

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

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No.1107/Bang/2019
Assessment year : 2015-16

Karnataka Bank Ltd., Head Office, Mahaveer Circle, Kankanady, Mangalore – 575 002. PAN : AABCT 5589K	Vs.	The Deputy Commissioner of Income Tax, Circle 2(1), Mangalore.
APPELLANT		RESPONDENT

ITA No.161/PAN/2019
Assessment year : 2015-16

The Deputy Commissioner of Income Tax, Circle 2(1), Mangalore.	Vs.	Karnataka Bank Ltd., Mangalore – 575 002. PAN : AABCT 5589K
APPELLANT		RESPONDENT

Assessee by	:	Shri Ananthan S. & Smt. Lalitha Rameswaran, CAs
Revenue by	:	Shri D.K. Mishra, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	18.07.2024
Date of Pronouncement	:	30.09.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

These cross appeals are filed by the assessee and revenue against the order dated 18.03.2019 of the CIT(Appeals), Mangaluru for the assessment year 2015-16.

2. The assessee has raised the following revised grounds:-

“1. The order of the learned CIT(A) is bad in law and against the facts of the case.

2. The learned CIT(A) erred in disallowing the claim of Rs. 218,08,80,715/- of the appellant bank u/s 36(1)(vii) being the bad debts written off by the non-rural branches of the Appellant bank.

2.1. The learned CIT(A) failed to appreciate the fact that the non-rural debts are not controlled by the proviso to Section 36(1)(vii).

2.2. The learned CIT(A) failed to appreciate the fact that the issue has been decided in favour of the appellant by the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd vs CIT [2012] 343 ITR 270 (SC).

2.3. The learned CIT(A) erred in not following the decision of Hon'ble Supreme Court decision in the case of Union of India vs Intercontinental Consultants & Technocrats (P.) Ltd [2018] 91 taxmann.com 67 (SC) in interpreting the words 'such debt' contained in proviso to Section 36(1)(vii).

2.4. The learned CIT(A) erred in concluding that Sections 36(1)(vii) and 36(1)(viia) of the Income Tax Act are not independent items of deduction post Finance Act, 1985.

2.5. The learned CIT(A) failed to appreciate the fact that introduction of Explanation 2 to Section 36(1)(vii) by Finance Act, 2013 has not changed the proposition of law as it existed before introduction of such explanation.

2.5.1. The learned CIT(A) failed to appreciate the fact that Explanation 2 was introduced to prevent double deduction in the case of same debt for which deduction was allowed u/s 36(1)(viia).

2.6 The learned CIT(A) erred in interpreting the purpose of the said explanation.

2.7 The learned CIT(A) erred in upholding the addition on surmises & conjunctures.

3. Without prejudice to the above, and as an alternate, the learned Assessing Officer be directed to delete the income offered u/s 41(4) in respect of the recoveries made from the bad debts not allowed as deduction u/s 36(1)(vii) in the earlier years and in the current year, if the Ground relating to the claim of bad debts u/s 36(1)(vii) is decided against the Appellant Bank.

4. The learned CIT(A) erred in upholding the decision of the AO in disallowing a sum of Rs 2, 27,04.737/- u/s 40(a)(ia) of the Income Tax Act, 1961 in respect of payments made to SA World Wide for usage of VISA ATM Network.

4.1 The learned CIT(A) failed to appreciate the fact that the provisions TDS are not applicable to these payments.

4.2 The learned CIT(A) failed to appreciate the fact that the issue is squarely covered by the Hon'ble Supreme Court decision in the case of CIT vs Kotak Securities Ltd - [2016] 383 ITR 1 (SC)

5. The learned Assessing Officer erred in adding an amount of Rs. 14,94,21,888/- being the expenditure incurred in relation to exempted income to the Book Profit computed u/s 115JB.

5.1 The learned Assessing Officer failed to appreciate the fact that no disallowance can be made u/s 14A.

5.2 Without prejudice to the above. the learned Assessing Officer failed to appreciate the fact that the disallowance u/s. 14A worked out by invoking Rule 8D cannot be applied for making an addition while computing the Book Profit u/s 115JB.

6. The learned Assessing Officer erred in adding an amount of Rs. 25,85,00,000/- being the provision for Wage Arrears while computing the Book Profit computed u/s 115JB.

6.1. The learned Assessing Officer erred in holding that the provision for wage arrears is an unascertained liability.

7. The learned Assessing Officer erred in adding an amount of Rs. 20,00,00,000/- being the provision for Ex-gratia & Bonus while computing the Book Profit computed u/s 115JB.

7.1. The learned Assessing Officer erred in holding that the provision for Ex-gratia & Bonus is an unascertained liability.

8. The learned Assessing Officer erred in charging interest u/s 234B & 234D of the Income Tax Act, 1961.

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

3. The revenue has raised the following grounds:-

“1. The order of the Learned CIT(A) is opposed to law and facts of the case.

2. Disallowance u/s 14A:

The CIT(A) has erroneously allowed relief on the ground that the AO failed to record non-satisfaction with regard to the correctness of the claim of the assessee, as envisaged under the provisions of section 14A has not been recorded by the AO before proceeding to make any disallowance.

3. The CIT(A) failed to notice from records that a show cause notice for determining and disallowing expenditure in accordance with section 14A rwr 8D was given to the assessee and this fact has also been explicitly mentioned in the assessment order.

4. The CIT (A) failed to take cognizance of such a proposal given by the Assessing Officer with regard to his dis-satisfaction about the correctness of the claim made by the assessee.

5. The CIT(A) erred in not considering that this would suffice the requirement of law as per provisions of section 14A, as the same has been communicated to the assessee before completion of assessments, even though there is no express-provision to give a finding regarding the satisfaction of the Assessing Officer.

6. The CIT(A) failed to appreciate that the assessment order made u/s 143(3) by itself being such a finding, based on the satisfaction or otherwise, of the Assessing Officer and no separate order finding on this count is envisaged as per the provisions of law.

7. The CIT(A) failed to appreciate that the disallowance is made after examining all the issues and the AO has also relied upon the decision of the Bombay High Court in the case of Godrej and Boyce 328 ITR 81 holding that there is a method and rationale in rule 8D for apportionment of expenditure between taxable and non taxable income.

8. The Learned CIT(A) erred in deleting the additions made on account of expenditure relating to earning of exempted income ignoring the provisions of Section 14A rwr 8D. The disallowance is made after examining all the issues and relying upon the decision of the Bombay High court in the case of Godrej and Boyce 328 ITR.

9. The decision of the Hon'ble High Court of Karnataka in assessee's own case for AY 2001-02 has not been accepted by the department and SLP has been admitted by the Hon'ble Supreme Court as seen from CA No.005716/2015 and the same is pending (SLP against ITA No.675 and 657 of 2008 of HC of Karnataka).

10. Disallowance u/s 36(1)(viiia) - Provision for bad and doubtful debts

The CIT(A) erred in allowing the claim of provision for bad and doubtful debts relating to rural advances.

11. The CIT(A) failed to appreciate the fact that the computation of Average Aggregate advances is erroneously worked and not in accordance with rule 6ABA of Income tax rules, 1961.

12. The CIT(A) failed to appreciate the fact that the details of rural branches was examined and it was held that the assessee has not classified rural branches correctly as per population and also that the definition of a revenue village was incorrectly stated.

13. The CIT(A) has erred in not appreciating the ratio of the decision of Hon'ble High Court of Kerala in the case of Lord Krishna Bank which considered the urban agglomeration and defined revenue village for the purposes of a rural branch.

14. The CIT (A) failed to appreciate the fact that the advances made during the year are only eligible for deduction and not the advance outstanding, as it amounts to repetitive and duplicate claims during every subsequent year.

15. The CIT(A) erred in deleting the disallowance made u/s 40(a)(ia) on the payments amounting to Rs.29,95,61,815/- made to NPCL, when the decision of the CIT(A) on this point has not been accepted by the department and an appeal was filed by the department before the Hon High Court of Karnataka in the case of M/s Corporation Bank for the AY 2011-12 86 2012-13 and the said appeal is pending as on date.

16. The CIT(A) erred in not considering the fact that the service provided by the NPCI comes under the explanation provided under Sec 194 J arid accordingly liable for TDS and the failure to adhere to the TDS provisions would attract disallowance u/s 40(a)(ia).

17. For these and any other grounds that may be urged at the time of hearing it is prayed that the order of the CIT(A) may be cancelled and that of the Assessing Officer restored.”

