books of account and therefore such reversal of interest is not an admissible deduction under the I T Act.*

(v) *The Learned CIT(A) erred in deleting the addition of Rs. 6,60,52,609/- made by the Assessing Officer on account of disallowance of unpaid expenses on encashment of leave.*

(vi) *The Learned CIT(A) ought to have appreciated that under section 43B() of the I T Act actual payments of leave encashment made to the employees during the year are only admissible deduction and not the entire contribution paid to LIC for maintenance of leave encashment scheme.*

(vii) *The Learned CIT(A) erred in deleting the addition of Rs. 558,56,58,451 /- made by the Assessing Officer on account of disallowance of differential amount of depreciation on investments claimed by the assessee bank in the computation of total income without providing for the same in the books of account of the assessee.*

(viii) *The Learned CIT(A) ought to have noted that such diminution in the value of investments, which is not provided for in the books of account of the assessee bank, is not an admissible deduction under the I T Act.*

(ix) *The Learned CIT(A) erred in deleting the addition of Rs.92,23,39,229/- made by the Assessing Officer on account of disallowance of excess claim of deduction under sec. 36(1)(vii) of the I T Act.*

(x) *The Learned CIT(A) ought to have noted that 'other income' of Rs. 859.92 crores and income from investments' of Rs. 120.9l crores do not form part of operating profit of the assessee bank and therefore these items of income have to be excluded from the eligible profits for the purpose of computing deduction under section 36(1)(vii).*

*(xi) The appellant craves leave to add, delete, substitute and amend any ground of appeal before and/or at the time of hearing of the appeal.*

*For these and other grounds that may be urged before/at the time of hearing of the appeal, it is prayed that the addition made by the Assessing Officer on account of disallowance of broken period interest, disallowance of reversal of interest on NPAs, disallowance of unpaid leave encashment, disallowance of depreciation on investment, disallowance of deduction u/s 36(1)(vii) be restored.”*

52. The first issue that came up for our consideration from Ground of Appeals 1 & 2 of Revenue’s appeal is deletion of addition made by the Assessing Officer towards disallowance of broken period interest on investment of Rs.5,86,01,903/- paid by the Bank at the time of purchase of HTM Securities.

53. The learned CIT-DR submitted that the learned CIT (A) erred in deleting addition without appreciating fact that HTM securities held by the appellant bank are treated as permanent investment and broken period interest paid at the time of acquisition of those securities form integral part of the cost of the securities and thus, segregating from face value and allowed as revenue expenditure under I.T. Act, 1961 is incorrect.

54. The learned Counsel for the assessee on the other hand submitted that this issue is squarely covered in favour of the assessee by the decision of the ITAT Hyderabad Benches in appellant’s own case for the A.Y 2011-12, reported in (2015) 5 TMI 478 ITAT Hyderabad, where the Tribunal has considered an

identical issue and deleted the addition made by the Assessing Officer.

55. We have heard both parties, perused the material available on record and gone through the orders of the authorities below. We find that the learned CIT (A) deleted the addition made by the Assessing Officer towards broken period interest paid on HTM securities by following the decision of the ITAT Hyderabad Benches in appellant's own case for earlier A.Ys. We further noted that the Coordinate Bench of the ITAT has considered an identical issue in appellant's own case for the A.Y 2011-12 and after considering relevant facts deleted the addition made by the Assessing Officer. The relevant findings of the Tribunal are as under:

*“3. In the Revenue appeal, the first ground of appeal raised by the Revenue is against the deletion of the disallowance of broken period interest paid by the assessee on purchase of long term securities and claimed as expenditure by the assessee. The AO made the disallowance holding that the securities are purchased by the assessee as capital outlay and therefore interest element in the purchase is also capital in nature. On appeal, the CIT (A) had given relief by following the decision of the ITAT in assessee's own case for A.Ys 2005-06 to 2010-11, wherein the decision of Bombay High Court in the case of American Express International Ltd vs. CIT (285 ITR 601 (Bom.)), was followed, wherein it was held that the securities which are held for ITA Nos.42 and 31 of 2015 Andhra Bank Hyderabad complying with SLR (Statutory Liquidity Ratio) are to be held as stock-in-trade and the broken period interest included in the purchase price of such govt. securities is revenue in nature and is allowable. The ld DR relied upon the order of the AO while the ld AR supported the order of the CIT (A) and also placed reliance upon the orders of the Tribunal in earlier A.Ys as well as the decision of the Hon'ble Supreme*

