आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री जगदीश, लेखासदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.877/Chny/2018 & 677/Chny/2020
निर्धारण वर्ष /Assessment Years: 2010-11

IDFC Limited, (erstwhile known as Infrastructure Development Finance Company Limited), KRM Tower, 8th Floor, No.1, Harrington Road, Chetpet, Chennai – 600 031. **PAN: AAACI 2663N**	**Vs.**	The Dy. Commissioner of Income Tax, Company Circle-II(3), Chennai.
(अपीलार्थी/**Appellant)**		**(**प्रत्यर्थी/**Respondent)**

आयकर अपील सं./ ITA No.878/Chny/2018
निर्धारण वर्ष /Assessment Year: 2010-11

The Dy. Commissioner of Income Tax, Corporate Circle-2(2), Chennai	**Vs.**	IDFC Limited, (erstwhile known as Infrastructure Development Finance Company Limited), KRM Tower, 8th Floor, No.1, Harrington Road, Chetpet, Chennai – 600 031. **PAN: AAACI 2663N**

अपीलार्थी की ओर से/ Assessee by	:	Shri Farookh V. Irani, Advocate
प्रत्यर्थी की ओर से /Revenue by	:	Shri A. Sasikumar, CIT
सुनवाई की तारीख/Date of Hearing	:	23.07.2024
घोषणा की तारीख /Date of Pronouncement	:	30.09.2024

आदेश / **O R D E R**

PER JAGADISH, A.M :

Aforesaid appeals filed by the assessee as well as Revenue for Assessment Years (AYs) 2010-11 arises out of the orders of Learned Commissioner of Income Tax (Appeals)-6, Chennai [hereinafter "CIT(A)"] dated 28.12.2017 & 20.03.2020.

2. As the appeals arise from the same order, we proceed to pass a common order. First, we shall take up assessee appeal in ITA No.877/Chny/2018 for A.Y 2010-11. The grounds raised by the assessee in ITA No.877/Chny/2018 are as under:

> "*1. Disallowance under section 14A of the Act- Rs. 134,25,40,754:*
>
> *1.1. The learned CIT (A) erred in disallowing a sum of Rs.134,25,40,754/- under Section 14A of the Act instead of Rs 74,98,536/- incurred wholly and specifically for earning exempt income.*
>
> *1.2. The learned CIT(A) erred in not appreciating the fact that the Appellant had sufficient own funds and hence, no interest expenditure was incurred to earn exempt income.*
>
> *1.3. The learned CIT(A) erred in not appreciating that the Appellant case is covered by Hon'ble Chennai ITAT for AY 2003-04 to AY 2007-08 [ITA Nos. 2065 8 2066 and ITA Nos 99 to 101 (Chen) as well as the order passed by the CIT(A) for AY 2008-09 and 2009-10.*
>
> *1.4 Without prejudice to the above, the CIT(A) in disposing off the Appellant's ground challenging the AO disallowance under section 14A of the Act ought to have held that:*
>
> *i. The disallowance under section 14A read with Rule 8D ought to have been deleted as the Assessing Officer ("the AO") had not*

arrived at and recorded an objective satisfaction regarding the incorrectness of the Assessee's stand.

ii. Even if Rule 8D is applied, then net interest to be considered for disallowance under Rule 8D(2) (i) read with section 14A;

iii. Even if Rule 8D is applied, then interest relating to loans taken for specific purposes is to be excluded;

iv. Even if Rule 8D is applied, then strategic investments in subsidiaries are to be excluded for the purpose of Rule 8D(2)(iii);

v. Only the investments from which the Appellant has earned exempt income should be considered for Rule 8D(i) and (ii) purposes.

vi. While computing the disallowance under section 14A, the AO has considered erroneous amount of average value of investments.

vii. The computation made Rule 8D(2)() and (iii) is erroneous inter-alia as, the AO had taken the gross value of investment instead of taking net of provision for diminution.

viii. The computation made as per Rule 8D(ii) is erroneous, inter alia, as the AO had, while calculating the total assets, considered the opening and closing balance of net current assets (ie, net of current liabilities and provisions) instead of gross current assets.
ix. The disallowance, if any, made under Rule 8D(2) was to be computed on the basis of the Rule 8D(2) which was substituted w.e.f 02.06.2016 by the Income-tax (14th Amendment) Rules, 2016.

2. ***Deduction under section 36(1)(vii) of the Act- Interest on Debenture- Rs. 92,24,44,539/-***

2.1 The learned CIT(A) has erred in questioning the eligibility of the Appellant to claim the deduction under section 36(1)(vii) of the Act without appreciating the fact that the Appellant is eligible to claim deduction under section 36(1)(vi) of the Act and which has been examined and allowed by the assessing officer.

2.2 The learned CIT(A) has erred in ignoring the directions of the Hon'ble ITAT (TA No.1197/Mds/2012) to treat the debentures as loans.