ITA No.1107/Bang/2024 (Assessee's appeal)

4. Disallowance of deduction claimed U/s 36(1)(vii):-

Briefly stated the facts of the assessee bank claimed a sum of Rs. 218.09 Crore as Bad Debts Written off (BDW) in the computation of income in Annexure X out of which Rs. 53.47 cr. was found to be

prudentially written off. The majority of bad debts written off related to urban debts mounting to Rs. 218.09 Crores and the rural debts written off was only Rs. 0.77 Crores which has been separately reduced from the claim of provision for bad and doubtful debts. The co-ordinate bench of the Tribunal has decided this issue in favour of the assessee in ITA No. 876 & 877/Bang/2023 order dated 19.02.2024 in which the co-ordinate bench has relied the decision of the assessee in its case for the AY 2014-15 in ITA No. 1907/Bang/2018 order dated 26.05.2022 in which it has been held as under:-

7. We shall now take up the appeal filed by the assessee. The first issue urged by the assessee relates to the disallowance of bad debts claimed u/s 36(1)(vii) of the Act applying the proviso to sec. 36(1)(vii) of the Act to nonrural/urban advances also, while the contention of the assessee is that the proviso to sec.36(1)(vii) shall apply to rural advances only for categories of bank like that of the assessee, who has claimed deduction under clause (a) of sec. 36(1)(viia) of the Act.

7.1 The assessee claimed a sum of Rs.146.28 crores bad debts, which consisted of bad debts relating to rural branches Rs.1.12 crores and the non-rural branches Rs.145.16 crores. The AO noticed that the bad debts written off was not debited to Profit and Loss account. The AO also noticed that the new provision created during the year was Rs.210.54 crores, out of which the assessee had claimed a sum of Rs.112.19 crores as deduction u/s 36(1)(viia) of the Act. Accordingly, the AO took the view that the assessee is claiming deduction both u/s 36(1)(vii) and 36(1)(viia) of the Act. The assessee submitted that the bad debts claimed by it included prudential write off of Rs.134.86 crores. The AO expressed the view that the Prudential write off is not eligible for deduction u/s 36(1)(vii) of the Act, since it is not actual write off. He then relied upon the decision rendered by Hon'ble Supreme Court in the case of Southern Technologies vs. ACIT (352 ITR 577)(SC), wherein it was held that the mere making of provision for NPA cannot be considered as write off u/s 36(1)(vii) of the Act. He also relied upon the decision rendered by Hon'ble Kerala High Court in the case of CIT vs. Hotel Ambassador (2002)(253 ITR 430)(Ker), wherein it was held that the deduction u/s 36(1)(vii) of the Act only if the assessee debits the same into the accounts as irrecoverable. Accordingly, the AO took the view that the amount of bad debts

claimed by the assessee was mere provision and not actual write off. Before the AO, the assessee had placed reliance on the decision rendered by Hon'ble Supreme Court in the case of Vijaya Bank vs. CIT (2010)(320 ITR 166 (SC)) to reiterate that it is entitled for deduction u/s 36(1)(vii) of the Act. The AO expressed the view that the issue considered by Hon'ble Supreme Court in the case of Vijaya Bank (supra) related to category of "Loss Assets", which is required to be provided @ 100% of the outstanding amount.

He further expressed the view that the Hon'ble Supreme Court did not consider the question viz., Whether the provision for non-performing assets created by the assessee bank by debiting P & L a/c and crediting the provision account would comply with the requirement of actual write off of 'bad debts' as mentioned in sec. 36(1)(vii) of the Income tax Act? Accordingly, the AO held that the assessee cannot place reliance on the decision rendered by Hon'ble Supreme Court in the case of Vijaya Bank (supra). Accordingly the AO held that the amount of Rs.145.16 crores was mere prudential write off and hence not allowable as deduction. He also held that it is a clear case of double deduction, i.e., once u/s 36(1)(vii) and again u/s 36(1)(vii) of the Act. Accordingly he disallowed the claim of bad debts of Rs.145.16 crores relating to non-rural advances.

7.2 The Ld CIT(A) did not agree with the view expressed by AO. He followed his decision rendered in the earlier year in the assessee's own case and held that the assessee's case is covered by the decision rendered by Hon'ble Supreme Court in the case of Vijaya Bank 323 ITR 166. It is pertinent to note that in AY 2013-14, the Ld CIT(A) had held as under:-

"6.5 Conclusion:-

a) It seen that the write off at the branch (Rs.101.72 cr.) & HO level (Rs.90.65 cr) together amounting to Rs.192.37 crores was debited to Provision account (which is part of the accounts of the assessee) which has the effect of reducing the advances in the balance sheet.

b) It is clear from the working of net advances and submissions that the assessee bank has not only debited provision a/c to the extent of bad debts, it simultaneously reduced the amount of loans and advances at the year end. In other words, the amount of loans and advances at the year end in the Balance sheet is shown as net of bad debts written off.

We also notice that the revenue has not filed appeal challenging the above said decision of Ld CIT(A) and hence this view of Ld CIT(A) on this issue has attained finality.

7.3 The Ld CIT(A), however, proceeded to examine this aspect from another angle, i.e., he took the view that the AO has not examined the claim of write off 'non-rural bad debts' of Rs.145.16 crores in terms of the proviso to sec. 36(1)(vii) read with 36(1)(viia) of the Act. Before Ld CIT(A), the assessee submitted that the "provision for bad and doubtful debts" (PBDD) allowed u/s 36(1)(viia) of the Act is related to rural debts only and hence, in terms of the proviso to sec. 36(1)(vii), only rural debts written off as bad should be adjusted against the PBDD allowed u/s 36(1)(viia) of the Act. However, the Ld CIT(A) expressed the view that the PBDD allowed u/s 36(1)(viia) of Act is applicable to both Rural and non-Rural debts. Accordingly, he held that the entire amount of bad debts written off (both rural and non-rural) should be first adjusted against the PBDD a/c allowed u/s 36(1)(viia) of the Act and only the excess should be allowed as deduction. He expressed the view that the decision rendered by Hon'ble Supreme Court in the case of Catholic Syrian Bank (2012)(343 ITR 270)(SC) was rendered under the assumption that the banks would maintain separate PBDD a/c in respect of rural branches and non-rural branches and therefore it is possible to distinguish PBDD as one in respect of rural branches and non-rural branches. The Ld CIT(A) expressed the view that the claim of the bank that the provisions of sec. 36(1)(viia) are distinct and independent of sec. 36(1)(vii) is based on the old circular no. 258 dated 14.6.1979 issued in connection with old law.

Accordingly the Ld CIT(A) held that the PBDD allowed u/s 36(1)(viia) of the Act is for single account since its introduction in 1985 and it is for all types of advances including rural advances. He also observed that the above said view has been clarified by Finance Act, 2013 by inserting Explanation 2 to sec 36(1)(vii) of the Act. Accordingly, the Ld CIT(A) held that the bad debts pertaining to non-rural advances should also be first adjusted against PBDD created u/s 36(1)(viia) of the Act. Accordingly, the Ld CIT(A) directed the assessee to furnish workings of PBDD a/c. As per the working so furnished, the opening credit balance as on 1.4.2013 in the PBDD account was shown at Rs.562.17 crores. Since it is more than the bad debts pertaining to non-rural branches of Rs.145.16 crores, the Ld CIT(A) held that the bad debts claim of non-rural branches is not allowable as deduction u/s 36(1)(vii) of the Act, as it does not exceed the Opening balance shown in PBDD a/c.