*Court in the case of CIT vs. Citi Bank reported in 2008 (8 TMI 766).*

*4. On consideration of the rival contentions and on perusal of the material on record, we find that this issue had arisen in the assessee's own case for the A.Y 2008-09 and the Tribunal has followed its decision in the assessee's own cases i.e. in ITA Nos.95 - 97 and 218/H/2010 dated 4.4.2013 for the A.Ys 2001- 02, 2003-04 and 2006-07 and ITA No.s.1592 & 1644/Hyd/2008 dated 30.04.2013 for the A.Y 2005-06 wherein the issue was decided in favour of the assessee and against the Revenue. Since the Revenue has not been able to bring any decision contrary to the above mentioned decisions in assessee's own case for the A.Y 2008-09, we do not find any reason to interfere with the order of the CIT (A). Accordingly, this ground of the Revenue is rejected."*

56. In this view of the matter and by following the decision of the Coordinate Bench of the ITAT in appellant's own case for A.Y 2011-12, we are inclined to uphold the findings of the learned CIT (A) and reject the ground taken by the Revenue.

57. The next issue that came up for our consideration from Ground of Appeal Nos 3 & 4 of Revenue's appeal is deletion of addition made by the Assessing Officer towards disallowance of reversal of unrealized interest of Rs.62,44,22,051/- on Non-Performing Assets (NPAs). The Assessing Officer noticed that the assessee claimed deduction for Rs.62,44,22,051/- on account of reversal of unrealized interest on NPAs. The assessee submitted that this amount has been credited to borrowers account as unrealized interest in A.Y 2012-13 and debit the same to the interest account. The assessee further submitted that as per RBI guidelines, once any loan account is termed as NPA, then

unrealized interest, if any, debited to the said loan account should be reversed. Therefore, the appellant has debited interest to NPA account in earlier period and because said loan account was treated as NPA for the impugned A.Y., the unrealized interest has been reversed and debited to the P&L Account. The Assessing Officer however, was not convinced with the explanation furnished by the assessee and according to the Assessing Officer, as per the I.T. Act, 1961, the assessee can claim deduction towards bad debts written off and provision for bad debts on loans/advances. But, it cannot claim deduction towards reversal of income on its own as per its accounting policy. Therefore, by following the decision of the ITAT in the case of State Bank of Hyderabad in ITA Nos.893 & 894/Hyd2022, has made disallowances towards interest reversal and debited to P&L Account.

58. The assessee carried the matter in appeal before the learned CIT (A). Before the learned CIT (A), the assessee submitted that this issue is squarely covered in favour of the assessee by the decision of the ITAT Hyderabad Benches in appellant's own case for A.Y 2011-12, where it has been held that unrealized interest reversal cannot be treated as income of the assessee. The learned CIT (A) by following the decision of the ITAT Hyderabad in appellant's own case for A.Y 2011-12 deleted the addition made by the Assessing Officer.

59. Aggrieved by the order of the learned CIT (A), the Revenue is in appeal before the Tribunal.

60. The learned DR submitted that the learned CIT (A) erred in deleting the addition made towards reversal of unrealized interest without appreciating fact that the assessee bank had neither set off said unrealized interest against the provision of bad and doubtful debts nor written off as irrecoverable in the books of account and therefore, such reversal of interest is not an admissible deduction under the I.T. Act, 1961.

61. The learned Counsel for the assessee submitted that this issue is squarely covered in favour of the assessee by the decision of the ITAT Hyderabad Benches in appellant's own case for the A.Y 2011-12. He further submitted that the Hon'ble Delhi High Court has also considered similar issue in the case of CIT vs. IFCI (2011) 201 Taxman 75. Therefore, he submitted that the order of the learned CIT (A) should be upheld. He further submitted that, no doubt this issue is against the assessee by the decision of the Hon'ble Telangana High Court in the case of State Bank Hyderabad vs. CIT, where it has been held that the deduction towards reversal of unrealized interest cannot be allowed. However, he further submitted that in case deduction is not allowed towards reversal of interest, but the same needs to be allowed as bad debts written off and the findings of the learned

CIT (A) in allowing relief to the assessee is in accordance with law and same needs to be upheld.