2.3 The learned CIT(A) has erred in not considering the fact that the Appellant had earned interest on debentures issued by the companies engaged in infrastructure development and it fell within

the meaning of long-term finance' as envisaged in the explanation to section 36(1) (vii) of the Act.

3. ***Denial of deduction under section 36(1)(viia)(c) of the Act - Provision for bad and doubtful debts - Rs. 51,77,84,317-***

3.1 The learned CIT(A) has erred in not considering the fact that the provision is as per provisioning policy of the Appellant in respect of stressed advances is eligible for deduction under section 36(1) (viia) (c) of the Act.

3.2 The learned CIT(A) has erred in stating that deduction under section 36(1)(viia) of the Act is not applicable to Appellant, being a Non-Banking Financial Company, without appreciating the fact that the Appellant is a Public Financial Institution under section 4A of the Companies Act, 1956.

4. ***Disallowance in respect of deduction for interest cost on zero percent bonds - Rs. 36,96.61,227/-***

4.1 The learned CIT(A) erred in not allowing the deduction with respect to interest cost on zero percent listed and traded bonds on the ground that it is not ascertained or crystalized and the same should be allowed on actual payment basis

4.2 The learned CIT(A) erred in considering the fact that discount on the zero coupon bonds represented interest cost

4.3 The learned CIT(A) erred in applying provision of section 43B(c), (d) and (e) of the Act to listed and traded bonds issued by the Appellant.

4.4 Without prejudice, the learned CIT(A) erred in not restricting the disallowance to interest payable to qualifying banks and financial institutions aggregating to Rs. 17,35,20,526/- and including even the interest payable to other lenders not covered under the provisions of Section 43B(d) and (e) of the Act.

5. Disallowance in respect of mark to market losses on current investments – Rs 13,96,48,468/-

5.1 The learned CIT(A) erred in rejecting the claim of the Appellant with respect to mark to market losses on current investments being considered as allowable business expenditure.

5.2 The learned CIT(A) erred in applying the CBDT Instruction No.3/2010 to current investments whereas the CBDT instruction pertains only to forex derivative losses and not other losses

5.3 The learned CIT(A) erred in ignoring the fact that the Appellant discloses these current investments as current assets and also offers income on sale of such investment as 'income from business'.

6. Interest under section 234D of the Act
The learned CIT(A) erred in computing interest under Section 234D of the Act

7. Non-adjudication on additional ground of appeal raised during the hearing relating to allocation of interest attributable to income considered under section 36(1)(vii) and computation of deduction under section 36(1) (vii) of the Act

The learned CIT(A) erred in not adjudicating on the ground pertaining to the assessing officer adopting a method of allocation of expenses based on income ratio instead of asset ratio adopted by the Appellant without providing any reasons for rejecting the method of allocation of expense adopted by Appellant while computing deduction under Section 36(1) (vii) of the Act."

Ground No.1 against the disallowance u/s. 14A of the Act - Rs. 134,25,40,754:

3. The assessee company received a dividend of Rs 134.25 crores during the relevant previous year, and claimed net income on the dividend of Rs 133,50,42,218 as exempt income under Section 10(34) of the Income Tax Act. The assessee allocated direct expenses of Rs 74,98,536 towards earning the dividend income. However, the A.O, noting that the assessee had not considered interest and other expenses attributable to earning the exempt income, computed the expenses incurred to earn such income as per Rule 8D of the Rules, arriving at a disallowance of Rs 210,31,28,725 under Section 14A of the Act.

4. The AO rejected the assessee's contention that only interest-free funds were used to make investment , yielding dividend income. The AO referred to stand taken by assessee in earlier years up to AY 2006-07, where assessee has been claiming that no interest expenditure has been incurred to earn exempt interest income u/s. 10(23G) of the Act, as own funds were used for funding assets yielding exempt interest income under section 10(23G) and borrowed funds were used to make investment in other assets including dividend earning assets. The AO observed that, with the cessation of Section 10(23G) benefits, the assessee had altered its stand ,and now claiming that its own funds were used to earn the dividend income. The AO concluded that investments, yielding dividend income , made earlier still exist and therefore were made from borrowed funds and, accordingly, disallowed expenses under Section 14A of the Act as per Rule 8D.

5. The learned Ld. CIT(A) upheld the AO invoking Rule 8D but limited the disallowance to the extent of exempt income earned , i.e., Rs 134.25 crore, relying on the jurisdictional High Court decision in *Redington (India) Ltd.* (392 ITR 633, Madras). The assessee is now in appeal against the invoking Rule 8D, and the revenue in in appeal against the restricting disallowance to the extent of exempt income.