7.4 In AY 2013-14 also, the Ld CIT(A) had disallowed the claim made u/s 36(1)(vii) on identical reasons. However, the Tribunal has reversed the decision rendered by Ld CIT(A) by following the decision rendered by Hyderabad bench of Tribunal in the case of State Bank of

Hyderabad vs. DCIT (ITA No.450/Hyd/2015, ITA No.498 and 499/Hyd/2015 dated August 14, 2015). The relevant observations made by the Tribunal are extracted below:-

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

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

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

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

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

"2. Under Section 36(1)(vii) of the ITA 1961, the tax payer carrying on business is entitled to a deduction, in the computation or taxable profits, of the amount of any debt which is established to have become a bad debt during the previous year, subject to certain conditions. However, a mere provision for bad and doubtful debt(s) is not allowed as a deduction in the computation of taxable profits. In order to promote rural banking and in order to assist the scheduled commercial banks in making adequate provisions from their current profits to provide for risks in relation to their rural advances, the Finance Act, inserted clause (viia) in subsection (1) of Section 36 to provide for a deduction, in the computation of taxable profits of all scheduled commercial banks, in respect of provisions made by them for bad and doubtful debts relating to advances made by their rural branches. The deduction is limited to a specified percentage of the aggregate average advances made by the rural branches computed in the manner prescribed by the IT Rules, 1962. Thus, the provisions of clause (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 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)(viiia). 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 (viiia) 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 (viiia). 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 (viiia) 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 (viiia). Thus, the proviso to clause (vii) stood introduced in order to protect the Revenue. It would be meaningless to invoke the said 1 proviso where there is no threat of double deduction. In case of rural advances, which are covered by the provisions of clause (viiia), there would be no such double deduction. The proviso limits its application to the case of a bank to which clause (viiia) applies. Clause (viiia) applies only to rural advances. This has been explained by the Circulars issued by CBDT. Thus, the proviso indicates that it is limited in its application to bad debt(s) arising out of rural advances of a bank. It follows that if the amount of bad debt(s) actually written off in the accounts of the bank represents only debt(s) arising out of urban advances, the allowance thereof in the assessment is not affected, controlled or limited in any way by the proviso to clause (vii)."

Thus, considered in light of principle laid down as referred to above, when the proviso to section 36(1)(vii) applies to bad debts written off relating to rural advances, the same cannot be applied for disallowing deduction claimed on account of write off of bad and doubtful debts relating to non-rural/urban advances. As far as application of explanation to section 36(1)(vii) is concerned, we agree with the Id.

AR that its operation will be prospective and will not apply to the impugned AY. For this proposition, we rely upon the decision of the ITAT Mumbai in case of Bank of India Vs. Addl. CIT (supra). Even otherwise also, careful reading of explanation to section 36(1)(vii) would indicate that nowhere it suggests that the proviso to section 36(1)(vii) would apply in respect of bad debt written off relating to nonrural advances. In the aforesaid view of the matter, we hold that assessee would be eligible to avail deduction of an amount of Rs. 209.94 crore representing actual write off in the books of account of bad debts relating to non-rural/urban advances in terms with section 36(1)(vii), as proviso to the said section would not apply to non-rural advances. Accordingly, we delete the addition made by AO and confirmed by Id. CIT(A).”

5.4 Following the above said decision, we hold that the view expressed by Ld CIT(A) is not legally correct. Accordingly, we set aside the order passed by Ld CIT(A) with regard to his alternative decision, i.e., the view that the proviso to sec. 36(1)(vii) which requires adjustment of bad debts against provision allowed u/s 36(1)(viia) would apply to non-rural advances also. Accordingly, we direct the AO to delete the disallowance of Rs.192.02 crores.

7.5 The Ld A.R submitted that the Ld CIT(A) has rendered his decision by following his decision rendered in AY 2013-14 and earlier years. He submitted that Finance Act, 2013 has inserted “Explanation 2” in sec. 36(1)(vii) of the Act and the same reads as under:-

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

The Ld A.R submitted that the Ld CIT(A) has referred to the above said Explanation -2 in 6.13.2(viii) -Page 38 of his order and observed that the view taken by him in earlier years has been clarified in Explanation-2. Thus, according to Ld CIT(A) as well as by the revenue that the decision rendered by Hon’ble Supreme Court in the case of Catholic Syrian Bank (2012)(343 ITR 270) has been undone by the Parliament by inserting Explanation-2 in sec. 36(a)(vii) of the Act by Finance Act 2013.

7.6 The Ld A.R, however, contended that Explanation-2 has not changed the legal position for claiming deduction of bad debts written off u/s 36(1)(vii) and also claiming PBBD u/s 36(1)(viia) for banks having rural branches. According to Ld A.R, the assessee has claimed

deduction towards PBDD under clause (a) of sec. 36(1)(viia) and it relates to the rural advances only. Hence the proviso to sec. 36(1)(vii) shall have bearing only on PBDD relating to rural advances only. Thus, according to Ld A.R, the bad debts written off relating to non-rural advances should be allowed independently u/s 36(1)(vii) of the Act without first adjusting the same against PBDD allowed under clause (a) of sec. 36(1)(viia) of the Act.

7.7 We heard the Ld D.R and perused the record. Now the core question that arises is whether the bad debts relating to non-rural branches are also required to be first debited to PBDD a/c and then the excess amount over and above the balance available in PBDD alone could be allowed as bad debts u/s 36(1)(vii) of the Act.

7.8 The provisions of sec. 36(1)(vii) allows deduction as under:-

“36(1)(vii) Subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year.

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

.....

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

The provisions of sec.36(2)(v) are relevant here and it reads as under:-

“(2) In making any deduction for a bad debt or part thereof, the following provisions shall apply----

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

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

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

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

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

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

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

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

(i) the provision allowed u/s 36(1)(viiia) shall apply only to rural branches.

(ii) since it does not maintain two separate PBDD a/c for rural and non-rural advances, the bad debts relating non-rural branches need not

be reduced from the PBDD a/c allowed u/s 36(1)(viia) in terms of sec. 36(2)(v) and the proviso to sec. 36(1)(vii) of the Act.

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

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

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

(ii) Clause (b) of sec. 36(1)(viia) shall be applicable to a bank incorporated by or under the laws of a country outside India. The quantum of deduction is 5% of the total income (computed before making any deduction under this clause and Chapter VIA).

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

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

The Hon'ble Supreme Court in the case of Catholic Syrian Bank (supra) has held that the PBDD allowed under clause (a) of Sec. 36(1)(viia) refers to 'rural advances' only. In fact the expression "rural branches" finds place in clause (a) only. It can be noticed that the reference to "rural branches" is not there in clause (b) to (d). Generally, the foreign banks may not have rural branches. However, such kind of banks, financial institutions, NBFC etc. are also eligible to claim deduction towards PBDD u/s 36(1)(viia) of the Act under clauses (b) to (d). In view of the decision rendered in the case of Catholic Syrian bank, it is possible that the assesseees covered by clause (b) to (d) may

contend that the bad debts written off by them need not be adjusted against PBDD allowed u/s 36(1)(viia) of the Act, since the bad debts relate to “non-rural debts”. Accordingly, we are of the view that the Explanation 2 has been inserted in order to bring the assesses covered by clauses (b) to (d) within the ambit of the proviso to sec. 36(1)(vii) and sec. 36(2)(v) of the Act. Hence, in our view, advances given by rural and non-rural branches mentioned in Explanation 2 shall apply to the assesses covered by clause (b) to (d) of sec. 36(1)(viia) of the Act.

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

“Clarification for amount to be eligible for deduction as bad debts in case of banks:-

Under the existing provisions of section 36(1)(viia) of the Income-tax Act, in computing the business income of certain banks and financial institutions, deduction is allowable in respect of any provision for bad and doubtful debts made by such entities subject to certain limits specified therein. The limit specified under section 36(1)(viia)(a) of the Act restrict the claim of deduction for provision for bad and doubtful debts for certain banks (not incorporated outside India) and certain cooperative banks to 7.5% of gross total income (before deduction under this clause) of such banks and 10% of the aggregate average advance made by the rural branches of such banks. This limit is 5% of gross total income (before deduction under this clause) under sections 36(1)(viia)(b) and 36(1)(viia)(c) for a bank incorporated outside India and certain financial institutions.

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

of the credit balance in the provision for bad and doubtful debts account made under section 36(1)(viia) of the Act.