62. We have heard both parties, perused the material available on record and gone through the orders of the authorities below. The appellant has reversed unrealized interest from NPA account as per RBI guidelines for Rs.62,44,22,051/- on the ground that the interest income has been credited on those loan account in earlier financial year and further, when the account become NPA as per RBI guidelines for the impugned A.Y, unrealized interest has been reversed. Since the appellant has not received any interest income, the same has been reversed and debited to P&L Account. We find that, as per RBI guidelines for asset classification and income recognition, loan account has to be categorized as standard asset, sub-standard asset and doubtful asset depending upon the period for which no recovery from sad loan account is made. But deduction towards provision for bad & doubtful debts or actual written off on bad debts should be allowed as per provisions of the I.T. Act, 1961. In fact, the appellant also claims deduction towards provision of bad & doubtful debts and actual write off of bad debts in terms of section 36(1)(vii) and 36(1)(viia) of the I.T. Act, 1961. There is no dispute on these facts.

63. Coming to the issue on hand, the assessee claims that it has recognized interest income on loan account on accrual

basis in earlier A.Ys and credited to income account. Since those loan account become NPA as per RBI guidelines for the current A.Y, the appellant has reversed unrealized interest and debited to P&L Account and claimed deduction while computing income from business/profession. Although the appellant accounting treatment of reversal of interest in the books is in accordance with general accepted accounting principles, but when it comes to claiming deduction, the reasons given by the assessee for claiming deduction towards reversal of interest is not in accordance with the scheme of taxation. As we have already stated, deduction towards provision of bad and doubtful debts and actual write off of debt should be allowed in terms of section 36(1)(vii) and 36(1)(viia) of the Act. In fact, the assessee also claims deduction as per said provision. Therefore, the assessee having claimed deduction as per provisions of the Act, once again claiming deduction for reversal of interest in terms of their accounting policies, is contrary to the law, because there is no clarity in respect of facts whether the assessee has made provision for bad debts in respect of those account in their books of account or not. Therefore, in our considered view, there is no merit in the argument of the assessee that reversal of unrealized interest is deductible. Although, the appellant claims that this issue is covered in favour of the appellant by the decision of the ITAT Hyderabad Benches in earlier A.Ys, but on going through the orders passed by the Tribunal, there is no discussion on the issue at all. On the other hand, the learned DR filed a copy of the order

passed by the Hon'ble Telangana High Court in the case of State Bank of Hyderabad vs. Jt. CIT reported in 2023 (2) TMI 810, where the High Court held that reversal of interest on NPA is not deductible. The relevant findings of the Hon'ble Telangana High Court are as follows:

*“7. Thereafter, assessee filed further appeal before the Tribunal. After adverting to the findings of the assessing officer and CIT(A), Tribunal held as follows:*

*We have carefully considered the rival submissions and perused the record. In the case of TCI Finance (supra) the issue as to whether nonrecognition of income by following RBI norms can be considered as a recognized method of accounting, was considered in detail and held as if any assessee follows the RBI norms consistently the same has to be accepted and interest income on NPA need not be recognized. With regard to the income already recognized in the earlier year the Bench observed, in para-29 of the order, that the department has already accepted the claim made as per the reversal entries. Since the issue is confined to non-recognition of income and not with regard to the reversal of entries, the Bench had no occasion to consider this issue with regard to the claim of deduction of the amount referable to the reversal of the entries. In the case of Bank of Madura (supra), the Hon'ble Madras High Court was Concerned with the peculiar case of a bank declaring higher income by charging excess interest from one of its Customers and on realization of the same, the excess interest which was charged and collected was claimed as liability in the year of realizing the mistake and credited to the account of the customer. The Court held that the claim of deduction in the year of realization of mistake is in order. It may be noted here that it was a case of excess collection of interest and there was a duty cast upon the bank to refund the excess interest whereas in the instant case interest on NPAs was earlier declared as income on accrual basis and though it has not become bad in all respects, the entry was sought to be reversed only because of RBI guidelines. The assessee has furnished the circular letter of the RBI containing consolidated instructions/guidelines on matters relating to prudential norms on income recognition. In the circular dated 4th*

*July, 2002, the RBI has consolidated all the instructions issued earlier. Paras 3.2, 3.2.1 and 3.2.2 of the Circular read as under:*