6. The learned Authorized Representative (AR) for the assessee submitted that the disallowance of interest expenditure under Section 14A of the Act was covered in favor of the assessee by earlier decisions of the Hon'ble ITAT Chennai Bench in the assessee's own case for AYs 2003-04 to 2007-08 and for AYs 2008-09 and 2009-10, the AO, while giving effect to the CIT(A) order, has not disallowed any further interest under Section 14A. The AR further argued that the AO had not recorded his satisfaction for rejecting the disallowance made by the assessee, therefore following the *Godrej & Boyce Manufacturing Co. Ltd.* and *Maxopp Investment* judgments of the Supreme Court, the AO's disallowance under Rule 8D is invalid. The AR also submitted that the assessee's own funds, including share capital and reserves, exceeded the amount invested in equity yielding dividend income, and therefore, no interest disallowance was justified, as upheld by the Supreme Court in *Reliance Utilities & Power Ltd*. The Ld AR sited various case laws , which has been discussed by the CIT(A) in his order.

7. The Ld. Departmental Representative (DR), on the other hand, argued that the ITAT's order for AY 2003-04 could not be relied upon as Rule 8D was not applicable at that time. Rule 8D was introduced only from AY 2007-08. Further, the DR argued that *res judicata* does

not apply to income tax proceedings, and each year should be assessed on its own merits. The DR also contended that the *Reliance Utilities* case dealt with disallowance under Section 36(1)(iii), not Rule 8D, and was thus not applicable in the present case. The Ld DR emphasized that the AO had provided valid reasons for rejecting the assessee's computation, noting that the assessee had previously claimed borrowed funds were used for dividend-yielding investments, which remained in the books during relevant assessment year too.

8. We have heard the rival submissions, and perused the materials available on record. The assessee allocated direct expenses of Rs.74,98,536/- to earn exempt income from dividends of Rs.134,25,40,754/-. The assessee has contended that no interest expenditure was incurred to earn the exempt income, as its own funds were used in such investments. The Ld AR further contended that the balance sheet shows that the share capital and reserves exceeded the investment made in equity and courts have held that if own funds exceeded the investments in dividend-yielding assets, the general presumption would be that assessee's own funds were used to make such investment. However, in this case, the assessee until AY 2006-07 , consistently claimed , that borrowed funds were used for dividend-yielding investments, while own funds were used for assets yielding

exempt income under Section 10(23G). These investments, made before AY 2006-07, continue to generate dividend income, contradicting the current claim that own funds were used. In light of such observations on relevant fact, first of all, we do not agree with the assessee that the AO did not express his satisfaction 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 that Act. Therefore, the A.O has rightly resorted to compute the disallowance applying Rule 8D of the Rules.

9. In continuation of our discussion, regarding the adjustment made by A.O under Rule 8D(2)(i) of the Rules (direct expenditure), we confirm the action of the A.O computing the direct expenses of Rs. 74,98,536/-, which assessee itself has *suo-moto* disallowed. Next regarding computation of disallowance under Rule 8D(2)(ii) of the Rules (indirect expenditure), we note that the A.O while computing the same at Rs.193,81,01,883/- on the reason stated at para 8 (supra) has taken note of certain relevant facts which we find has not been properly confronted to the assessee and therefore, there is per-se violation of nature justice qua the assessee qua the relevant Assessment Year and therefore, we set aside this part of the computation i.e., computation under Rule 8D(2)(ii) of the Rules back to

the file of A.O and direct the A.O to give proper opportunity to the assessee and consider the assessee's submission and relevant documents in support thereto and thereafter to pass order in accordance to law after hearing the assessee.

10. Coming to computation under Rule 8D(2)(iii) of the Rules is concerned, we direct the A.O compute the same at 0.5% of the investment yielding exempt income as held by the Ld. Special Bench of ITAT, New Delhi in the case of *ACIT vs. Vireet Investment Pvt. Ltd. in ITA No.502/Del/2012 dated 16.06.2017*, which ratio has been upheld by the Hon'ble Bombay High Court. Therefore, this ground is allowed for statistical purposes.

Ground No.2 is against deduction u/s. 36(1)(vii) of the Act - Interest on Debenture- Rs. 92,24,44,539/- :

11. Ground No.2 is against deduction u/s. 36(1)(viii) of the Act of interest on debenture of Rs 92,24,44,539/-. The AO has disallowed the claim of interest on debenture of Rs 92,24,44,539/- eligible u/s 36(1)(vii) of the Act on the ground that debenture cannot be treated at par with loan that too as a long term financing instrument and therefore debenture does not partake character of receipt within the meaning of deduction u/s 36(1)(vii) of the Act. The Ld CIT(A) has confirmed the addition . The Ld AR has submitted that this issue is

covered by assessee own case in ITA No 751/Chny/2018 & 676.Chny/2020 for AY 2007-08 decided vide order dated 09.08.2023. We have gone through the order of coordinate bench on this issue and the Hon'ble Bench has held as under:

> *"18. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the assessee has earned interest on debentures which were issued to the entities engaged in development of infrastructure facility in India. The interest was earned in normal course of assessee's lending business and the same was considered for deduction u/s. 36(1)(viii) of the Act. We noted that the debentures subscribed by the assessee were non-tradable and were having tenure of more than 5 years. It is also a fact that interest earned on debentures, which were issued by companies engaged in infrastructure development and therefore, it fall within the meaning of long term finance as envisaged in explanation to section 36(1)(viii) of the Act. We noted from the order of CIT(A) that he has reproduced the relevant provisions of section 36(1)(viii) of the Act including the explanation where the meaning of eligible business under clause 'b' is normally mentioned as development of infrastructure facility in India. In our view, debenture proceeds have been utilized for infrastructure development and also the tenure thereof is more than 5 years, the interest earned on such debentures is directly and inextricably related to the business of providing long term finance of infrastructure development. Hence, the issue is covered by the decision of Delhi Tribunal in the case of Tourism Finance Corporation of India Ltd., vs. JCIT, [2010] 2 ITR 1, wherein exactly on identical facts, the assessee was held to be eligible for claim of deduction u/s.36(1)(viii) of the Act. The Delhi Tribunal held as under:-*
>
> > *"22…. Regarding interest on debentures, we are in agreement with the learned authorised representative for the assessee that this income is in the nature of interest on loans because debenture is nothing but loan but whether the same is for long-term or not, this fact is not available on record and hence, this aspect of the matter should go back to the file of the AO for a fresh decision after examining this factual aspect regarding the period of repayment of these debentures along with interest and if the same is found to be as per cl. (h) of the Explanation to s. 36(1)(vii), interest on debentures should be considered for the purpose of allowing deduction under s. 36(1) (vi)."*
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> *In view of the above ruling, as the debenture proceeds have been utilised for infrastructure development and also the tenure thereof is more than 5 years, the interest from such debentures is directly*

and inextricably related to the business of providing long term finance for infrastructure development.
In view of the above legal analysis including judicial precedents, we would like to summarize as under:
Appellant follow the same credit process for lending in the inform of Debentures classified as Infrastructure Loans under Schedule VI of the Accounts whether in the form of Loans / Debentures;
The form in which the loan is disbursed depends upon borrower needs, in substance, whatever be the form, they are in nature of "loans";

The tenure of loan given in form of debentures is not less than 5 years:
These debentures are unlisted and hence no trading is carried out in such debentures;

a) These debentures are directly subscribed and money is lent specifically for projects directly to the borrower;
b) There is a formal debenture subscription agreement signed with the borrower including clauses on financial / non-financial covenants:
c) Infrastructure Loans in the form of Debentures are fully secured similar to a project loan and is for the purpose of financing infrastructure projects;
d) Interest like penal / liquidated damages / additional interest for non-creation of security are charged on infrastructure loans in the form of debentures;
e) In all laws and regulations, debentures are treated as loans.

As per the Tribunal order (|TA no. 1197/Mds/2012) in the Appellant's own case on the section 263 proceedings for AY 2007-08, 1TAT has stated that the interest or debenture is eligible for deduction subject to satisfaction of conditions under Explanation h to section 36(1) (vi) (refer para 28 on page 33 of Annexure 4.

Thus, as all the conditions are satisfied, interest on debentures should be included to arrive at the eligible receipts for the purpose of deduction under section 36(1) (vii) of the Act."

12. As the issue is covered in favour of assessee by its own order and the facts are identical, respectfully following the order of coordinate Bench, addition made is deleted.

Ground No3 is against denial of deduction u/s. 36(1)(viia)(c) of the Act -Provision for bad and doubtful debts - Rs. 51,77,84,317-

13. The AO has disallowed the claim of provisions of standard assets claimed u/s 36(1)(viia)(c) of the Act as provision for bad and doubtful debt on the ground that provision for standard asset is not provision for bad and doubtful debt as per section 36(1)(viia) of the Act. Therefore, not allowable for deduction u/s 36(1)(viia) of the Act. The Ld. CIT(A) has confirmed the disallowances.

14. The Ld. AR has contended that this issue is covered by assessee's own case in ITA No 751/Chny/2018 & 676/Chny/2020 for AY 2007-08 decided vide order dated 09.08.2023. We have gone through the order of coordinate bench on this issue and the Hon'ble bench has held as under:

> *"13. We have heard rival contentions and gone through facts and circumstances of the case. The assessee being a financial institution and NBFC engaged in the business of lending money for the purpose of financing infrastructure project as per the policy of the assessee to conduct assessment of its loans and advances based on which provision was made for loans or advances, which are doubtful and the same provision is shown under the head provision for standard assets. This provision is made in term of the prudential norms of RBI, which permits onetime restructuring of infrastructure loans and such restructured loans are classified as standard assets. An infrastructure loan is required to restructure only in case the infrastructure project is facing difficulty in meeting the obligation of interest / principal repayment on account of delay in completion of project. Accordingly, such restructured assets are classified as standard assets as per RBI regulations and accordingly onetime restructuring are permitted by RBI being stressed out assets and hence, provision is created for contingencies reflecting the estimated loss to that portfolio. In such circumstances, assessee has made claim of this amount of*