However, certain judicial pronouncements have created doubts about the scope and applicability of proviso to section 36(1)(vii) and held that the proviso to section 36(1)(vii) applies only to provision made for bad and doubtful debts relating to rural advances. Section 36(1)(viia) of the Act contains three sub-clauses, i.e. sub-clause (a), sub-clause (b) and sub-clause (c) and only one of the sub-clauses i.e. sub-clause (a) refers to rural advances whereas other sub-clauses do not refer to the rural advances. In fact, foreign banks generally do not have rural branches. Therefore, the provision for bad and doubtful debts account made under clause (viia) of section 36(1) and referred to in proviso to clause (vii) of section 36(1) and section 36(2)(v) applies to all types of advances, whether rural or other advances. It has also been interpreted that there are separate accounts in respect of provision for bad and doubtful debt under clause (viia) for rural advances and urban advances and if the actual write off of debt relates to urban advances, then, it should not be set off against provision for bad and doubtful debts made for rural advances. There is no such distinction made in clause (viia) of section 36(1). In order to clarify the scope and applicability of provision of clause (vii), (viia) of sub-section (1) and sub-section (2), it is proposed to insert an Explanation in clause (vii) of section 36(1) stating that for the purposes of the proviso to section 36(1)(vii) and section 36(2)(v), only one account as referred to therein is made in respect of provision for bad and doubtful debts under section 36(1)(viia) and such account relates to all types of advances, including advances made by rural branches. Therefore, for an assessee to which clause (viia) of section 36(1) applies, the amount of deduction in respect of the bad debts actually written off under section 36(1)(vii) shall be limited to the amount by which such bad debts exceeds the credit balance in the provision for bad and doubtful debts account made under section 36(1)(viia) without any distinction between rural advances and other advances. This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

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

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

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

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

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

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

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

7.15 As noticed earlier, the assessee covered by clauses (b) to (d) may not be having rural branches, but they would be getting the benefit of deduction of PBDD u/s 36(1)(viia) of the Act. Hence, in order to bring

those assessee within the ambit of the proviso to sec. 36(1)(vii) and sec. 36(2)(v), it was imperative for the Parliament to clarify the legal position and accordingly Explanation-2 has been inserted in sec. 36(1)(vii) of the Act. Accordingly, on the analysis of the provisions discussed above, we are of the view that the above said Explanation-2 shall operate

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

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

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

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

5. Respectfully following the above decision of the coordinate Bench, we allow this ground in above terms.

6. **GROUND No. 03** is alternate ground of 02, since we have decided the ground No. 02 in above terms, therefore it does not require separate adjudication.

7. **Ground No. 04** - Disallowance u/s 40(a)(ia) is taken up with ground Nos. 15 & 16 in the revenue's appeal in the following para.

8. **Ground No.5** is regarding addition of Rs.14,94,21,888 u/s. 14A being expenditure in relation to exempt income to the book profit u/s.

115JB. During the course of hearing the Id. AR of the assessee relied on the judgment of Sobha Developers Ltd. reported in [2021] 434 ITR 266 (Karn) and submitted that para no. 6 & 7 is relevant part of the judgment is squarely applicable to the present case on hand which reads as under:-

“ 6. We have considered the submissions made on both sides and have perused the record. Before proceeding further, it is apposite to take note of relevant extract of section 115JB of the Act, which reads as under:

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

(f) the amount or amounts of expenditure relatable to any income to which section 10 (other than the provisions contained in clause (38) thereof) or section 11 or section 12 apply; or

(i) the amount or amounts set aside as provision for diminution in the value of any asset,

if any amount referred to in clauses (a) to (i) is debited to the statement of profit and loss or if any amount referred to in clause (j) is not credited to the statement of profit and loss, and as reduced by,—

(i) the amount withdrawn from any reserve or provision (excluding a reserve created before the 1st day of April, 1997 otherwise than by way of a debit to the statement of profit and loss), if any such amount is credited to the statement of profit and loss:

(5) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section.

7. Thus from perusal of the relevant extract of section 115JB, it is evident that sub-section (1) of section 115JB provides the mode of computation of the total income of the assessee and tax payable on the assessee under section 115JB of the Act. Sub-section (5) of section

115JB provides that save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee being a company mentioned in this section. Therefore, any expenditure relating to earning of income exempt under section 10(2A) and section 10(35) of the Act is disallowed under section 14A of the Act and is added back to book profit under clause (f) of section 115JB of the Act, the same would amount to doing violence with the statutory provision viz., sub-sections (1) and (5) of section 115JB of the Act. It is also pertinent to mention here that the amounts mentioned in clauses (a) to (i) of Explanation to section 115JB(2) are debited to the statement of profit and loss account, then only the provisions of section 115JB would apply. The disallowance under section 14A of the Act is a notional disallowance and therefore, by taking recourse to section 14A of the Act, the amount cannot be added back to book profit under clause (f) of section 115JB of the Act. It is also pertinent to mention here that similar view, which has been taken by this court in Gokaldas Images (P.) Ltd. (supra) was also taken by High Court of Bombay in CIT v. Bengal Finance & Investments (P.) Ltd. [IT Appeal. No. 337 of 2013, dated 10-2-2015]. It is pertinent to note that in Rolta India Ltd., the Supreme Court was dealing with the issue of changeability of interest under sections 234B and 234C of the Act on failure to pay advance tax in respect of tax payable under section 115JA/115JB of the Act and therefore, the aforesaid decision has no impact on the issue involved in this appeal. Similarly, in Maxopp Investment Ltd. (supra) the Supreme Court has dealt with section 14A of the Act and has not dealt with section 115JB of the Act. Therefore, the aforesaid decision also does not apply to the fact situation of the case.

In view of preceding analysis, the substantial questions of law framed by a bench of this court are answered in favour of the assessee and against the revenue. In the result, the order passed by the tribunal dated 9-1-2015 insofar as it pertains to the findings recorded against the assessee is hereby quashed.”

9. The ld. DR relied on the order of the AO and submitted that the AO has correctly added the disallowance made u/s. 14A for computing income u/s. 115JB.
10. Considering the rival submissions we noted that the AO has calculated the disallowance u/s. 14A of Rs.14,94,21,888 and this issue was raised before the CIT(A) and the CIT(A) has also decided the

issue in favour of the assessee. Against the deletion by the CIT(A), the revenue has raised this issue before us in ground no.2 to 9 of revenue's appeal. After considering the submissions we have dismissed the appeal of the revenue on this issue observing that there should not be disallowance u/s. 14A and decided this issue in favour of assessee, therefore no question arises for adjudication u/s. 115JB. Hence this ground becomes infructuous.

11. **Ground No.6 & 7** relates to addition of Rs.25,85,00,000 being provision for wage arrears and Rs.20 crores towards Ex-gratia and Bonus while computing book profits computed u/s. 115JB. During the course of assessment proceedings, the AO noted that while computing taxable income these provisions has been added back by the assessee, however, while computing the book profit, these provisions have not been added back and the assessee's view is that the provisions made were not unascertained liability. The AO further noted that while computing the income of the subsequent year the actual arrears of salary has been claimed as expenses, therefore the amount remained contingent liability. This would not alter the nature of provision and accordingly required to be added back to the book profits. Further, the AO noted from the submissions that the provisions have been computed on approximate basis on the basis of previous wage revision and the quantification pending discussion with unions. Accordingly it cannot be said that it is ascertained liability. The claim of future liability is to be held as unascertained liability and not being capable of quantification with certainty. Accordingly these amounts were added

back to the book profit. This issue was raised before the CIT(A), however, the CIT(A) has observed that the income under normal provisions as per the return itself is higher than the book profit calculated u/s. 115JB. During the course of hearing, both the parties agreed that the CIT(A) should have decided the issue in detail, therefore we are remitting this issue back to the file of the CIT(A) for fresh decision as per law. Assessee is directed to substantiate its case with sufficient material. Grounds No. 6 & 7 are allowed for statistical purposes.

12. **Ground No. 8** regarding interest u/s. 234B & 234D is consequential in nature.

13. The appeal of the assessee is partly allowed for statistical purposes.

ITA No.161/Bang/2019 (Revenue's appeal)

14. **Ground No.1 & 17** are general in nature.

15. **Ground Nos. 2 to 9: Disallowance u/s. 14A:** During the course of assessment proceedings the AO noted that the assessee has received certain exempt income but there is no disallowance made by the assessee under section 14A of the Act. During the impugned AY, the assessee had made investment and earned exempt income as under:-

A. Investments	
Tax free bonds	Rs. 5 crore
Shares	Rs.150.44 crores

Total investments	<u>Rs.155.44 crores</u>
B. Exempt income earned	
Dividend income	Rs. 87,05,348
RIDF interest	<u>Rs. 30,98,618</u>
Total	<u>Rs.118,03,966</u>

16. The AO noted that without utilising the resources and the existing establishment of the applicant it would have been possible to earn the exempt income. The investment made will always have a notional interest and other costs attached to it. The investments made by the assessee are from common pool of funds, therefore the proportional expenditure should have been disallowed by the assessee since the assessee has interest bearing and interest free funds available. The assessee submitted that during the relevant AY the investment have come down by Rs.59,36,09,174 and the assessee has own fund of Rs.3389.06 crores and increased from previous AY by Rs.336.86 crores. Therefore there is no any capital (internal and external) outlay. From the submissions made by the assessee, it was observed that there is no incremental investment during the year, there are interest free surplus funds, tax free income is only incidental income received from investments made out of cost free funds and the income earning activity does not require human agency and no expenditure involved. From the further reply submitted by the assessee, the AO further noted that certain administrative expenditure cannot be denied and there is direct and indirect expenditure involved towards earning of such exempt income. He relied on certain judgments and calculated the disallowance u/s. 14A r.w. Rule 8D of Rs.14,94,21,888.