### *3.2 Reversal of income:*

*3.2.1. If any advance, including bills purchased and discounted becomes NPA as at the close of any year, interest accrued and credited to income account in the corresponding previous year, should be reversed or provided for if the same is not realized. This will apply to Government guaranteed accounts also.*

*3.2.2. In respect of NPAs, fees, commission and similar income that have accrued should cease to accrue in the Current period and should be reversed or provided for with respect of past periods, if uncollected."*

*As per the Circular, if the interest is shown as accrued in the earlier year but in the subsequent years the advance becomes NPA the interest accrued and credited into income account should be reversed or provided for in the corresponding previous year. The mode of claiming deduction under the IT Act was absolutely not mentioned in the instruction. Income Tax Act is a self-contained code and in order to claim a deduction, it is for the assessee to show that the Act provides for such a deduction.*

*It could be seen from the note given by the assessee, during the relevant period, 180 days yardstick was prescribed for identifying an asset as standard or NPA. For example, if an advance is given on 1st January, 1998 the clear picture as to whether it has become NPA or not emerges on June, 1998. Let us further presume that the interest payable by the party for a period of 6 months is Rs.6 lakhs. As on 31-3-98 it can be predicted that it would become NPA and thus the assessee accounts for interest of Rs.3 lakhs for three months ending on 31-3-98. Such interest is assessable to tax in the assessment year 1998-99.*

*However, if the assessee has not received any interest during the previous year relevant to the assessment year 1999-00, on the expiry of 30th day of June, 1998 the assessee bank can treat it as NPA and interest for the period of three months if already credited in the books as income, such entry should be reversed in the later part of the accounting year and for the balance period of 9*

*months of the previous year 1998-99 the assessee need not recognize the income of Rs.9 lakhs. If the assessee has other income to the tune of Rs. 20 lakhs, can the assessee claim that only Rs.17 lakhs has to be treated as income, on the ground that interest to the tune of Rs.3 lakhs payable by another party was wrongly declared as income in the earlier year and thus it needs to be set off in the year under consideration? Non recognition of income permissible in applying the real income principle and the income which is already accounted for in the first part of the year but reversed in the later part of the year also need not be declared as income, by applying the same principle, because in the computation of income of a particular year, the income of that year to be taken into consideration. However, once the income of that year is properly recorded the assessee cannot reduce the income from the subsequent years computation on the ground that in the earlier year income was shown on accrual basis wrongly and thus the income of this year gets reduced if set off is permitted. In the given example, it could be seen that the assessee is not claiming any expenditure against the current year income but seeking reduction of current year's income though even according to the assessee such income accrued in the year under consideration. In our considered opinion, such a claim is not permissible. In the immediately preceding year, the assessee having declared income on the accrual basis, the only course open to the assessee to derecognize the income is to treat the same as bad debt by following the RBI norms. Our view is supported by the decision of Apex Court in the case of State Bank of Travancore (158 ITR 102) as well as the decision of ITAT, Delhi Bench in the case of Poysha Oxygen (P) Ltd., (91 ITD 616).*

*Admittedly, the assessee has not written off the impugned sum as bad-debt u/s 36(1)(V) of the Act and in fact the case of the assessee is that there is no question of write off u/s 36(1)(vi) of the Act. Such being the case, we are of the view that the claim of the assessee is contrary to law and accordingly we reject the contention of the assessee.*

*8. From the above, we find that Tribunal had considered the circular of RBI dated 04.07.2002 and held that once an income of a previous year is recorded, assessee cannot reduce the Income of subsequent years on the ground that in the earlier year income was shown on actual basis wrongly. Tribunal held that such a claim of*

*the assessee is not permissible under the provisions of the Act. Further, Tribunal held that assessee had also not written off the NPAs as bad debts under Section 36(1)(vi) of the Act. Therefore, there was no question of writing off such interest as a bad debt.*

*9. In the hearing today, learned counsel for the appellant has referred to Section 21 of the Banking Regulation Act, 1949 and submits that under sub-section (1) thereof, all banking companies are bound to follow policy of the RBI so determined. Therefore, assessee being a banking company had to comply with the RBI guidelines. He has also referred to a decision of the Supreme Court in Deputy Commissioner of Sales Tax v. M/s. Motor Industries Company (1983) 2 SCC 108 and submits that in that case under the Kerala General Sales Tax Act, 1963, Supreme Court had pointed out a way to overcome such a difficulty. Further reference has been placed on the decision of the Supreme Court in UCO Bank v. Commissioner of Income Tax (1999)4 SCC 599 to contend that it is always open to the Central Board of Direct Taxes (CBDT) to issue instructions under Section 119 of the Act to remove any difficulty in which event such instructions would be binding on the department.*