Rs.49.85 crores towards standarad assets. It is nobody's case neither AO nor CIT(A) that the claim is false or it is not genuine. But according to the authorities below, the claim is not allowable only on principle. We noted that the Co-ordinate Bench of Mumbai Tribunal in the case of State Bank of India, supra has considered this issue in great detail and finally allowed the claim by observing in para 73 & 74 as under:-

> *73. We noted from the provision of Section 36(1)(viia) of the Act that the same allows a deduction to banks in respect of any provision made 'for' bad and doubtful debts. It does not restrict the allowance to provision made 'on' bad and doubtful debts. Even in respect of assets that are classified as standard assets, a part of the debts are doubtful of recovery. The fact that a provision is made for standard assets by itself indicates that a part of the standard assets are doubtful of recovery. Accordingly, the entire provision made by the assessee, including in respect of standard assets, is for bad and doubtful debts as envisaged by section 36(1)(viia) of the Act. Thus, in light of above, the assessee is eligible to claim deduction under section 36(1)(viia) of the Act even in respect of the provision made for standard assets. This issue was considered by the ITAT in assessment year 2006-07 in ITA 3145/Mum/2009 dated 6.09.2016, in an appeal against the revision order of the CIT passed under section 263 of the Act, wherein it is held as under:*
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> *"So, however, we may also clarify that we are in principle in agreement that a provision for bad and doubtful debts cannot include that against standard assets i.e. which the bank (assessee) itself regards as good for receipt and, therefore with the decision by the tribunal in Bharat Overseas Bank Ltd. (supra) relied upon by the Revenue. A provision by definition a charge against profits, while that in respect of an asset, considered good, would be more in the nature of an appropriation of profit i.e. a reserve. This is precisely what the Tribunal in Bharat Overseas Bank Ltd. (supra) means when its states of the deduction being not in the nature of a standard allowance. No contrary judgement by the Tribunal or a higher court has even otherwise been brought to our notice. At the same time, the provision as per RBI guidelines – which are contended to have been followed / adopted, provide for the minimum provision, and the bank is free to make a higher provision, i.e., than that prescribed by the RBI norms. Provisioning, it may be noted, is a management function, made reflecting its risk assessment qua different assets. If therefore, the assessee-bank is able to satisfy the assessing authority that the provision as made is justified with reference to the debts considered by it as bad and doubtful, we see no reason as to why the same cannot be allowed. The matter is accordingly restored back to the file of the A.O. for fresh determination by issuing definite findings of fact. Even as the primary onus would be on the assessee, the A.O. cannot substitute his own judgement with regard to the risk assessment qua a particular asset and, correspondingly, the provision in its respect. His purview would be to examine the reasonableness of*

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

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

13.1 Similarly, the Indore Bench in the case of M/s. Jila Sahakari, supra has allowed the claim of standard assets by observing in para 9 & 10 as under:-

"9. We have considered the rival contentions raised by both sides and perused the material held on record in the light of section 36(1)(viia) and the judicial decisions cited above. After a careful consideration, we observe that it has been loudly held in all of the decisions cited above that the provision made by a banking company in respect of standard assets, as per RBI guidelines, is very much allowed as deduction u/s 36(1)(viia). Ld. DR is not able to point out any contrary decision on this issue. We extract below the decision of ITAT Indore Bench itself in Vikramaditya Nagarik Sahakari Bank Vs. ACIT (supra):

"6. We have heard the rival contentions and perused the material placed on record. The sole grievance of the assessee revolves around the disallowance of Rs. 2 lacs confirmed by both the lower authorities relating to provision for contingency of standard assets claimed by the assessee u/s 36(1)(viia) of the Act. Before proceeding further we would like to reproduce the provision of section 36(1)(viia) of the Act as under :-

"Other deductions.
36.(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28 xxxx xxxx xxxx
(viia) in respect of any provision for bad and doubtful debts made by –

(a) a scheduled bank [not being a bank incorporated by or under the laws of a country outside India] or a non-scheduled bank or a cooperative bank other than a primary agricultural credit society or a primary co- operative agricultural and rural development bank, an amount not exceeding 99[seven and one-half per cent] of the total income (computed before making any deduction under this clause and Chapter VIA) and an amount not exceeding ten per cent of the aggregate average

advances made by the rural branches of such bank computed in the prescribed manner :

Provided that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed in any of the relevant assessment years, deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf, for an amount not exceeding five per cent of the amount of such assets shown in the books of account of the bank on the last day of the previous year:

Provided further that for the relevant assessment years commencing on or after the 1st day of April, 2003 and ending before the 1st day of April, 2005, the provisions of the first proviso shall have effect as if for the words "five per cent", the words "ten per cent" had been substituted:

Provided also that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed a further deduction in excess of the limits specified in the foregoing provisions, for an amount not exceeding the income derived from redemption of securities in accordance with a scheme framed by the Central Government:

Provided also that no deduction shall be allowed under the third proviso unless such income has been disclosed in the return of income under the head "Profits and gains of business or profession."