17. On appeal, the Id. CIT(A) following the judgment of the previous AY in assessee's own case allowed the grounds raised by the assessee. Aggrieved from the order of CIT(A), revenue has filed appeal.

18. The Id. DR relied on the order of AO and submitted that for purpose of making investments, the involvement of internal and external funds cannot be denied. The assessee is unable to demonstrate that how much interest free funds are involved towards investments for earning exempt income. The assessee has also not quantified for indirect expenditure involved towards earning of exempt income. In bank there is separate treasury division for maintaining the investments therefore the assessee should allow disallow certain administrative expenditure for earning exempt income, however assessee has not disallowed any expenditure. The Circular No.5/2014 referred by the AO is squarely applicable in the present facts of the case of assessee.

19. Considering rival submissions, we noted that during the impugned AY, the assessee has received exempt income of Rs. 1.18 crores and there is no disallowance made by the assessee u/s. 14A on the premise that there is no any incurred expend are incurred by the assessee towards earning exempt income. The assessee's own fund is more than the investments made and there is decrease in quantum of investments during the year by Rs.59.36 crores and the increase in the internal fund is by Rs.336.86 crores. Therefore there is no external fund used for investments towards earning of exempt income and there

is no separate administrative expenditure incurred for earning exempt income. This issue has been decided by the coordinate Bench of Tribunal in assessee's own case for the AY 2016-17 & 2017-18 in ITA No.876 & 877/Bang/2023 in which it has been held as under:-

20. 11. After considering the rival submissions and perusing the material on record, we note that this issue was considered by this Tribunal in the case of Canara Bank (erstwhile Syndicate Bank) in ITA No. 501 & 390/Bang/2023 for assessment years 2016-17 & 2017-18 dated 25.10.2023 and it was held as under:-

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

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

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

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

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

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

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

9. From perusal of Section 14A of the Act, it is evident that for the purposes of computing the total income under this chapter, no deduction shall be allowed in respect of the expenditure incurred by the assessee in relation of the income which does not form part of his total income under the Act. The expenditure, the return of investment and cost of requisition are distinct concepts. Therefore the word 'incurred' in Section 14A of the Act have to be read in the context of the scheme of the Act and if so read, it is clear that it disallows certain expenditures incurred to earn exempt income from being deducted from other incomes which is includable in the total income for the purposes of chargeability to the tax. It is equally well settled that expenditure is a pay out. In order to attract applicability of section 14A of the Act, there has to be a pay out and return of investment or a pay back is not such a debit item. [See: WALFORTH SHARE AND STOCK BROKERS (P) LTD SUPRA as well as M.4XOP INVESTMENTS LTD SUPRA]. In the instant case, the assessee has admittedly not incurred any expenditure. This case pertains to income on dividend, which by no stretch of imagination can be treated to be an expenditure to attract the provisions of Section 14A of the Act. In view of aforesaid enunciation of law by the Supreme Court, the first substantial question of law framed by this court is answered in favour of the assessee and against the revenue.

10. Learned counsel for parties, have fairly admitted that in case this court frames a substantial question of law that whether provisions of Section 115JA apply to the Banking Companies are not the remaining substantial questions of law, would be reduced otiose. This court has already framed a substantial question of law in this regard today. This court by an order passed on 16.01.2020 passed in ITA No.13/2014 has already held that the provisions of Section 115JB do not apply to the banking companies. Therefore, the substantial questions of law Nos_3, 4 and 5 and substantial question of law framed in ITA 99/2010 are rendered academic and need not be answered. So far as substantial; question of law No.2 in ITA No.97/2010 is concerned, the same is squarely covered by the decision of the Supreme Court in 'CIT VS.

ESSAR TELEHOLOINGS LTD.',(2018) 401 ITR 445, wherein it has been held that provisions of Section 114A read with rule 8D of the Income Tax Rules are prospective in nature and can not be applied to any assessment year prior to Assessment Year 2008-09. Accordingly, the aforesaid substantial question of law is answered against the revenue and in favour of the assessee."

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

"MEMO ON BEHALF OF THE APPELLANT

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

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

6. As per the Memo, question Nos.1 & 3 would only be treated as academic and hence, not answered. in view of the same, in terms of the order dated 31.01.2020, the substantial questions of law Nos.2 & 4 are answered in favour of the assessee and in terms of the aforesaid judgment."

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

21. During the course of hearing, the ld. AR of the assessee also relied on the judgment of Hon'ble jurisdictional High Court in the case of CIT v. M/s. Karnataka Bank Ltd. reported in 2021 (7) TMI 1411 – Karnataka High Court. And the issue has been decided as per question of law No.2 in favour of the assessee at para No.3 of the judgment. Respectfully following the above judgments, we dismiss the grounds raised by the revenue on this issue.

22. **Ground No. 10 to 14** : Briefly stated the facts of the case are that the assessee bank has claimed a sum of Rs.211.22 crores as deduction u/s. 36(1)(viia) in the computation of income filed. The assessee was asked to justify the claim and the assessee furnished reply as under:-

Assessee's written submission of details

Deduction U/s 36(1)(viia)

Basis of claiming Rs.211,22,28,835 as deduction U/s 36(1)(viia) of the IT Act

The claim u/s 36(1)(viia) has been made on the following basis:

<i>(i) 10% of Aggregate Average Rural Advances</i>	<i>Rs.127,09,83,333</i>
<i>(ii) 7.50% of the total income</i>	<i>Rs. 84,12,45,502</i>

Provision made U/s 36(1)(viia)
(against above balance provision Available supra)

Rs.211,22,28,835

(iii) Provision for bad and doubtful debts made in the Books Rs. 223,07,13,584
The claim is restricted to minimum of the provision made in the Books and percentage of average advances and total income prescribed under the Section.

The method of calculation of aggregate average advances for the purposes of Section 36(1)(viia) is exactly as specified in Rule 6ABA of the Income Tax Rules. The details of working is furnished

23. From the above submissions, it was noted that assessee has not furnished details as asked regarding rural branches and average aggregate advances as prescribed under the Rules. Accordingly a further query was raised to assessee. The assessee furnished reply as under:-

Deduction claimed u/s 36(1)(viiia):

Identification of rural branches: AR submitted that the rural branches as per list furnished earlier, were classified as rural branches by RBI notification / at the time of commencement of branch. However, as and when they are notified to be non rural the same is modified for the purpose of working out rural advances as per rule 6ABA.

Assessee requested to justify the claim that they are still rural branches as on date and furnish details of population in each of the rural branches as claimed, with complete address. The branches which are part of urban agglomeration are not be considered as rural, in view of the decision of Hon'ble High Court of Kerala in the case of Lord Krishna Bank, which was discussed during hearing. Assessee asked to justify / revise the claim of rural branches as on the date of claiming deduction in the above context. Identification of such branches with evidences is required to be made for allowing deduction.

Advances made during the year are only eligible for deduction:

It is submitted by the assessee that the balances shown in the list furnished are the **terminal balances / outstanding balances** and the average advances are worked out to claim deduction u/s 36(1)(viiia). However, the assessee informed that the advances made during the year alone are eligible for deduction and not the cumulative advances outstanding. It will be an aberration to allow deduction on the cumulative advances on which the deduction is already claimed earlier. Assessee asked to furnish the details of advances made during the year. In the absence of any details, it is proposed to adapt the incremental figures as the advances made during the year and restrict the deduction accordingly.