*10. We are afraid we cannot accept such contention urged by learned counsel for the appellant. In the present appeal, it is not CBDT which has issued circulars or guidelines under Section 119 of the Act. On the other hand, circular has been issued by the RBI which is binding on all the banking companies in general. However, when it comes to assessment under the Act, the revenue authorities are bound by the provisions of the Act. Therefore, the claim of the assessee that interest paid on NPAs should be excluded from computation of income was rightly negated by the assessing officer, which has been affirmed by the two lower appellate authorities.*

*11. As pointed out by the Supreme Court in M/s. Motor Industries Company (supra), it is always open for the assessee or appellant to file a revised return and claim the deduction. Even if assessment is completed, assessee could have demanded adjustment or refund by preferring the claim in time. But that was not done.*

*12. Thus, in the facts and circumstances, we do not find that any question of law, much less any substantial*

*question of law, arises for consideration of the Court from the order of the Tribunal.*

*13. Appeal fails and is accordingly dismissed. No costs. As a sequel, miscellaneous petitions, pending if any, stand closed.”*

64. In this view of the matter and by respectfully following the decision of the Hon'ble Telangana High Court in the case of State Bank of Hyderabad vs. Jt. CIT (Supra), we are of the considered view that the reversal of unrealized interest on NPA accounts and debited to P&L Account cannot be allowed as deduction. Thus, we reverse the findings of the learned CIT (A) and upheld the addition made by the Assessing Officer.

65. In so far as the alternative argument of the assessee that in case deduction is not allowed towards reversal of interest, but the same can be allowed as write off of bad debts, we find that the deduction towards provision for bad debts and actual write off of bad debts is allowed in terms of section 36(1)(vii) and 36(1)(viii) of the I.T. Act, 1961. In case deduction claimed by the assessee is in accordance with the provisions of above section, then the assessee can very well claim deduction for reversal of interest as provision for bad and doubtful debts. But facts are not clear and needs to be verified. Therefore, we set aside the alternative claim of the assessee to the file of the Assessing Officer and direct the Assessing Officer to verify the claim of the assessee in light of any evidence that may be filed by the assessee to prove its case.

66. The next issue that came up for our consideration from Ground Nos. 5 & 6 of Revenue's appeal is deletion of addition of Rs.6,60,52,610/- made by the Assessing Officer towards disallowance of excess contribution to leave encashment fund. We find that, an identical issue has been considered by us in assessee's appeal in ITA No.1018/Hyd/2017. The reasons given by us, in preceding paragraph No. 34-35, shall mutatis mutandis apply to this appeal, as well. Therefore, for similar reasoning, we are inclined to uphold the findings of the learned CIT (A) and reject the ground taken by the Revenue.

67. The next issue that came up for our consideration from Ground Nos. 7 & 8 of Revenue's appeal is deletion of addition of Rs.558,56,58,451/- made by the Assessing Officer towards diminution in value of investment.

68. The appellant has claimed deduction towards diminution in value of investment of Rs.558,56,58,451/- on the ground that the investment of appellant bank are stock-in-trade and further, any diminution in value of the said stock in trade should be treated as loss or depreciation. The Assessing Officer disallowed diminution in value of investments on the ground that as per CBDT Circular No.17/2018 dated 26.11.2008, the actual deduction made in the books by the assessee shall only be allowed in respect of any provision and thus, allowed deduction towards actual diminution in value on investment in the books to

the extent of Rs.26,86,34,000/- and balance amount of Rs.558,56,58,451/- is disallowed and added back to the total income.

69. On appeal, the learned CIT (A) by following the decision of the ITAT Hyderabad Benches in appellant's own case for A.Y 2007-08 deleted the addition made by the Assessing Officer.

70. The learned DR submitted that the learned CIT (A) is erred in deleting the addition made by the Assessing Officer towards diminution in value of investment without appreciating the fact that the said diminution in the value of investment was not provided for in the books of account of the assessee bank.