Explanation. For the purposes of this sub-clause, "relevant assessment years" means the five consecutive assessment years commencing on or after the 1st day of April, 2000 and ending before the 1st day of April, 2005

7. On perusal of the above provision and in the given facts of the case, wherein the assessee, which is a cooperative bank carrying on banking business, we find that the assessee is eligible to claim provision for bad and doubtful debts to the extent of 7.5% of the total income before making any deduction under this clause and under Chapter VIA. Further in the profit and loss account except for the alleged provision for Rs. 2 lacs, no other provision for bad and doubtful debts has been claimed. We find force in the contention of the learned counsel for the assessee that the phrase contingency provision for standard assets is basically a provision for bad and doubtful debts only which is in general a regular feature of the banking business. It is also pertinent to mention that even though the assessee was eligible to claim much higher amount as an expenditure of provision for bad and

doubtful debts, it only claimed Rs. 2 lacs. We, therefore, in the facts and circumstances of the case, are of the opinion that in the instant appeal the contingency provision for standard assets is basically in the nature of bad and doubtful debts only and the assessee has rightly claimed the expenditure u/s 36(1)(viia) of the Act. We, therefore, allow the sole ground raised by the assessee."

10. Thus, the impugned issue is settled in favour of assessee by various decisions of ITAT Benches including the co-ordinate bench of ITAT, Indore. Respectfully following the same, we too hold that the provision made by assessee qua standard assets is allowable u/s 36(1)(viia) and therefore the Ld. CIT(A) has rightly deleted the disallowance made by AO. However, during hearing, we raised a specific query to Ld. AR that the assessee has claimed a total deduction of Rs. 10,00,00,000/- but the section 36(1)(viia) allows deduction upto a certain limit prescribed therein; whether the AO has verified that the deduction of Rs. 10,00,00,000/- is within permissible limit prescribed in section? Ld. AR fairly agreed that it is not reflected in the orders of lower-authorities. Ld. AR, however, raised a plea that the assessee was entitled to much higher deduction but claimed only Rs. 10,00,00,000/-. In absence of any finding on this aspect by lower-authorities, we are unable to accept such a pleading of Ld. AR. Therefore, in the circumstance, though we agree in principle that the provision made for standard assets is also eligible for deduction yet we are of the view that there is a strong necessity to verify whether the claim made by assessee is within the permissible limit prescribed in section 36(1)(viia) or not; therefore it would be appropriate to refer this issue back to the file of Ld. AO for the limit purpose of such verification. The Ld. AO will verify the permissible limit and allow deduction within such limit. We order accordingly. We also direct the assessee to provide necessary information/calculation to Ld. AO to enable him to make such verification. These grounds are, thus, allowed in terms indicated here."

13.2 We noted that there is unanimity in the judicial precedents that as principle, the standard assets for which the provision is made as per policy and prudential norms of RBI, which permits onetime restructuring of infrastructure loans, the same is allowable u/s.36(1)(viia)(c) of the Act. Hence, we are of the view that authorities below erred in not allowing the claim of assessee and hence, we allow the claim of assessee. This issue of assessee's appeal is allowed."

15. As the issue is covered in favour of assessee by its own order and the facts are identical, respectfully following the order of Co-ordinate Bench, addition made is deleted.

Ground 4 is against disallowances in respect of deduction or interest cost on zero percent bond of Rs 36,96,61227/-:

16. The Assessee has claimed an amount of Rs.36,96,61,227/- towards interest cost on zero coupon bonds. The zero coupon bond are issued by assessee-company at discounted price and on maturity the face value of the bond is paid and discount has been claimed as interest . The AO has disallowed the claim on the ground that assessee has calculated interest cost on effective yield method for future liability, therefore it is not ascertained liability. The AO also held that such interest is not paid therefore as per section 43B of the Act, it can only be allowed in the year of payment, but not in the year of issue. The Ld. CIT(A) has confirmed the disallowances. The Ld. A.R, placing on reliance of the case of Madras Industrial Investment Corporation 12 SCL 139(SC) and other case laws have argued that there is continuing benefit to the business of the company over the entire period, the liability therefore, should be spread over the period of the debentures etc.

17. On Section 43B of the Act, The Ld. AR relied upon the decision of ITAT, Ahmedabad in the case of Gujarat Road and Infrastructure Co Ltd 31 Taxmann.com 137 in which interest payable on deep discount bond was to be allowed.