24. Further the AO noticed from the submission that the assessee bank has computed the 10% of Average Aggregate Advances (AAA) at Rs.1,27,09,83,33,333. The AO examined the submission and found some discrepancies for the following reasons:-

- a) The classification of rural branches was adapted as per RBI norms and the recent population figures have not been considered for identifying rural branches and the population of many of the rural branches had already exceeded 10,000.
- b) Further, in several cases it was noticed that the branch is not a rural branch and rather it was situated in urban agglomeration which cannot be considered as a Rural branch.
- c) Apart from this, while the computing the AAA the assessee bank has taken into account the running balance of the advances made in the previous year as the opening balance of the subsequent year and computed the outstanding balance at the end of last day of each month comprised in the previous year.
- d) While computing the AAA the assessee bank should have considered the fresh amount of advances made by each rural branch as outstanding at the end of each month comprised in the previous year rather the running balance. In this process, substantial amount of deduction has been claimed over and above the eligible amount.

25. Accordingly the assessee was asked to furnish the working made in respect of AAA made by various branches. Further the AO noted that the rural branches should be defined as per judgment of Hon'ble jurisdictional High Court in the case of Lord Krishna Bank and advances made by rural branches are to be considered but not the cumulative balances. The assessee is eligible to get deduction u/s. 36(i)(viiia) to the extent of 7.5% of total income before allowing this deduction and 10% of the AAA. The quantum of advances should be only the advances made but not the advances outstanding at the end of the year. The assessee contended that there is no such interpretation with regard to advances made. Ther AOA relied on various judgments. During the course of hearing the assessee was informed that deduction is only 10% of AAA and not the cumulative balance outstanding. The AO noted that the terminal balances / outstanding balances on this

deduction is being claimed, year after year will lead to a situation wherein the advances on which deduction is allowed during earlier years will also get deduction in the subsequent year which may not be the intention and purport of the law. The words “advances made” signify that the advances made during the year and hence the cumulative balance which includes advances granted during earlier years cannot be considered for the purpose of computing of deduction at 10%. This would result in an absurdity of law, which cannot be cured, as the same advances gets deduction year after year, where the period of advance is more than one year. The same was examined in the light of the above observation and assessee is getting undue benefit or extra deduction by interpreting that the average advances which were granted during the earlier year were also eligible for deduction u/s. 36(1)(viia). The assessee was further asked to submit details of rural advances to which the assessee submitted. After considering the entire submissions the AO relied on the judgment of Hon’ble Kerala High Court in the case of Lord Krishna Bank computed net disallowance as under:-

	Particulars	Amount
01	10% of average aggregate advances made during the year by rural branches being Rs.475.14 crores (Rs.529.71 crores – Rs.117.57 crores; excluding advances pertaining to branches situated in urban agglomeration and considering the amount of advances sanctioned by rural branch during the year – incremental averages as provided by the assessee)	Rs.47,51,40,000
02	7.5% of the total income before deduction u/s 36(1)(viia) and Chapter VIA deductions	Rs.87,49,19,279
03	Deduction allowable u/s 36(1)(viia)	Rs.1,35,00,59,280
04	Deduction claimed u/s 36(1)(viia)	Rs.211,22,28,835
05	Disallowance made being excess claim of deduction	Rs. 76,21,69,555
Net Disallowance Rs.76,21,69,555/-.		

26. Aggrieved from the above order, the assessee filed appeal before the CIT(A) and the ld. CIT(A) relying on following judgments allowed appeal of the assessee:-

- Canara Bank v. JCIT, LTU [2017] 60 ITR (Trib) 1 (ITAT Bang)
- Vijaya Bank v. JCIT, LTU in ITA No.1252/B/2010 order dt. 5.1.2018
- Nizamabad Dist. Co-op. Central Bank Ltd. v. ITO, 2014 (12) TMI 562 – ITAT, Hyd.
- DCIT v. Madurai Dist. Central Co-op. Bank Ltd. [2014] 51 taxmann.com 194 (Chennai Trib)
- DCIT v. City Union Bank Ltd. in ITA No.1485/Mds/07 dt. 30.10.2009.

27. The ld. DR relied on the order of AO and submitted that the assessee has wrongly interpreted the provisions of the Act and submitted that the order of the AO should be upheld.

28. The ld. AR submitted that the issue is squarely covered in favour of the assessee by the order of the jurisdictional High Court and in assessee's own case and further submitted that the ld. CIT(A) has rightly allowed the appeal of the asse. He also relied on the coordinate Bench decision in the assessee's case in ITA Nos. 963 & 964/Bang/2023 dated 19.2.2024 for AYs 2016-17 & 2017-18 where it is held as under:-

“40. Considering the rival submissions, the assessee has computed deduction u/s 36(1)(viiia) of Rs. 191.95 crores being a scheduled bank to the extent of 7.5% of the total income and 10% of the AAA of rural branches. The AO noted that the assessee has claimed excessive deduction on two counts. Firstly the assessee has not updated its information about categorization of rural branches which has either converted to semi urban branches or where the population has exceeded 10,000. Secondly the assessee has claimed 10% of the entire advances of rural branches including the opening balances. The AO discussing the provision and relying on the decision of Hon'ble High

Court of Kerala in the case of Lord Krishna Bank on the basis of information furnished by the assessee restricted the deduction to the tune of Rs. 103.72 crores. This issue has been decided by the Hon'ble Jurisdiction high Court in the case of CIT, LTU v. Canara Bank [2023] 147 taxmann.com 171 (Karnataka) dated 5.12.2022. the relevant part of the order is as under:-

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

7. Shri Suryanarayana, adverting to the Para 7 of the impugned order, submitted that in identical circumstances, in assessee's own case, the assessee had made provision in similar manner as made in A.Y. 2013-14. A co-ordinate bench of the Tribunal had accepted the provision made by the assessee benefit in Canara Bank v. Jt. CIT [2018] 99 taxmann.com 357/[2017] 60 ITR (Trib.) 1 (Bengaluru - Trib.). He further submitted that the said order has been followed by the Tribunal in Vijaya Bank v. Jt. CIT [IT Appeal Nos. 915 & 845 (Bang.) of 2017, dated 5-1-2018] and the said method of making provision has been approved by the Calcutta High Court in Uttarbanga Kshetriya Gramin Bank case.

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

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

"7.2 Before us, the learned Authorised Representative for the assessee reiterated the submission that the language of Rule 6ABA is very clear and does not mandate that only incremental advances has to be considered and nothing can be read into it as has been done by the authorities below. It was submitted that this issue has been considered and decided in favour of the assessee by the co-ordinate bench of this Tribunal in the case of Canara Bank v. JCIT (2017) 60 ITR (Trib) 1 [ITAT (Bang)]"

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

"Mr. Khaitan, learned senior Advocate appeared on behalf of the assessee and submitted that the computation to be made as prescribed by rule 6ABA is for the purpose of fixing the limit of the deduction available under section 36(1)(viiia). Clauses (a) and (b) in rule 6ABA cannot be given the restricted interpretation. The amounts of advances as outstanding at the last day of each month would be a fluctuating figure depending on the outstanding as increased or reduced respectively by advances made and repayments received. The assessee might provided for bad and doubtful debts but the deduction would only be allowed at the percentage of aggregate average advance, computation of which is prescribed by rule 6ABA. We find from the amended direction made by the Tribunal that such direction is in terms of rule 6ABA. The ITO has made the computation of aggregate monthly advances taking loans and advances made during only the previous year relevant to assessment year 2009-10 as confirmed by CIT(A). The Tribunal amended such direction, in our view, correctly applying the rule."

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

41. Respectfully following the above judgment of the Jurisdictional High Court we hold that while calculating AAA of rural branches under section 36(1)(viiia), not only fresh advances made during year, but also amount of advance outstanding are to be considered. Accordingly, the ground taken by the revenue on this issue is dismissed.

42. In ground No. 2 the revenue has raised that the Id. CIT (A) has not followed the decision of Hon'ble High Court of Kerala in the case Lord Krishna for computation of deduction u/s. 36(1)(viiia) in respect of classification of rural branches. This issue has been decided by the jurisdictional High Court in the case of State Bank of Mysore v. ACIT [2015] 57 taxmann.com 253 (Karnataka) in which it has been held as under:-

"The instant case is concerned with the assessment for the assessment years 2003-04 and 2004-05. The first day of the previous year for these

assessment years would be 1-4-2002 and 1-4-2003. For the purpose of computing the deduction under section 36(viia) the population figures available prior to 1-4-2002 is to be considered. [Para 6]

If the provisional population totals as published on 27-3-2001 and 1-9-2010 is taken into consideration, then it is the Census figures of 2001, which has to be taken into consideration. If the final population published on December 2003 is taken into consideration, then it would be the final population figure of 1991 Census that has to be taken into consideration. The question is which is the final population total which has to be taken into consideration because as it is clear from the letter written by the Registry of Home Affairs, the provisional population total cannot be relied upon. [Para 7]

In respect of any provision for bad and doubtful debts made by the scheduled bank, an amount not exceeding 7 1/2 percentage of the total income computed before making any deduction under this clause and chapter VIA and an amount not exceeding 10 per cent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner are allowed as deduction. It is clear from the said provision that the distinction has been made between the branches situated in the rural areas and the branches situated outside the rural areas. In respect of rural area, branches have to cater to the requirements of the poor and underprivileged section of the society. The chances of recovery by the national bank being weaker by 10 per cent to the aggregate average, advances made in those rural branches is given deduction towards bad and doubtful debts.