71. The learned Counsel for the assessee, on the other hand, supporting the order of the learned CIT (A) submitted that this issue is squarely covered in favour of the assessee by the decision of the ITAT Hyderabad Benches in the appellant's own case for the A.Y 2007-08, where under identical set of facts, the Tribunal held that the deduction towards diminution in value of investment is allowable deduction.

72. We have heard both parties, perused the material available on record and gone through the orders of the authorities below. We find that, this issue is squarely covered in favour of the

assessee by the decision of the ITAT Hyderabad Benches, in appellant's own case for the A.Y 2011-12 in ITA No 630/Hyd/2012, where the Tribunal by following its earlier order for A.Y 2006-07 has deleted the addition made by the Assessing Officer. The relevant findings of the Tribunal are as under:

*"5. After hearing the parties and perusing the record, we find that the issue under consideration is squarely covered by the decision of the coordinate bench of ITAT, Hyderabad in assessee's own case for AY 2006- 07 wherein the coordinate bench held as follows:*

*"50. We are of the opinion that the assessee Bank is holding various Government Securities in order to comply with the statutory liquidated ratio. The bank would have to hold requisite percentage of deposits in the form of cash, gold, government or approved securities. The government securities held for the purpose of comply with the SLR has been held to be stock in trade and therefore value of the same as on 31st March has to be made and there is any depreciation the same should be allowed as a revenue deduction. However, the RBI has issued Circular wherein they have classified the investment made to comply with SLR requirement as 'Held to maturity' (HTM), 'Available for sale' (AFS) and 'Held for Trade' (HFT). Based on the RBI Circular lower authorities came to the conclusion that investment in Government Securities which are classified under the head HTM cannot be considered as stock in trade and therefore depreciation in value of such securities cannot be allowed as a deduction. The Apex Court in the case of UCO Bank Ltd Vs CIT reported in 240 ITR 355 has held that value of the securities at cost or market value whichever is less should be accepted for income tax even if the banks in their books do not value on that basis. Therefore, it is an accepted proposition that investment made by the bank to comply with the SLR requirement would constitute their stock in trade and depreciation in value of the same is an allowable deduction.*

*51. Respectfully following the decisions cited by the learned counsel for the assessee, we uphold the claim of the assessee and direct the AO to allow depreciation/fall in value of investment in Government Securities including those classified under HTM category. No doubt the value in*

*opening stock in the next year would correspondingly be adjusted. This issue is decided in favour of the assessee."*

*6. Since the issue under consideration is identical to that of AY 2006-07 in assessee's own case, respectfully following the same we uphold the directions of Ld.CIT(A) with a direction to AO to follow the same in this year also as per the order of ITAT supra.. Accordingly, ground No. 2 raised by the revenue is dismissed."*

73. In this view of the matter and by respectfully following the decision of the ITAT Hyderabad Benches in appellant's own case for the A.Y 2011-12, we are inclined to uphold the findings of the learned CIT (A) and reject the grounds taken by the Revenue.

74. The next issue that came up for our consideration from Ground Nos. 9 & 10 of Revenue appeal is deletion of addition made by the Assessing Officer towards disallowance of excess claim of deduction u/s 36(1)(viii) of the I.T. Act, 1961. The assessee has created reserve for Rs.165 crore u/s 36(1)(viii) of the Act, towards profits and gains from business/profession for providing long term finance to eligible business entities. The Assessing Officer recomputed the deduction u/s 36(1)(viii) of the Act, by taking into account operating profit of the assessee as per statement of total income which was at Rs.1344,67,15,414/- and then reduced other income of Rs.859,92,96,000/- and income from investment of Rs.120,91,15,562/- and has, finally arrived at eligible income of Rs.363,83,03,852/- and then computed 20% eligible profit of Rs.72,76,60,770/- and excess amount transferred

to reserve account for Rs.92,23,39,229/- has been disallowed and added back to the total income.

75. The assessee challenged the addition before the learned CIT (A). Before the learned CIT (A), the assessee has filed a revised computation by considering operating profit as per P&L Account at Rs.1344.67 crores and after adding and deducting certain items worked out eligible profit at Rs.980,84,11,562/- and claimed that the deduction claimed u/s 36(1)(viii) of Rs.165 crores is as per provisions of law. The learned CIT (A) after considering revised computation filed by the assessee, has deleted the addition made by the Assessing Officer towards reserve created for eligible profit u/s 36(1)(viii) of the I.T. Act, 1961.

76. The learned DR submitted that the learned CIT (A) is erred in deleting the addition made by the Assessing Officer on account of disallowance of excess claim of deduction u/s 36(1)(viii) of the Act, without appreciating fact that the eligible profits computed by the appellant from providing long term finance to eligible sectors should not include other income. The learned CIT (A) without considering relevant facts simply deleted the addition made by the Assessing Officer and their orders should be set aside.

77. The learned Counsel for the assessee, on the other hand, supporting the order of the learned CIT (A) submitted that

this issue is covered in favour of the assessee by the decision of the ITAT Bangalore Benches in the case of Vijaya Bank vs. JCIT reported in 2015(7) TMI 86. Further, there is no dispute with regard to the fact that the appellant is engaged in the business of providing long term finance to eligible business sector. Therefore, the Id. CIT(A) has rightly deleted the addition made by the Assessing Officer and their order should be upheld.

78. We have heard both parties, perused the material available on record and gone through the orders of the authorities below. Provisions of section 36(1)(viii) deals with deduction towards any special reserve created and maintained by specified entity, an amount not exceeding 20% of the profit derived from eligible business computed under the head profits and gains of business or profession and carried to such reserve account. The 'specified entity' and 'eligible business' has been defined in Explanation to Section 36(1)(viii) of the Act. There is no dispute with regard to the fact that the appellant is a specified entity and also carried on eligible business. In fact, the Assessing Officer and the learned CIT (A) have accepted this fact. The only dispute is with regard to how to compute eligible profits u/s 36(1)(viii) of the Act. As per provisions of section 36(1)(viii) an amount not exceeding 20% of the profits derived from eligible business and carried to such reserve account is allowed as deduction. The assessee has claimed deduction of Rs.165 crores, whereas the Assessing Officer has allowed deduction of Rs.72,76,60,770/-.

Thus, the Assessing Officer has disallowed Rs.92,23,39,229/-. The Assessing Officer has determined eligible profit of Rs.363,83,03,852/-, whereas the assessee claims that the eligible profit from long term finance for industrial and agricultural development was at Rs.1578,66,42,773/-. The assessee has filed a computation before the learned CIT (A) which has been extracted in page 54, 55 and 56 of the learned CIT (A)'s order. The assessee at one stage arrived at eligible profit of Rs.964,34,19,414/-, by considering net profit before tax of Rs.1824.27 crores. There is a difference between eligible profits computed by the assessee itself. At page 55 of learned CIT (A)'s order, the assessee claims eligible profit of Rs.964.34 crores, whereas in page 56 of learned CIT (A)'s order the assessee submitted working and claims that the eligible profit is at Rs.1578.66 crores. Facts are not clear. The Assessing Officer computed eligible profit Rs.363.83 crores by adopting net profit as per P&L Account for Rs.1344.67 crores, whereas the assessee arrived at eligible profit of Rs.964.34 crores by considering net profit of Rs.1344.67 crores. We are not able identify, which is the correct amount of eligible profit for deduction u/s 36(1)(viii) of the Act. There is no dispute with regard to the fact that the assessee is eligible for deduction u/s 36(1)(viii) of the Act. But, only dispute is with regard to how to compute eligible profit and deduction u/s 36(1)(viii) of the Act. In our considered view, the matter needs to be re-examined from the side of the Assessing Officer. Therefore, we set aside the order of the learned CIT (A) and restore the issue

to the file of the Assessing Officer and direct the Assessing Officer to recompute the deduction u/s 36(1)(viii) of the Act by considering revised computation filed by the assessee before the learned CIT (A) in light of net profit as per P&L Account and allow deduction as per law.

79. In the result, the appeals filed by the assessee as well as the Revenue are partly allowed for statistical purposes.

Order pronounced in the Open Court on 28<sup>th</sup> August, 2024.

Sd/-

Sd/-

<b>(K.NARASIMHA CHARY) JUDICIAL MEMBER</b>	<b>(MANJUNATHA, G.) ACCOUNTANT MEMBER</b>
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Hyderabad, dated 28<sup>th</sup> August, 2024

*Vinodan/sps*

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2	Dy.CIT Circle 1(1) Hyderabad
3	Pr. CIT – 1, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*