18. The Ld. D.R has relied on the orders of lower authorities.

19. We have heard the rival submission and perused the materials available on record. The issue is covered in favour of assessee by the decision of honorable Supreme Court in the case of Madras Industrial Investment Corporation (Supra) and order passed by ITAT, Ahmedabad Bench in the case of Dy CIT v. Gujarat Road and Infrastructure Co. Ltd. [2013] 31 taxmann.com 137 (Ahmedabad-Trib.. The Bench has held as under:

> *"5. We have heard the rival submissions and carefully perused the materials on record. On both these issues, the learned Commissioner of Income-tax (Appeals) has followed the decision of the Income-tax Appellate Tribunal based on which he deleted the addition made by the learned Assessing Officer and thereby allowed the assessee's appeal, In 1.TA. No. 2901/Ahd/ 2006 in the case Gujarat Toll Road Investment Co. Ltd. V. Asstt. CIT [20101] 125 ITD 159 (Ahd.) for the assessment vear 2003-04 the Tribunal vide its order dated May 15, 2009 had examined the matter with regard to deep discount bonds and arrived at the following conclusion in page 155 of the order :*
>
> *"In the instant case, the interest is payable in respect of amounts deposited by financial institutions with the assessee by subscribing to the bonds issued by the assessee. The interest is payable in respect of certain deposits received by the assessee and not in respect of any loans, advances or borrowings made by the assessee. For the same reason, clause (e) of section 43B relating to loans and advances from a scheduled bank is also not applicable in the instant*

case. In the above circumstances, in our considered view, neither was the Assessing Officer justified in disallowing the deduction claimed for the provision made in respect of interest accrued but not due on the deep discount bonds issued by the assessee nor was the learned Commissioner of Income-tax (Appeals) justified in confirming such disallowance. It is observed that the amount of the provision made by the assessee in respect of interest accrued on bonds is not in dispute as excessive or not relating to the year under consideration. We, therefore, delete the disallowance of Rs.6,08,03,230 in respect of the provisions made for interest in respect of deep discount bonds. Hence, these grounds of appeal of the assessee are allowed."

20. In view of the above, we delete the addition made by Assessing Officer.

Ground 5 is against the confirming disallowances of mark to market losses on current investment of Rs 13,96,48,468/-:

21. The AO has disallowed mark to market losses on current investment on the ground that it is notional loss. The AO has also placed reliance on CBDT Instruction No.03/2020. The Ld CIT(A) has confirmed the disallowances. The Ld AR has argued that mark to market loss is on the current investment and accounted as per accounting standard and therefore it is not a notional loss and allowable . The Ld. AR also submitted that CBDT instruction is also not applicable in assessee case.

22. The Ld. AR has relied upon decision of Hon'ble Supreme Court in the case of CIT vs. Woodward Governor India P. Ltd 179 Taxman 326 and CIT vs Karur Vysaa Bank Ltd.

23. We have heard the rival submission and agree with the Ld. AR that mark to market loss on investment are not notional loss and allowable as per decision of Hon'ble Supreme Court. The ITAT, Chennai Bench in ITA No.776/Chny/2023 dated 08.03.2024, has held as under:

> *"9. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the CIT(A) has recorded his finding that a loss which is apprehend to raise as a result of fall in the market, however probable or certain the loss may be, cannot be claimed as deduction. He noted that the deduction has been claimed by assessee owing to valuation of investments held as per the market rate but not as per the valuation of stock-in-hand at cost or market value, whichever is lower. The ld. counsel for the assessee countering this finding of CIT(A), argued that the finding of CIT(A) is wrong because it relates to or based on CBDT instruction No.3 of 2020, which relates to derivatives or future & options, which is not the case of the assessee. The ld. counsel argued that the assessee has rightly valued the said investments at the end of the year at cost or market value, whichever is lower and the difference arising as a result of valuation has to be assessed as loss or income. He relied on the decision of Hon'ble Bombay High Court in the case of CIT vs. Bank of Baroda reported in 262 ITR 334, wherein the Hon'ble Bombay High Court has considered this aspect and allowed the claim of deduction on account of depreciation in the value of investment by observing as under:-*
>
> > *"In the case of UCO Bank v. CIT 1999] 240 ITR 355, the Supreme Court came to the conclusion that where the market value of shares and securities had fallen below the cost before the date of valuation and where on the date*
> > *of valuation, the market value is less than the actual cost, then the Appellant was entitled to value the articles at market price and the Appellant was entitled to claim the loss which the Appellant would probably incur at the time of sale of shares and securities. That, whichever method the Appellant adopts, it should disclose the true picture of profits and gains. That, for determining the real income, the entries in the balance sheet was required to be maintained in the statutory form.*

However, such entries in the balance sheet were not decisive or conclusive. In such cases it was open to the ITO and the Appellant to ascertain true and proper income, while submitting income-tax returns. That, for valuing the closing stock, it was open to the Appellant to value the stock at cost or market price, whichever is lower. [Para 4]

The judgment of the Supreme Court in UCO Bank's case (supra) squarely applied to the facts of instant case. In fact, that instant case was on a stronger footing because in the case of UCO Bank (supra), the loss was not debited to the profit and loss account whereas in instant case, the loss had been debited to the profit and loss account which was reflected as a provision for liability in the balance sheet and shares and securities were valued at cost on the assets side. [Para 4].