The Legislature has defined what is 'rural branch', as it is clear from the explanation. They have fixed the population of not more than 10,000 as determining the rural branch and that population of 10,000 should be according to the last preceding census of which the relevant figures have been published before the first day of previous year. Therefore, this benefit of 10 per cent of the aggregate average advances made by the rural branches of the bank is extended to the small population, living in the villages which is less than 10,000. If the population of such village is more than 10,000, then the said benefit of 10 per cent deduction is not available. Hence, one should keep this object of the Legislature in mind and then interpret the word 'rural branch'. The word used is 'published' before the first day of previous year. If in the Census it is found that the population of a particular village has crossed 10,000, then the scheduled bank pertained to that village would not be entitled to the deduction of 10 per cent of the aggregate average advances towards bad and doubtful debts. The Census figure would be available with the Census Department. It is not possible for the common man or the bank to know what is the Census

figure. Therefore, the said provision stipulates that Census figure has to be published. Therefore, it is only after publication of the Census figures that one may be able to decide whether it is a rural branch as defined under the Act or not. The last stipulated population necessarily would be with reference to particular date. That day is also prescribed as that date before first day of the previous year. Once the publication of census is made before the first day of the previous year, then the said information is in public domain. Therefore, on that basis one could find whether a branch is a rural branch or not. It is no doubt true that the Census Department initially publishes a provisional population total, probably calling objections from the public and after considering those objections, publishes final population total.

The legislature has used the words 'bad and doubtful debts' and the words 'provisional' and 'final' conspicuously missing in the said words. The word 'published' has to be understood as final population as contended by the assessee. If other words are added, it would amount to re-writing which is impermissible in law. Keeping in mind the object, before the bank is entitled to the said benefit, all that is to be seen is whether in that village where the rural branch is situated, population is less than 10,000 or exceeding 10,000. Census is conducted once in ten years. After conclusion of the Census, provisional figure will be published and then final publication is made. If from the date of provisional population totals being published, it has crossed the 10,000 limit as prescribed under the law, then it does not satisfy the requirements of the rural branch and, consequently, would not be entitled to the benefit granted to the rural branches. The publication of the final population total is only a formality. If provisional population total shows more than 10,000 and in the final population total figure shown is less than 10,000, then it will make difference. But in both the provisional population total and the final population total if figure is mentioned above 10,000, it makes no difference in the instant case. It is not the case of the assessee that though the provisional figure mentioned is above 10,000 in the final population total it has gone below 10,000 and, therefore, provisional population total cannot be acted. In that view of the matter, the Tribunal was justified in upholding the order passed by the assessing authority where they have acted on the Census figures of 2001 as reflected in the provisional population totals and denied the benefit to the assessee. [Para 8]”.

43. Respectfully following the above judgment, we hold that for claiming deduction u/s. 36(1)(viiia) in respect of rural branches, the latest/provisional census available should be considered. Accordingly this issue is remitted back to the AO. The assessee is directed to

provide the latest/provisional census which was available for the respective assessment year. This ground is allowed for statistical purposes.”

29. Respectfully following the above judgment, we remit this issue back to the file of AO in above terms.

30. **Ground No. 15 & 16 of the revenue appeal and ground No.4 of the assessee appeal** : During the course of assessment proceedings it was noticed that the assessee has made certain payments to National Payments Corporation of India managed by Reserve Bank of India and the company is registered u/s. 25 of the Companies Act being switch charges of Rs.1,05,25,504 and ATM charges of Rs.26,63,32,574 and ATM usage charges paid to Visa Worldwide of Rs.2,27,04,737. In this regard, the assessee was asked detail of tax deducted at source but the assessee did not give the specific reasons for not deducting TDS. However the assessee submitted written submissions filed on 30.1.2017 which is incorporated by the AO in his order. The assessee submitted that banks allow other banks customer to do transactions in their ATMs like cash withdrawal, balance enquiry, statement request, etc. For this purpose NPCI network which manages national financial switch (NFS), act as intermediary in settling the dues among the banks. NPCI collects charges from the ATM card issuing bank whose customer has done transaction in other bank's ATM and share it with such banks. Apart from these charges, NPCI collects from all the banks 0.50 paise (in our opinion it should be 50 paise) per transaction as switch charges which is retained by it. These charges are debited to current account after netting the amount to be received by the bank for

usage of the bank ATM by the customers of other bank. Thus the net amount is credited to the bank account rather than the bank making any payment. The amount so debited to the bank's account is in turn paid to various banks by NPCI only. The assessee also referred to the Notification SO 3069(E) [NO.56/2012 (F. NO. 275/53/2012-IT(B)], DATED 31-12-2012 and NOTIFICATION NO. SO 2143(E) (NO.47/2016 (F.NO.275/53/2012-IT(B), DATED 17-6-2016]. From the written synopsis it was observed that the deductee has reported receipts in their returns of income and furnished a certificate in the prescribed form. However the assessee was unable to provide the legal basis / detailed reasons as to why the amounts were paid without TDS in the absence of any express provision of law or a certificate u/s. 197 obtained and furnished by the deductee for non-deduction of tax. He further noted that even if the deductee has offered the receipts, the deductor is liable for consequences of non-deduction of tax and the Notification relied by the assessee is applicable from its publication i.e. 17.6.2016 and payment made prior to such date are not eligible for any TDS exemption. He also noted that NPCI which is fully owned subsidiary of RBI has issued several Notifications in the form of Circulars/letters to the member banks to deduct taxes uniformly and intimate the details for their record. It was noted that the exemption from TDS to the NPCI is applicable from 17.6.2016 and the assessee is liable for deduction of TDS before that date since the transaction was done in the ordinary course of business. NPCI also collects charges from ATM card issuing bank whose customer has done transaction in

other bank ATM and share it with other bank. NPCI also retains a part of such receipt as its share of profit. All this show that the assessee is utilising service of NPCI, accordingly it is liable for TDS. It was also noticed that the TDS AO has also passed orders in this regard for non-deduction of TDS and it has been upheld by the FAA. Accordingly after considering the entire submissions the AO disallowed the payments made to NPCI and for VISA of Rs.29,95,61,815 (27,68,58,078 + 2,27,04,737) and added back to the total income of the assessee.

31. Before the Id. CIT(A) the service charges of VISA or NPCI the necessary auditor's certificate u/s. 201 of the I.T. Act was furnished. The other ATM utilisation charges is a portion to the bankers by the respective agencies in making multi level settlement of the usage charges, i.e., after netting both the receipts to the assessee from other banks and payments from assessee to other banks for usage of the ATM card among each other. The ATM usage charges is akin settlement of accounts and payment made through the NPCI and VISA are akin to clearing charges referred to in the CBDT Notification noted supra. Ther Id. CIT(A) relying on the judgment of coordinate Bench of ITAT Bangalore in ITA No.1264 & 1352/Bang/2013 for the AY 2011-12 deleted the switch charges and ATM usage charge s paid to NPCI. The ATM usage charges paid to VISA Worldwide was upheld. Aggrieved from the above, both the parties are in appeal.

32. The ld. AR of the assessee submitted in respect of the ATM Usage charges paid to VISA Worldwide is covered by the judgment of the coordinate Bench of the Tribunal in the assessee's own case for AY 2013-14 in ITA Nos..1906 & 229 Bang/2018 dated 27.12.2021. He further submitted that the issue has been decided by the Hon'ble jurisdictional High Court in the case of CIT v. Karnataka Bank Ltd. reported in 2021 (7) TMI 1411 – Karnataka High Court and the issue has been answered in favour of the assessee as per the question of law no. 4.

33. The ld. DR relied on the order of the AO in respect of payment made to NPCI and in respect of payment made to VISA Worldwide the order of the lower authorities.

34. Considering the rival submissions we noted that the issue has been decided by the coordinate Bench of Tribunal in assessee's own case for AY 2013-14 as relied by the ld. AR of the assessee noted supra. For the sake of convenience we are reproducing the same as under:-

“The next issue urged by the assessee relates to disallowance of payments made to VISA International u/s 40(a)(ia) of the Act, which was confirmed by Ld CIT(A). The revenue is also in appeal in respect ITA No.1906/Bang/2018 & ITA No.229/PAN/2018 M/s. The Karnataka Bank Ltd., Mangalore Page 11 of 22 of relief granted by the first appellate authority in respect of remaining amount of disallowance made u/s 40(a)(ia) of the Act. 6.1 The AO noticed that the assessee has claimed a sum of Rs.17.27 crores as expenditure towards expenses on ATM charges. The breakup details is given in the order of ld CIT(A) as under:-

NPCI (NFS) (includes SWITCH FEE)	-	16,17,01,971
Cash Tree network	-	95,74,697
VISA Charges	-	15,01,663

		17,27,78,331

The assessee submitted that these payments have been made to various agencies like NPCI, Cash tree networks and VISA international in connection with settling dues amongst the banks in respect of transactions entered by the customers of the assessee bank through ATM of other banks and vice versa. Accordingly, it was submitted that these payments are not liable for deduction of tax at source. However, the AO took the view that the assessee is liable to deduct tax at source u/s 194J of the Act. The assessee replied that the ATM machines are taken on hire by the assessee and hence there is no transfer of usage or right to use any industrial, commercial or scientific equipment subjecting ATM usage charges paid to NPCI to TDS. It was further explained that:-

(a) SWITCH facility extended by NPCI is a standard facility without any human intervention. Hence TDS provisions are not applicable to ATM usage charges paid.

(b) ATM usage charges debited to assessee's account by RBI after netting of charges for usage of ATM of other bank by assessee's customers and vice versa. Hence payment has not originated from bank's end and hence TDS provisions are not applicable.

(c) In respect of SWITCH fee of Rs.83,96,711/- retained by NPCI, the assessee has furnished a certificate as per the first proviso to sec.201(1) and second proviso to sec. 40(a)(ia) of the Act. Further CBDT notification no.56/2012 dated 31.12.2012 provides exemption from TDS provisions for payments made to NPCI.

The AO did not accept the explanations of the assessee and accordingly disallowed the amount of Rs.17,27,78,331/-.

6.2 The Ld CIT(A) deleted the disallowance of payments made NPCI and Cash Tree network by following the decision rendered by Hon'ble Supreme Court in the case of CIT vs. Kotak Securities Ltd (2016)(285 CTR (SC) 63) and also the decision rendered in the assessee's own case by ITAT in ITA No.1264 & 1352 (B)/2013 for AY 2011-12. The Ld CIT(A), however, confirmed the addition of VISA charges of Rs.15,01,663/-. Hence both the parties are in appeal before us.

6.3 We notice that identical issues have been considered by the coordinate bench in the assessee's own case in ITA No.89/PAN/2017 & CO No.07/PAN/2017 relating to AY 2012-13 and the Tribunal, vide its order dated 06.02.2020 has decided the issue as under:-

“13. The next issue relates to disallowance made u/s 40(a)(ia) of the Act. The AO noticed that the assessee has claimed a sum of Rs.75.46 crores as other expenses details of which are given below:-

- i) ISC for provision of ATMs (Rs.18,14,31,425/-)
- ii) Payment to NFS Network towards ATM usage charges (Rs.15,04,34,326/-)
- iii) Payment to Cash Tree Network towards ATM usage charges (Rs.99,87,801/-)
- iv) VISA fees paid to VISA International (Rs.96,87,529/-)

14. The AO asked the assessee to furnish details of tax deducted at source from the above said payments. The AO noticed that the assessee has not deducted tax at source from the following payments:-

- i) Payment to NFS Network towards ATM usage charges (Rs.15,04,34,326/-)
- ii) Payment to Cash Tree Network towards ATM usage charges (Rs.99,87,801/-)
- iii) VISA fees paid to VISA International (Rs.96,87,529/-)

Accordingly, he disallowed all the three expenses aggregating to Rs.17.01 crore by invoking provisions of sec. 40(a)(ia) of the Act. The Id CIT(A) noticed that the Bengaluru Bench of Tribunal has held in the case of Corporation Bank in ITA No.1264 and 1352/Bang/2013 for asst. year 2011-12 that the payments made to National Financial Switch and Cash Tree could not be considered as commission or brokerage falling within the purview of sec. 194H of the Act. Accordingly the Tribunal had deleted identical disallowances made in the hands of Corporation Bank. Accordingly he directed the AO to delete the disallowance of payments made to NFS and Cash Tree.

15. In respect of payment of Rs.96.87 lakhs made to Visa International, the Id CIT(A) restored the issue to the file of the AO with the direction to verify the details of Tax deduction and allow deduction to the extent of TDS deducted.

16. The assessee has filed cross-objections in respect of addition of Rs.96.87 lakhs made to Visa International, which has been confirmed by Id CIT(A) by way of setting aside to the AO.

17. We heard the parties on this issue and perused the record. We noticed that an identical issue was considered by the coordinate bench in the assessee's own case for asst. year 2008-09 and the disallowance of payments made to NFS and cash tree as well as visa Charges were deleted with the following observations :-

“17.5 We heard the rival submissions and perused the material on record. The only issue in the present grounds of appeal is whether the assessee is liable for tax deduction at source on the charges paid to National Financial Switch and Cash Tree Consortium for use of ATM of other banks by its customers and whether failure to do so attracts the disallowance under section 40(a)(ia) of the Act. These charges are known as cash management service charges which does not attract the TDS provisions in the light of the Central Board of Direct Taxes Notification No, 56 of 2012 dated December 31, 2012 :

Notification No. S. O. .3069(E) [No. 56/2012 (F. No. 275/53/2012-ff(B)], dated December 31, 2012'

[Superseded by Notification No. S. O. 2143(E) (No. 47/2016 (F. No. 275/53/2012-11(B), dated June 17, 2016]

In exercise of the powers conferred by sub-section (iF) of section 197A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that no deduction of tax under Chapter X1711 of the said Act shall be made on the payments of the nature specified below, in case such payment is made by a person to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934), excluding a foreign bank, namely

1. bank guarantee commission;
 - (ii) cash management service charges
 - (iii) depository charges on maintenance of demat accounts
 - (iv) charges for warehousing services for commodities
 - (v) underwriting service charges
 - (vi) clearing charges (MICR charges)
 - (vii) credit card or debit card commission for transaction ben-: the merchant establishment and the acquirer bank.
2. This notification shall come into force from the 1st day of January, 2013.

Furthermore, the Hon'ble Supreme Court in the case of Kotak Securities Management 383 ITR 1 held that consultancy managerial services involving services rendered by human efforts where services are made available to all customers and there is nothing special,

exclusive or customer service charges, it does not partake of the character of managerial or technical services. In the light of this decision we hold that the assessee-bank is not liable for tax deduction at source on these payments. We direct the Assessing Officer to delete addition on account of technical service.”

18. Following the above said decision, we uphold the order of Id CIT(A) in deleting the disallowance of payments made to NFS and Cash Tree. We also set aside the order passed by Id CIT(A) inspect of payment to Visa International towards visa fee, as the same is not liable to tax deduction at source as per the decision rendered by Hon’ble Supreme Court in the case of Kotak Securities Management (supra). Accordingly we direct the AO to delete the said disallowance also.”

6.4 Following the above said decision we confirm the deletion of payments made to NPCI and Cash tree Network. We also set aside the order passed by Ld CIT(A) in respect of VISA charges and direct the AO to delete the disallowance of the same

35. Respectfully following the above judgment, we dismiss the ground nos. 15 & 16 raised by the revenue and ground no. 4 raised by the assessee on this issue is allowed.

36. The revenue’s appeal is dismissed.

37. In the result, the appeal of the assessee is partly allowed for statistical purposes and the revenue’s appeal is dismissed.

Pronounced in the open court on this 30th day of September, 2024 as per Rule 34 of the ITAT Rules, 1963.

Sd/-

(SOUNDARARAJAN K.)
JUDICIAL MEMBER

Bangalore,
Dated, the 30th September, 2024.

/Desai S Murthy /

Sd/-

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Copy to:

1. Assessee
2. Revenue
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.