Therefore, the Appellant was entitled to deduction on account of depreciation in the value of investments"

9.1 The ld.counsel for the assessee also relied on the decision of Hon'ble Madras High Court in the case of Lakshmi Villas Bank Ltd., vs. CIT reported in 154 taxman 301, wherein the Hon'ble Madras High Court in similar facts allowed the claim of assessee as under:-

"In the instant case, the Appellant, was dealing with purchase and sale of Government securities. The profit and loss on the sale of Government securities had been assessed as business income/loss under the Act. The Appellant bank had always been treating Government securities as stock-in-trade. It was further noticed that whenever there was depreciation/appreciation in the value of the securities at the end of each accounting year, the same had been claimed as deduction /offered as income of the relevant year, while computing income taxable under the Act.

There was no change of method of accounting of the securities since the assessment year 1976-77. It was also noticed that for the earlier assessment years, the revenue had accepted the plea of the Appellant that the Government securities were stock-in-trade and against the earlier orders, the revenue did not agitate by filing an appeal and, therefore, the same reached finality. Hence, it was too late in a day to raise instant issue when regard was particularly to the fact that the Appellant's method of treating the Government securities as stock-in-trade had all along been accepted by the Department."

10. On the other hand, the ld.CIT-DR heavily relied on the assessment order and the order of the CIT(A).

10. The ld.counsel for the assessee drew our attention to the treatment given by the Revenue in assessment year 2017-18 wherein the AO has accepted the profit declared by assessee on account of reversal of offered amount under MTM loss. The ld.counsel drew our attention to supplementary paper book filed at page 262 and the relevant reads as under:-

Particulars	*Amount (Rs)*	*Tax Treatment*
Pertaining to loans converted to equity	*1,800,465,325*	*Disallowed in tax computation – forming part of provisions disallowed – Rs.2,832,928,736/-*
Pertaining to reversal on mark-to-market for treasury portfolio	*(7,989,132)*	*Reversal offered to tax since MTM loss is considered as tax deductible*
Reversal pertaining to investments held as capital assets	*(223,428,170)*	*Reversal not offered to tax since provision on capital assets has been disallowed*
TOTAL	*1,569,048,023*	

The ld.counsel for the assessee stated that this has been accepted by the AO while framing assessment for the assessment year 2017-18 and for the purpose of consistency also this should have been accepted by the AO once he accepted the income on the same concept or principle. We noted that this issue stands covered by the decision of Hon'ble Madras High Court in the case of Lakshmi Villas Bank Ltd., supra and it is the case of valuation of investment at cost or market value whichever was lower and the difference arising as a result of valuation has to be allowed to the assessee either as loss or income. Hence, we find that the assessee's claim is perfectly alright and hence, the order of AO and that of the CIT(A) is reversed and the claim of assessee is allowed. This issue of assessee's appeal is allowed."

24. In view of the above, we direct AO to delete the addition and this ground of appeal of the assessee is allowed.

Assessee's appeal in ITA No.677/Chny/2020:

25. The assessee has filed this appeal against the rectification order dated 20.03.2020 passed by Ld CIT(A) in response to the application

made by the assessee against CIT(A) order . The Ld. CIT(A) had dismissed the rectification application as the mistake pointed out in order of Ld. CIT(A) in ITA No.80/CIT(A)-6/2013-14 dated 28.12.2017 is not mistake apparent from record.

26. The assessee in the ground of appeal has taken all the grounds which has been taken against the Ld. CIT(A) order in ITA No.80/CIT(A)-6/2013-14 dated 28.12.2017. As we have already adjudicated all the issues in the main appeal, this ground of appeal becomes infructuous and therefore, dismissed. In view of above, the appeal in ITA No.677/Chny/2020 is dismissed.

Revenue's appeal in ITA No.878/Chny/2018:

27. This appeal has been filed against order of Ld. CIT(A)-6, Chennai dated 28.12.2017 restricting the disallowance u/s. 14A of the Act r.w. Rule 8D of the Rules to the exempt income.

28. The Ld. CIT(A) has passed the order relying on the order of Jurisdictional High Court and the issue of disallowance u/s. 14A of the Act has already been discussed in the assessee's appeal. Hence, this appeal filed by the Revenue is dismissed.

29. In the result, the appeal filed by the assessee in ITA No.877/Chny/2018 is partly allowed and the appeal in ITA No.677/Chny/2020 filed by the assessee is dismissed. The appeal in ITA No.878/Chny/2018 filed by the Revenue is dismissed.

Order pronounced on 30th September, 2024.

Sd/-	**Sd/-**
(एबी टी. वर्की)	**(जगदीश)**
(ABY. T. Varkey)	**(Jagadish)**
न्यायिक सदस्य / Judicial Member	**लेखा सदस्य /Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 30th September, 2024.
EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF