**IN THE INCOME TAX APPELLATE TRIBUNAL**
**"F" BENCH, MUMBAI**
**BEFORE SHRI ANIKESH BANERJEE, JM &**
**SHRI MS PADMAVATHY S, AM,**

**I.T.A. No.1440/Mum/2023**
(Assessment Year: 2016-17)

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| **M/s Union Bank of India,**<br>Union Bank Bhavan, 239,<br>Vidhan Bhavan Marg,<br>Nariman Point, Mumbai-400021<br>**PAN : AAACU0564G** | Vs. | **DCIT, Circle-(LTU) 2**<br>29th Floor, World Trade Centre,<br>Cuffe Parade, Mumbai-400005. |
| | | |
| **Appellant**) | : | **Respondent**) |

**I.T.A. No.1819/Mum/2023**
(Assessment Year: 2016-17)

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| **DCIT-3(4)**<br>29th Floor, Centre-1,<br>World Trade Centre,<br>Cuffe Parade, Mumbai-400005. | Vs. | **M/s Union Bank of India,**<br>Central Accounts Dept., 6th Floor,<br>Union Bank Bhavan, 239,<br>Vidhan Bhavan Marg,<br>Nariman Point, Mumbai-400021<br>**PAN : AAACU0564G** |
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| **Appellant**) | : | **Respondent**) |

**I.T.A. No.1441/Mum/2023**
(Assessment Year: 2017-18)

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| **M/s Union Bank of India,**<br>Union Bank Bhavan, 239,<br>Vidhan Bhavan Marg,<br>Nariman Point, Mumbai-400021<br>**PAN : AAACU0564G** | Vs. | **DCIT, Circle-(LTU) 1**<br>29th Floor, World Trade Centre,<br>Cuffe Parade, Mumbai-400005. |
| | | |
| **Appellant**) | : | **Respondent**) |

**I.T.A. No.1818/Mum/2023**
(Assessment Year: 2017-18)

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| **DCIT-3(4)**<br>29th Floor, Centre-1,<br>World Trade Centre,<br>Cuffe Parade, Mumbai-400005. | Vs. | **M/s Union Bank of India,**<br>Central Accounts Dept., 6th Floor,<br>Union Bank Bhavan, 239,<br>Vidhan Bhavan Marg,<br>Nariman Point, Mumbai-400021<br>**PAN : AAACU0564G** |
| | | |
| **Appellant)** | : | **Respondent)** |

**Assessee by** : Shri C. Naresh, AR
**Revenue by** : Shri Vivek Perampurna, CIT-DR

**Date of Hearing** : 23.09.2024
**Date of Pronouncement** : 27.09.2024

O R D E R

**Per Bench :**

These appeals by the assessee and the Revenue are against the separate orders of Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [in short 'the CIT(A)'] both dated 20.03.2023 for Assessment Years (AY) 2016-17 & 2017-18. The common issues contended by the assessee and the revenue through various grounds are tabulated as under:

**Assessee's Appeal**

| Issues contended | AY2016-17 | AY2017-18 |
|---|---|---|
| Disallowance u/s 14A r.w.r. 8D | Ground No.1 | Ground No.1 |
| Disallowance u/s 14A without recording objective satisfaction | Ground No.1.1 | Ground No.1.1 |

| | | |
|---|---|---|
| Amendment in 14A vide Finance Act, 2022 is retrospective. | Ground No. 1.2 | Ground No. 1.2 |
| Disallowance u/s 14A r.w.r. 8D(ii) | Ground No. 1.3 | Ground No. 1.3 |
| Disallowance of interest paid on IPDI Bonds | Ground No.2 | Ground No.2 |
| Taxation of recovery of bad-debts written off | Ground No.3 | Ground No.3 |
| Applicability of provisions of section 115JB | Ground No. 4 | Ground No. 4 |
| Addition of provisions made for doubtful debts, fraud, suspense, depreciation on investment and derivatives to book profit u/s 115JB | Ground No.5 | |
| Exclusion of income of foreign branches in completing book profit u/s 115JB | Ground No.6 | |

**Revenue's Appeal**

| **Issue contended** | **AY2016-17** | **AY2017-18** |
|---|---|---|
| Broken period interest | Ground No.1 | Ground No.1 |
| Amortization of premium paid on HTM Securities | Ground No.2 | Ground No.2 |
| Taxation of unrealized rent on NPA | Ground No.3 | Ground No.3 |
| Deduction u/s 36(1)(viii) | Ground No. 4 | Ground No. 4 |
| Sale of Asset to Asset Restructuring company | Ground No.5 | |
| Disallowance on payment made to RBI for not following internal regulations laid down | | Ground No.5 |
| Disallowance u/s 14A in computing book profits | Ground No.6 | Ground No.6 |

**ITA No. 1440/M/2023 - AY 2016-17 – Assessee's appeal**

2. The assessee is a public sector bank and has earned income from banking operations and treasury operations. The assessee filed the return of income for AY 2016-17 on 29.11.2016 declaring a total income of Rs.35,57,10,04,800/-. Subsequently the case was selected for scrutiny and statutory notices were duly served on the assessee. The Assessing Officer (AO) made various additions computing the assessed income of the assessee at Rs. 58,99,19,42,907/-. On further appeal, the CIT(A) gave partial relief to the assessee. Both the assessee and the Revenue are in appeal against the order of the CIT(A) before the Tribunal.

**Disallowance u/s 14A**

3. The AO noticed that during the year under consideration the assessee has received exempt income towards dividend on shares and interest on tax free bonds to the tune of Rs. 105,79,10,571/-. The assessee has made a suo-moto disallowance of Rs. 87,99,656/-. The AO after perusing the details furnished by the assessee computed the disallowance u/s 14A r.w.r. 8D at Rs. 1441,80,00,000/-. The CIT(A) upheld the disallowance made by the AO.

4. The ld. AR submitted that the Co-ordinate Bench in assessee's own case for AY 2014-15 (ITA No. 1807/Mum/2018 dated 27.11.2020) has considered a similar issue and held that

> *"6. We have heard the submissions made by rival sides and have examined the orders of authorities below. The assessee in appeal has raised solitary ground against the disallowance under section 14A r.w.r. 8D of the Act. The Revenue in ground No.1 of the appeal has impugned the finding of CIT(A) in restoring the issue of disallowance under section 14A r.w.r. 8D of the Act to Assessing Officer. Undisputedly, the assessee has earned tax free income from*

*Bonds and dividend income on shares held as 'stock-in-trade'. The assessee has made suo-moto disallowance of Rs.9,20,164/- under section 14A for earning tax free income. The assessee in appeal has contended that no disallowance under section 14A of the Act is warranted as tax free income has been earned on shares/stock held as 'stock-n-trade'. In so far as contention of the assessee that shares/bonds on which tax free income has been earned are held as 'stock-in-trade', is not disputed by the Revenue. The Hon'ble Apex Court in the case of Maxopp Investment Pvt. Ltd. (supra) has observed that where shares are held as 'stock-in-trade', it becomes business activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not is immaterial. It is quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the intention of the assessee is to trade in shares to earn profits. The Hon'ble Supreme Court approved the order of Hon'ble Punjab & Haryana High Court in the case of PCIT vs. State Bank of Patiala, 391 ITR 218 albiet for a different reason that provisions of section 14A would not get attracted where the shares are held in 'stock-in-trade',*

*Following the judgment rendered in the case of Maxopp Investment P. Ltd. (supra), the Tribunal in the case of Asstt.CIT vs. UCO Bank (supra), Punjab National Bank vs. ACI (supra) and IDBI Bank Ltd. Vs. DCIT(supra) has held that disallowance under section 14A r.w.r. 8D of the Act in case of assessee engaged in Banking business and holding shares as 'stock-in-trade' is not warranted.*

*7. The CIT(A) has restored the issue of disallowance under section 14A r.w.r. 8D of the Act to Assessing Officer to decide the issue in line with the order of Tribunal in assessee's own case for assessment year 2010-11. We observe that the Co-ordinate Bench while adjudicating the issue of disallowance under section 14A r.w.r. 8D of the Act for assessment year 2010- 11 in appeal by the assessee ITA No.1627/Mum/2014 has in turn followed the order of Tribunal in assessee's own case for assessment year 2008-09, wherein the issue was restored to Assessing Officer with a direction to examine the same afresh. The Tribunal while deciding the appeal of assessee for assessment year 2010-11 was not having the benefit of judgment rendered in the case of Maxopp Investment P. Ltd. (supra). The Tribunal passed the order on 08/01/2016 and the judgment in the case of Maxopp was delivered in February 2018. Even the judgment in the case of Pr.CIT vs. State Bank of Patiala (supra) and Pr.CIT vs. Punjab and Sind Bank (supra) are subsequent to the order of Tribunal.*

*8. Thus, in the light of the decisions discussed above, we hold that no disallowance under section 14A r.w.r. 8D of the Act is warranted where the*

*assessee has earned exempt income on shares/stocks held as 'stock-in-trade'. Consequently, the sole ground raised in appeal by the assessee is allowed and corresponding ground No.1 raised in the appeal by the Revenue is dismissed.*

*9. In the result, appeal of the assessee is allowed."*

5. We heard the parties and perused the material on record. The facts for the year under consideration is identical i.e. the exempt income earned by the assessee is out of the shares/stock held as stock-in-trade, therefore respectfully following the above decision of the Co-ordinate Bench in assessee's own case, we direct the AO to delete the disallowance made u/s 14A r.w.r. 8D.

6. In view of our decision with regard to the disallowance made under section 14A, Ground No. 1.1 to 1.3 raised by the assessee have become academic and not warranting any separate adjudication.

**Disallowance of interest paid on IPDI Bonds**

7. The assessee has incurred interest expenditure of Rs. 100,89,00,000/- against issue of Innovative Perpetual Debt Instruments (IPDI) Bonds. The AO held that the said interest is not admissible as a deduction u/s 36(1)(iii) for the reason that the bonds are

(a) Perpetual nature
(b) High Loss Absorption Capacity – Provisions for write down of principal or conversion to equity on trigger
(c) Discretionary pay out with existence of full coupon discretion

8. We heard the parties and perused the material on record. We notice that the Co-ordinate Bench in the case of DCIT Vs. State Bank of India (ITA Nos. 3033 & 2873/Mum/2019 dated 29.09.2022) has considered a similar issue where it has been held that

*"16 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. As far as argument of rule of consistency is concerned, the Ld. CIT(A) has rejected the contention of the assessee following the decision of the Hon'ble Delhi High Court in the case of Krishak Bharati cooperative Ltd (supra). The said finding being based on the precedent, we concur with the finding of the Ld. CIT(A).*

*16.1 The assessee has distinguished the decision of Hon'ble Punjab Haryana High Court in the case of Pepsu Road transport Corporation (supra) on the ground that in said case capital was provided by the Union of India under a statutory obligation which had no provision of repayment. Further in the event of the liquidation of Pepsu Road transport Corporation after meeting the liabilities if any, the assets were to be divided among Central Government and the State Government and such other parties, if any as may have subscribed to the capital in proportion to the contribution made by each of them to the total capital. However in the instant case there was no statutory obligation on the investors to subscribe to IPDs and further the claim of the investor of the IPD bonds is superior to that of equity investor and subordinate to other creditors. Further, it was submitted that interest paid on IPD cannot be equated with the dividend as dividend is not mandatory to be paid each year and it has to be paid if there is profit during the any financial year and on approval of the proposal of the Board of Directors by the shareholders in the annual general meeting. Whereas in the case of the IPD, it is mandatory to pay interest irrespective of the availability of the profit and no approval of the Board of Directors or shareholders was required. In view of the above discussion, we concur with the contention of the assessee that ratio in the case of Pepsu Road transport Corporation Ltd (supra) cannot be applied or the instant case.*

*16.2 However as far as finding of the Coordinate bench of Tribunal in the case of Tata Power Co Ltd (supra) is concerned, the Tribunal has in principle held that perpetual bond are not in the nature of equity and therefore quashed the revision proceedings passed by the Ld. PCIT, The relevant finding of the Tribunal (supra) is reproduced as under:*

> *Heard both the sides and perused the material on record. Assessment in the case of the assessee was completed by the Assessing Officer u/s 143(3) r.w.s 144C(13) of the I.T. Act, 1961 on 30.06.2017. The ld. Pr.CIT has held vide order u/s 263(3) of the Act, dated 28.03.2018 that assessment order passed u/s 143(3) r.w.s 144C(13) as erroneous insofar as it was prejudicial to the interest of revenue holding that the Assessing Officer was not correct*

*in allowing the interest on perpetual debt instruments without examining and verifying the allowability of such expenditure. With the assistance of ld. representatives we have gone through the copies of documents and detailed submission made before the A.O during the course of assessment proceedings as per page no. 1 to 160 of the paper book filed by the assessee. It is noticed that assessing officer has specifically asked the assessee vide notice dated 24.11.2016 to provide the detail of income tax reversal on distribution of unsecured perpetual securities. In this regard assessee has given detailed submission vide letter dated 16.12.2016 stating that it has issued 11.4% unsecured perpetual securities (bonds) for the purpose of business use. Interest of such securities is payable @ 11.40% per annum. The assessee has also specifically explained in line with accounting standard, the aforesaid interest is charged to reserve and surplus. The gross amount of interest of aforesaid securities was of Rs.142.03 crores for F.Y. 2010-11. But the same was charged to Rs.113.61 crores after netting off taxes [142.03 - 28.42]. The amount of tax impact of Rs.28.42 crores has been charged to reserve and surplus during the year. Thereafter again on 23.12.2016 the assessee has explained to the assessing officer that during the year the company has incurred Rs.18.63 crores on issue of 10.75% debenture of Rs. 1500 crores. This amount being expenditure of capital nature has not been claimed by the assessee in its return of income. The assessee has also supplied to the Assessing Officer detailed offer document issued for unsecured perpetual debentures of Rs.1500 crores during the course of assessment proceedings. In the offer document the terms and conditions of issuing perpetual debentures, basis of allotment, creation of debenture redemption reserves along with object of the issue were clearly mentioned. As per the copy of object of the issue placed at page 67 of the paper book, it is mentioned that utilization of funds to be raised through this private placement will be for general business purpose and at page no. 62 issue size was mentioned of 15000 debentures of face value of Rs. 10 lac each aggregating to Rs.1500 crores. It is demonstrated from the detailed submission and copies of documents placed in the paper book that assessing officer has made detailed inquiry/verification during the course of assessment proceedings that assessee has borrowed funds for business use by issue of debentures. The borrowed fund were payable on call option exercising by company after the 10th year or any at the end of every year thereafter. It was also explained that the lenders were not entitled to share any surplus or bear any loss like shareholders. Debentures trustee were appointed to safeguard interest of the lenders. The assessee company had also stated on the basis of aforesaid discussion that it had borrowed fund for the purpose of its business and the interest on debenture was deductible in computing the income from profit*

*and gains from business and profession. In the light of the above facts and after considering the detailed material furnished by the assessee during the course of assessment proceedings before the assessing officer we observe that the assessee has categorically explained to the assessing officer with relevant supporting material that it has issued unsecured perpetual non-convertible debentures and such lenders were not entitled to share any surplus or bear any loss like shareholders. These debentures were entitled for fixed interest @11.40% along with redemption after the 10th year. These facts and submissions were also brought to the notice of the ld. Pr.CIT during the course of proceedings u/s 263 of the Act, however, the ld. Pr.CIT without controverting these undisputed fact held that assessment order was erroneous so far it was prejudicial to the interest of Revenue. Therefore, we consider that the order passed by the ld. Pr.CIT u/s 263 is unjustified and we quash the same. Therefore, we allow the ground of appeal of the assessee.*

*16.3 Respectfully, following the finding of the Tribunal (supra), we set aside the finding of the Ld. CIT(A) on the issue in dispute and direct the Ld. A.O. to delete the disallowance of interest amounting to Rs. 18,00,00,000/-, which was made u/s 36(1)(iii) of the Act. The ground No. 4 of the appeal of the assessee is accordingly allowed.*

9. The facts pertaining to the issue in assessee's case is identical to the above and therefore in our considered view the decision of the Co-ordinate Bench the above case is applicable to assessee also. Accordingly, we hold that the interest claimed by the assessee is allowable as deduction u/s 36(1)(iii) and the AO is directed to delete the disallowance made in this regard.

**Taxation of recovery of bad-debts**

10. During the year under consideration the assessee has reduced an amount of Rs. 9,49,46,665/- from its computation of total income on account of recovery in respect of accounts written off of Rural Branches. The AO did not accept the submissions made by the assessee with regard to such adjustment and held that

*"11.2 The contention of the assessee that write off of rural bad debts is not allowable is not correct in as much as provision for rural as well as non-rural bad debts is allowable as per the provisions of Section 36(viia) (a). Further, both the rural and non-rural bad debts not exceeding the credit balance available in provision for bad and doubtful debts is charged to the provision itself thus, indirectly charged to the P&L a/c and the excess amount is allowed to be debited to P&L a/c directly. In the circumstances, any recovery in respect of accounts written off of rural branches required to be added back in computation of income.*

*11.3 In view of the above discussion, the amount of Rs. 9,49, 46,665/- on account of recovery in respect of accounts written off of rural branches is added to the total income of the assessee. Penalty proceedings u/s 271 (1) (C) are initiated for furnishing inaccurate particulars of income"*

11. We heard the parties and perused the material on record. The ld. AR brought to our attention that a similar issue in assessee's own case for AY 2013-14 (ITA No. 1439/Mum/2023 dated 13.03.2024) was considered by the Co-ordinate Bench where it has been held that

*"11. Considered the rival submissions and material placed on record, we observe from the record that the issue raised by the assessee is covered in its favour by the order of the Coordinate Bench in assessee's own case, the same is reproduced by the Ld. CIT(A) in his order at Page No. 17 of the order. Since the issue under consideration is already covered in favour of assessee, however, Ld. CIT(A) has elaborately discussed his point of view that why he is not in a position to follow the decision of the Coordinate Bench, even though it is not as per the legal conventions still we proceed to explain the issue in the following paragraphs.*

*12. In the factual matrix submitted before us, the Bank makes provision for bad and doubtful debts as per RBI norms. Out of the said provisions made, deduction is allowed under section 36(1)(viia) to the extent of eligible amount as prescribed (an amount not exceeding 8.5% of the total income and an amount not exceeding 10% of the aggregate average advances by the rural branches). This is the first stream of deduction specified u/s 36(1)(viia) of the Act.*

*13. Therefore, Let us understand this transaction with an example, if a provision of say ₹.1000 is made in the books as per RBI norms, a deduction of*

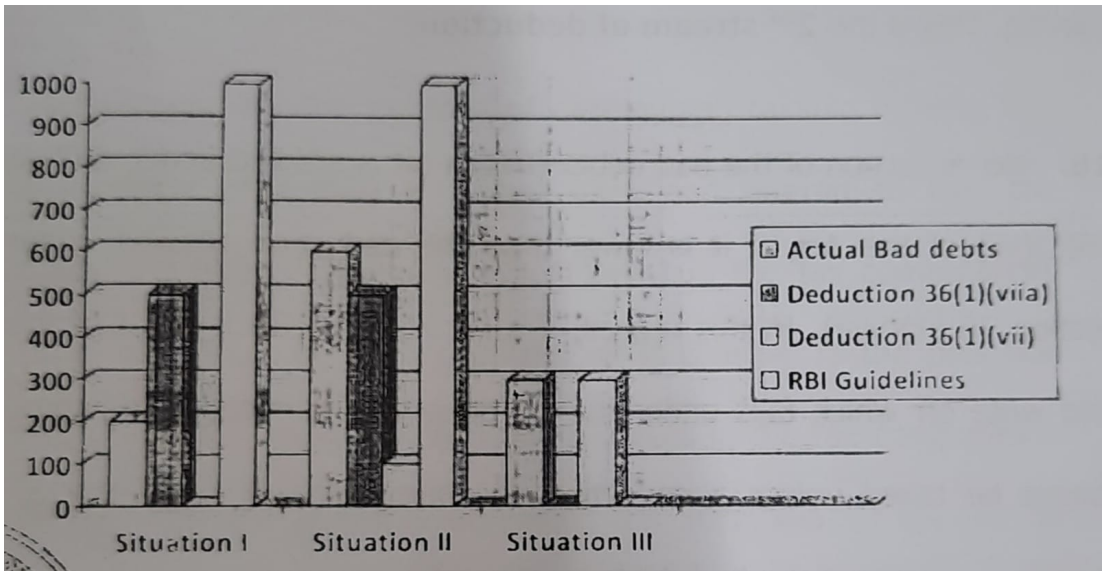
*say ₹.500 is allowed based on formula (an amount not exceeding 8.5% of the total income and an amount not exceeding 10% of the aggregate average advances by the rural branches) under section 36(1)(viia). However, if no provision is made in the books, no deduction is allowed under section 36(1)(viia) as per section 36(2)(v) of the Act.*

*14. Accordingly, for the purpose of determining taxable income, the provision made of ₹.1000 is added back and offered to tax, the deduction of ₹.500 is claimed u/s 36(1)(viia) in the tax computation. Therefore, the actual bad debts written off is charged to the provision account, which the assessee ultimately reverses in the tax computation and allowed only the statutory deduction u/s 36(1)(viia) of the Act, in the books it never crossed the amount allowed under section 36(1)(viia) of the Act.*

*15. If there is a reversal of provision which is credited to P&L account, the same will be offered to tax and no deduction is allowed under section 36(1)(viia) of the Act. Therefore, the provision made/reversed and deduction allowed under section 36(1)(viia) / amount offered to tax form a separate stream of deduction under the Income-tax Act. When a bad debt is written off, the same is written off by debit to provision account for the reason that the assessee's claim of actual bad debts written off never crossed the claim of deduction claimed under section 36(1)(viia) of the Act by the assessee. Whereas, the deduction under section 36(1)(vii) is allowed to the extent it exceeds the opening credit balance in the provision account maintained under section 36(1)(viia) of the Act. This is the* ***2nd stream of deduction****.*

*16. No deduction of the bad debts written off is allowed under section 36(1)(vii) of the Act, if it is lower than the deduction allowed under section 36 (1)(viia). In this regard, if a recovery is effected out of the said write off which falls under the 2nd stream of deduction, the same cannot be taxed unless a deduction has been allowed under the 2nd stream in respect of the bad debts written off.*

*17. The provisions of section 41(4) of the Act which provides for taxing the recovery effected out of the bad debts written off, therefore, clearly stipulates that the said recovery will be taxed if a deduction has been allowed in respect of bad debts written off which falls under the second stream of deductions as stated above. Accordingly, the section provides that if a bad debt written off has been allowed as deduction under section 36(1)(vii) of the Act i.e., in second stream of deductions, the recovery effected out of such write off, which has been allowed, will be charged to tax. This is explained in the below chart and table:*




| ***Particulars*** | ***Situation I*** | ***Situation II*** | ***Situation III*** |
|---|---|---|---|
| *Actual Bad debts* | *200* | *600* | *300* |
| *Deduction 36(1)(viia) (first stream of deduction)* | *500* | *500* | *0* |
| *Deduction 36(1)(vii) (second stream of deduction)* | *0* | *100* | *300* |
| *Provisions as per RBI Guidelines* | *1000* | *1000* | *0* |

*18. From the above, in situation I, the deduction u/s 36(1)(viia) is allowed the extent of ₹.500 because there is a provision created as per RBI guidelines. In situation II, deduction of ₹.500 is allowed under 36(1)(viia) and also the actual bad debts is more than the first stream of deduction, the additional deduction is allowed of ₹.100/- u/s 36(1)(vii) of the Act. In situation III, if the provision is not created in the books of account, then no deduction is allowed under section 36(1)(viia) of the Act and only option available to the assessee is to claim u/s 36(1)(vii) of the Act.*

*19. Therefore, it is clear that where a deduction has not been allowed in respect of bad debts written off under the 2nd stream, the question of charging the recovery effected out of such bad debts written off to tax will not arise. In the third situation discussed in the chart, when the assessee does not make any provision as per RBI Guidelines, then it cannot claim any deductions under*

*section 36(1)(viia) of the Act and it can only claim deduction under section 36(1)(vii) of the Act, if there is any recovery, it can be charged to tax under section 41(4) of the Act. Therefore, the proposed addition of recovery of bad debts by the Assessing Officer is not proper and observation of Ld.CIT(A) is also not correct, the revenue has to appreciate the actual claim of deductions made by the assessee under various provisions exclusively enacted for the purpose of banking companies has to be read along with the tax computation submitted by the assessee and not express their opinion without properly verifying the impact in the tax computation. It may look double deduction while reading the provisions in isolation. Accordingly, the grounds raised by the assessee is allowed.*

*20. In the result, appeal filed by the assessee is allowed."*

12. From the observations of the AO as extracted in earlier part of this order, it is clear that the AO has held the recovery to be taxable for the reason that the adjustment made to the provision is indirectly charged to P&L A/c. This scenario is considered in the above decision and therefore respectfully following the same, we hold that the recovery of bad-debts which has not been claimed as a deduction u/s 36(1)(vii) in earlier years is not taxable. Accordingly, the AO is directed to delete the addition made in this regard.

**Applicability of provisions of section 115JB**

13. We notice that the issue of applicability of provisions of section 115JB has been considered by the Special Bench in assessee's own case for AY 2015-16 (ITA No. 424/Mum/2020 dated 06.09.2024) where it has been held that

*"39. We have heard both the parties and also perused the relevant material referred to before us and the various provisions of the relevant Acts cited which are relevant for adjudication of the issue before us.*

*40. The question which has been referred to the Special Bench is whether the requirement of sub-section (2) of 115JB is fulfilled in the present case of the assessees. Sub-section (1) of Section 115JB mandates charge of income tax*

*based on book profits subject to fulfillment of certain conditions and also provides the rate on which such tax shall be charged. The Section starts with non-obstante clause and therefore, it is a departure from normal charge of tax on the total income of the company. Sub-section (2) is the computation provision dealing with the manner in which such book profits are to be computed. Upto A.Y.2012-13, subsection (2) of Section 115JB applied only to such companies which were required to prepare its profit and loss account in accordance with part II & III of Schedule VI to the Companies Act 1956. The assessee bank is required to prepare its profit and loss account in accordance with Section 52 r.w.s. 29 of the Banking Regulation Act and not as per the Companies Act. Earlier in the case of the assessee it has been settled by the Hon"ble Jurisdictional High Court that provision of Section 115JB has no application to its case. Now after the amendment w.e.f. A.Y.2013- 14, Sub-section (2) has been amended to bring into the ambit of Section 115JB, those companies to which second proviso to subsection (1) of Section 129 of the Companies Act is applicable, who are required to prepare its statement of profit and loss account in accordance with provisions of the Act governing such company. For the sake of ready reference the amended subsection (2) of Section 115JB is again reproduced hereunder:-*

*(2) Every assessee,—*

*(a) being a company, other than a company referred to in clause (b), shall, for the purposes of this section, prepare its statement of profit and loss for the relevant previous year in accordance with the provisions of Schedule III to the Companies Act, 2013 (18 of 2013); or*

*(b) being a company, to which the second proviso to subsection (1) of section 129 of the Companies Act, 2013 (18 of 2013) is applicable, shall, for the purposes of this section, prepare its statement of profit and loss for the relevant previous year in accordance with the provisions of the Act governing such company:*

*Provided that while preparing the annual accounts including statement of profit and loss,—*
*(i) the accounting policies;*
*(ii) the accounting standards adopted for preparing such accounts including statement of profit and loss;*
*(iii) the method and rates adopted for calculating the depreciation,*

*shall be the same as have been adopted for the purpose of preparing such accounts including statement of profit and loss and laid before the company at*

*its annual general meeting in accordance with the provisions of section 129 of the Companies Act, 2013 (18 of 2013):*

***Provided further** that where the company has adopted or adopts the financial year under the Companies Act, 2013 (18 of 2013), which is different from the previous year under this Act,—*

*(i) the accounting policies;*
*(ii) the accounting standards adopted for preparing such accounts including statement of profit and loss;*
*(iii) the method and rates adopted for calculating the depreciation,*

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

*41. In so far as Clause (a), the same applies to a case of a company other than referred to in Clause (b). According to clause (a), for the purpose of Section 115JB the company has to prepare its profit and loss account for the relevant previous year in accordance with the Companies Act, 2013 and the First proviso to sub-section (2) requires that while preparing the accounts including the profit and loss account, the accounting policies, the accounting standards and the method and rates adopted for the purpose of preparing such accounts including the profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of Section 129 of the Companies Act, 2013. Since assessee bank has to prepare its accounts in accordance with the provisions contained in Section 51 r.w.s. 29 of the BR Act, therefore, Schedule III of the Companies Act is not applicable. Thus, Clause (a) of Section 115JB (2), the computation provision, will not apply and this matter has attained finality in the case of the assessee by the Hon"ble Jurisdictional High Court in the case of the assessee (cited supra).*

*42. Now for Clause (b), following conditions need to be satisfied for applying section 115JB in the case of a company:-*

*i. it applies to a company to which the second proviso to subsection (1) of section 129 of the Companies Act, 2013 is applicable;*

*ii. once this condition is fulfilled, it requires such assessee for the purpose of this section to prepare its profit and loss account in accordance with the provisions of the Act governing such company.*

*43. Since 115JB is applicable to the company to which second proviso to Section 129(1) applies, therefore, it would be relevant to quote Section 129 of the Companies Act which reads as under:-*

*"129. Financial statement-(1) The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III:*

*Provided that the items contained in such financial statements shall be in accordance with the accounting standards.*

*Provided further that nothing contained in this subsection shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company*

*Provided also that the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose (a) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938 (4 of 1938), or the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999),*

*(b) in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949 (10 of 1949),*

*(c) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003 (36 of 2003),*

*(d) in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law."*

*44. The second proviso applies to any insurance company, banking company or any company engaged in the generation or supply of electricity or to any*

*other class of company for which a form of financial statement has been specified in or under the Act governing such class of company.* ***In so far as the present case is concerned, one has to consider whether the assessee could be regarded as a 'banking company' for the purposes of section 129 of the Companies Act, 2013).***

*45. Now whether the assessee bank can be termed as a company within the meaning of the Companies Act, 2013, first of all, Section 115JB(2) is applicable to every assessee „being a company". The company has been defined in Section 2(17) of the Income Tax Act which we have already reproduced in para 22 above. Thus, the company means any Indian company. Indian company has been defined in Section 2(26) (incorporated in para 23 of the order) which defines „Indian company" means company formed and registered under the Companies Act. Thus, the company for the purpose of the Income Tax Act is a company which is formed and registered under the Companies Act.* ***Section 2(9)*** *of the Companies Act, 2013, a banking company has been defined to mean* ***a banking company as defined in section 5(c) of the BR Act).*** *Section 5(c) of the BR Act defines a „banking company" as under:*

*"(c) "banking company" means any company which transacts the business of banking in India"*

*Therefore, for an entity to qualify as a banking company it should first of all, be a company' and secondly the said company should transact the business of banking in India.*

*46. The expression "company" has been defined in section 5(d) of the BR Act as under:*

*"(d) "company" means any company as defined in section 3 of the Companies Act, 1956 (1 of 1956); and includes a foreign company within the meaning of section 591 of that Act;"*

*47. Therefore, in so far as is relevant, the entity has to be a company as defined in section 3 of the Companies Act, 1956 (Now 2013) to be regarded as a banking company. Section 3(1)(i) of the Companies Act, defines a 'company' as under:*

*"(i)* ***"company" means a company formed and registered under this Act or an existing company as defined in clause (ii)"***

*48. Therefore, it is sine-qua-non that for an entity to qualify as a company it must either be a company formed and registered under the Companies Act or it should be an existing company as defined in sub-clause (ii) thereof. Since the Assessee is not formed and registered under the Companies Act, 1956, albeit came into existence by a separate Act of Parliament, that is, „Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970", therefore, it does not fall in the first part of the said section.*

*49. Further, the expression "existing company has been defined in Section 3(1)(ii) to mean as under:*

*"(ii) "existing company" means a company formed and registered under any of the previous companies laws specified below :-*

*(a) any Act or Acts relating to companies in force before the Indian Companies Act, 1866 (10 of 1866), and repealed by that Act;*
*(b) the Indian Companies Act, 1866 (10 of 1866);*
*(c) the Indian Companies Act, 1882 (6 of 1882);*
*(d) the Indian Companies Act, 1913 (7 of 1913);*
*(e) the Registration of Transferred Companies Ordinance, 1942 (54 of 1942); and*
*(f) any law corresponding to any of the Acts or the Ordinance aforesaid and in force –*
*(1) in the merged territories or in a Part B States (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913 (7 of 1913);*
*Or*
*(2) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956 (62 of 1956), insofar as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu & Kashmir) Act, 1968 (25 of 1968), insofar as other corporations are concerned; and*
*(3) the Portuguese Commercial Code, insofar as it relates to sociedades anonimas";"*

*50. The assessee bank was neither formed or registered under the Companies Act, 1956; nor it is in existing company as per the above definition. Once it is not a company under the Companies Act, then the first condition referred to in clause (b) of Section 115JB(2) is not fulfilled, and consequently second proviso below Section 129(1) of the Companies Act is also not applicable.*

*51. The main crux of the department is that since assessee bank has come into existence by the „Acquisition Act" and Section 11 thereof states that for the purpose of Income Tax Act, every corresponding new bank shall be deemed to be an „Indian company" and the company in which the public are „substantially interested' and since in Section 2(17) of the Income Tax Act, the „company" has been defined as any Indian company therefore, the provisions of the Income Tax Act would apply because Section 2(26) of the Act defines „Indian company" means the company formed and registered under the Companies Act and therefore, it is deemed to be a company under the Companies Act.*

*52. Section 11 of the Acquisition Act states that* ***"For the purposes of Income-tax Act, 1961 (43 of 1961), every corresponding new bank shall be deemed to be an Indian company and a company in which the public are substantially interested".*** *Therefore, the said deeming fiction is created only for the purposes of the Income-tax Act. Further, for the purposes of the said Act, it treats every corresponding new bank to be an Indian company and also a company in which the public are substantially interested.*

*53. First of all, deeming an entity to be an Indian Company or a company in which public are substantially interested for the purposes of the Income-tax Act would not ipso facto make such entity as a 'company' for the purposes of the Companies Act, 2013, unless the conditions specified in Section 3 thereof are fulfilled. There is no provision to deem a nationalised bank to be a company for the purposes of Section 3 of the Companies Act, 1956.*

*54. As explained in the foregoing paragraphs, Section 2(17) of the income Tax Act r.w.s. 2(26) which defines „company" to mean a company formed and registered under the Companies Act, 1956, does not meet the requirement of being a company in the case of assessee bank, because the Indian company has to be formed and registered under the Companies Act. Notwithstanding that Section 11 of the Acquisition Act deems assessee bank to be a company for the purpose of Income Tax Act, but that does not lead to an inference that merely regarded as a company for the purpose of the Income Tax Act it is also Company registered under the Companies Act. The fiction created by Section 11 of the Acquisition Act, does not imply that the assessee bank would also become a company for the purpose of the Companies Act for which Clause (b) of Sub-Section 2 of Section 115JB is applicable.*

*55. In the earlier part of the order, we have already noted that by the Acquisition Act, the banking business of the existing bank was transferred from Union Bank of India Ltd to The Union Bank of India. The earlier entity,*

*i.e., Union Bank of India Ltd. was a company under the earlier Companies Act, however, that company as a whole was not taken over or acquired but only banking business was acquired by the Acquisition Act. That is the reason why Union Bank of India Ltd. still existed at the point of acquisition and continues till now and the shareholders of Union Bank of India Ltd. were paid compensation as a consideration for acquiring the banking business. It was by the Acquisition Act that these banks were nationalized and the banking business was acquired from the erstwhile banking companies. These new acquiring banks including Union Bank of India is neither registered under the Companies Act, 2013 nor under any other previous company law. Already the Hon"ble Supreme Court in the case of Rustom Cavasjee Cooper v. Union of India (supra) as noted above, the Hon"ble Supreme Court had held that only undertaking was acquired for the banking companies acquisition and transfer of invoking ordinance which was promulgated on 19/06/1969, which culminated into the Act of Banking Companies (Acquisition and Transfer of Undertaking) Act,1970. Thus, assessee cannot be treated as a company under the Companies Act, because it was never registered under the Companies Act. Ergo, the deeming fiction by way of Section 11 of the Acquisition Act has to be read purely in the context for the purpose of Income Tax Act where the corresponding new bank have been deemed to be an Indian Company and a company in which public are substantially interested. This deeming section cannot be extended to a company registered under the Companies Act to which alone Section 115JB is applicable.*

*56. Thus, we hold that Section 11 of the Acquisition Act which deals a corresponding new bank treated as Indian company for the purpose of Income Tax, however, Clause (b) in Sub-Section 2 to Section 115JB does not permit treatment of such bank as a company for the purpose of the said clause, because it should be company to which second proviso to sub-section (1) to Section 129 of the Companies Act is applicable. The said proviso has no application to the corresponding new bank as it is not a banking company for the purpose of the said provision. The expression "company" used in section 115JB(2)(b) is to be inferred to be company under the Companies Act and not to an entity which is deemed by a fiction to be a company for the purpose of the Income Tax Act.*

*57. Before us, ld. Counsel has given various references under the Income Tax Act itself where the corresponding new bank and a banking company have been treated separate and independent from each other for which our reference was also drawn to Section 36(1)(viii) & 72A. Apart from that, it is noticed that, Section 194A(1) of the Act which provides that if any specified person is responsible for paying to a resident any income by way of interest is*

*obliged to deduct tax at source, however, Section 194A(3) provides that Section 194A(1) shall not apply if the payment has been made to certain entities. Clause (iii) of subsection (3) of section 194A, deals with such entities. The said clause reads as under:-*

*iii) to such income credited or paid to-*
*(a) any banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies, or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank), or*
*(b) any financial corporation established by or under a Central, State or Provincial Act, or*
*(c) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or*
*(d) the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), or*
*(e) any company or co-operative society carrying on the business of insurance, or*
***(f) such other institution, association or body [or class of institutions, associations or bodies] which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette:***
*[Provided that no notification under this sub-clause shall be issued on or after the 1st day of April, 2020;]*

*58. The aforesaid clause (f) provides that if Central Government notifies any such entity then TDS is not to be deducted. It is very relevant to note that at the time of Acquisition Act was enacted, Central Government had issued a Notification No. SO 710 dated 16/02/1970 [1970] [Reported in 75 ITR (Stat) 106] which reads as under:-*

***Income-tax Act, 1961: Notification under sec. 194A(3)(iii)(f)***

*Notification No. S. O. 710, dated February 16, 1970. (1)*

***In pursuance of sub-clause (f) of clause (iii) of sub-section (3) of section 194A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notify with effect from the 19th July, 1969, the following banks for the purposes of the said sub-clause:-***

*1. Indian Overseas Bank, 151, Mount Road, Madras-*
*2. Indian Bank, Indian Chamber Building, Madras-1.*
*3. Allahabad Bank, 14, India Exchange Place, Calcutta-1.*

*4. Dena Bank, Devkaran Nanjee Building, 17, Horniman Circle, Fort, Bombay-1.*
*5. Canara Bank, 112, Jayachamarajendra Road, Bangalore-1.*
*6. **Union Bank of India**, 66/80, Apollo Street, Fort, Bombay-1.*
*7. United Commercial Bank, 10, Brabourne Road, Calcutta-1.*
*8. Bank of Baroda, 3, Walchand Hirachand Marg, Bombay-1.*
*9. Punjab National Bank, Parliament Street, New Delhi-1.*
*10. Bank of India, 70/80 Mahatma Gandhi Road, Bombay-1.*
*11. **Central Bank of India,** Mahatma Gandhi Road, Bombay-1.*
*12. United Bank of India, 4, Narendra Chandra Datta Srani (Clive Ghat Street), Calcutta-1.*
*13. Bank of Maharashtra, 1177 Peth, Poona-2.*
*14. Syndicate Bank, Manipal, Mysore State, Mysore*

*59. Thus, the aforesaid notification read with provision of Section 194A(3), makes it clear that even Government of India considers the above entities separate and distinct from banking companies. Once under the Income Tax Act, Legislature itself has made a distinction for the aforesaid banks including the assessee are not covered as banking company, then, this further buttresses the point that these banks are separate and distinct from other banking companies.*

*60. Accordingly, the question referred to Special Bench is decided in favour of the assessee banks that clause (b) to sub section (2) of section 115JB of the Income-tax Act inserted by Finance Act, 2012 w.e.f. 1-4-2013, that is, from assessment year 2013-14 onwards, are not applicable to the banks constituted as 'corresponding new bank' in terms of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and therefore, the provision of Section 115JB cannot be applied and consequently, the tax on book profits (MAT) are not applicable to such banks."*

14. Respectfully following the above decision, we hold that the provisions of section 115JB are not applicable to assessee's case for the year under consideration also.

15. Ground No. 5 & 6 with respect to inclusion and exclusion while computing book profit u/s 115JB has become academic in view of our decision with regard to

the applicability of the said section in assessee's case. Hence these grounds do not require separate adjudication and are dismissed accordingly.

**ITA No. 1819/Mum/2023 – AY 2016-17 - Revenue's appeal**

**Broken period interest**

16. During the year under consideration, the assessee has paid Rs. 379,53,74,991/- as broken period interest on purchase of securities during the year and held as stock-in-trade as on 31.03.2016. The assessee has treated the said amount as revenue and claimed deduction accordingly. The AO held that the broken period interest paid is nothing but part of the purchase price paid for the securities and therefore cannot be treated as revenue in nature. The AO therefore made an addition towards broken period interest. The CIT(A) deleted the disallowance by placing reliance on the decision of the Hon'ble Bombay High Court in the case of CIT Vs. HDFC Bank Ltd. (2014) 49 taxmann.com 335 (Bom.).

17. The ld. DR submitted that the Hon'ble Rajasthan High Court in the case of CIT Vs. Bank of Rajasthan Ltd. (2009) 316 ITR 391 (Raj.) has held a contrary view which has been followed by the AO while making the disallowance. Accordingly, the ld. DR supported the order of the AO.

18. The ld. AR on the other hand submitted that the Hon'ble Bombay High Court in the case of HDFC Bank (supra) has distinguished the decision of the Hon'ble Rajasthan High Court and the decision of Jurisdictional High Court is binding. The ld. AR drew our attention to the relevant observations of the Hon'ble Bombay High Court as extracted below:

*"(B) Whether the ITAT was correct in law in holding that the broken period interest is allowable as a deduction, inspite of the Hon'ble Supreme Court's decision in the case of CIT v. Vijay Bank (187 ITR 541) and the Rajasthan High Court's decision in the case of Bank of Rajasthan (316 ITR 391)?*

*****

*"6. Even as far as question (B) is concerned, we find no infirmity in the orders passed by the CIT (Appeals) or the ITAT. In deciding this issue, CIT (Appeals) and the ITAT have merely followed the judgment of this Court in the case of American Express International Banking Corpn. v. CIT [2002] 258 ITR 601/125 Taxman 488. On going through the said judgment, we find that question (B) reproduced above and projected as substantial by Mr Suresh Kumar is squarely answered by the judgment of this Court in the case of American Express International Banking Corpn. (supra). In view thereof, we do not find that even question (B) gives rise to any substantial question of law that needs to be answered by this Court."*

19. We heard the parties and perused the material on record. We notice that the Hon'ble Supreme Court in the case of CIT Vs. Citi Bank (Appeal No. 1549 of 2006 dated 12.08.2008) while considering the following question of law has held the appeal in favour of the assessee.

*"Whether on facts and in circumstances of the case, the High Court was right in law in holding that the interest paid for broken period should not be considered as part of the purchase price, but should be allowed as revenue expenditure in the year of purchase of securities."*

20. Respectfully following the decision of the Hon'ble Supreme Court and the Jurisdictional High Court, we hold that the AO is not correct in making the disallowance towards broken period interest and accordingly we see no infirmity in the order of the CIT(A) in deleting the said disallowance.

**Amortization of premium paid on HTM Securities**

21. The assessee has claimed amortized premium to the tune of Rs. 133,01,99,864/- on securities in Held To Maturity (HTM). The assessee submitted before the AO that as per the RBI Guidelines investments in HTM category should be carried at acquisition cost and in case the purchase price is higher than the face value, the premium should be amortized over the remaining period of maturity of the security. The assessee further submitted that the amortized premium thus claimed is to be allowed as a deduction. The AO however did not accept the submissions of the assessee stating that specific clauses in RBI Circular with regard to accounting treatment cannot be considered for Income tax purposes and accordingly disallowed the amortized premium claimed by the assessee as a deduction.

22. We heard the parties and perused the material on record. We notice that the Hon'ble Bomby High Court in the case of HDFC Bank Ltd. (supra) while considering the question of law as to *"whether the ITAT is right in law in holding that the assessee is entitled for deduction with respect to the diminution in value of investment and amortization of premium on investment held to maturity on the ground of mandate by RBI Guidelines thereby ignoring the decision of the Hon'ble Supreme Court in the case of Southern Technologies Vs. CIT (320 ITR 575)?"* has held that

> *"7. As far as question (C) is concerned, we find that an identical question of law was framed and answered in favour of the Assessee by this Court in its judgement dated 4-7-2014 in Income Tax Appeal No. 1079 of 2012, CIT-2 v. Lord Krishna Bank Ltd. (now merged with HDFC Bank Ltd.). Mr Suresh Kumar fairly stated that question (C) reproduced above is covered by the said*

*order. In view thereof, we are of the view that even question (C) does not raise any substantial question of law that requires an answer from us."*

23. Considering the above decision, we see no reason to interfere with the decision of CIT(A).

**Taxation of unrealized interest on NPA**

24. During the assessment proceedings, the AO noticed that the assessee has not recognized the interest income pertaining to the NPA on accrual basis and called on the assessee to furnish details and provide explanations. The assessee submitted before the AO that as per the provisions of section 43D of the Act in the case of Schedule Bank income by way of interest in relation to prescribed categories of bad or doubtful debts shall be chargeable to tax having regard the Guidelines issued by the RBI either in the year in which it is credited to the P&L A/c or in which actually received by the Bank whichever is earlier. The assessee relied on the decision of the Hon'ble Supreme Court in the case of Vasisthchay Vyapar Ltd. (253 taxaman 401) where it is held that even in case where the provisions of section 43B are not applicable interest on bad and doubtful debits have to be taxed only in accordance with RBI Guidelines. The AO did not accept the submissions of the assessee to hold that the when the assessee is maintaining books of account on accrual basis, not accounting for interest on NPA on the basis of RBI Guideline cannot be accepted. Accordingly, the AO brought to tax interest of Rs. 236,21,71,029/- to tax towards interest on NPA. The CIT(A) gave relief to the assessee by placing reliance on the decision of the Co-ordinate Bench in the case of State Bank of India (ITA No. 3644 & 4563/Mum/2016).

25. We heard the parties and perused the material on record. We notice that the Co-ordinate Bench in the case of State Bank of India (successor to State Bank of Bikaner & Jaipur) Vs. DCIT (ITA No. 3033 & 2873/Mum/2019 dt. 29.09.2022) has considered a similar issue and held that

*"4.2 The ground No. 1 of the appeal of the assessee relates to addition of Rs. 3,86,10,180/- in respect of unrealized interest on borrower accounts classified as non-performing accounts under RBI directions. The Ld. Counsel of the assessee submitted that this is one of the recurring issue in the case of the assessee and it has been decided in favour of the assessee by the Tribunal for A.Y.2008-09 vide order dated 03/02/2020 in ITA No. 3644 and 4563/Mum/2016. The Ld. Departmental Representative on the other hand relied on the order of the lower authorities.*

*5. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The Ld. A.O. held that since the assessee is maintaining its books of accounts on accrual basis, the income in respect of bad and doubtful debt was required to be taxed on accrual basis except for the exceptions provided under rule 6EA of Income-Tax rules, 1962 read with Section 43D of the Act. The Ld. A.O. rejected the claim of the assessee that exceptions should be provided as per RBI guidelines and accordingly he added the amount of Rs.3,86,10,180/-being the interest on NPA/NPI not recognized by the assessee as income in view of RBI guidelines ignoring the provision of section 43D read with rule 6 EA of rules. The Ld. CIT(A) following the decision of his predecessor in the case of the assessee for A.Y.2014-15 confirmed the addition.*

*5.1 We find that identical issue has been adjudicated by the Tribunal(supra) in the case of the assessee for A.Y. 2008-09, observing as under:*

> *We have gone through the case law in American Express Bank Ltd. vs. Addl. CIT [2012] 25 taxmann.com 572 (Mumbai), wherein the Mumbai Tribunal was considering a case where the loans on which interest/principal remained unpaid for 90 days were classified as no-accrual loans. The unpaid interest in respect of such loans was reversed to an account called Reserve for Doubtful Interest (RFDI) account. All subsequent interest accruals of such loans were credited to RFDI account and not to the profit and loss account. The assessee offered to tax the net amount credited to the RFDI account i.e. the interest accruals in the RFDI account net of recoveries. However, it was argued that such tax treatment*

*leads to offering interest on nonaccrual loans to tax on accrual basis, even if the same is not credited to the profit and loss account. The Mumbai Tribunal held that where the AO has not contested that the policy adopted by the assessee is not in accordance with RBI guidelines, the incidence of taxation of interest on bad and doubtful debts will be either when the same is credited to the profit and loss account for the year or in the year in which it is actually received. Mere crediting of the interest to a reserve cannot be said to be an incidence by which the said interest could be charged to tax. The aforesaid decision has been affirmed by the Bombay High Court in the case of DIT vs. American Express Bank Ltd [2015] 235 Taxman 85 (Bombay). In the present case the assessee argued that there is no credit entry in the books of the account in respect of the interest on such NPAs and, accordingly, the addition made cannot be sustained. Hence according to assessee the issue stood covered by the first proposition in terms of the Bombay High Court in assessee's favour and hence, no further submissions were made on other two propositions*

*We noted that this issue is squarely covered by the decision of Hon'ble Bombay High Court in the case of American Express Bank Ltd (supra), wherein it is held that there is no credit entry in the books of the account in respect of the interest on such NPAs, no addition can be made. Further, even the Mumbai Tribunal in the case of American Express Bank Ltd. (supra) has considered this issue and held that where the AO has not contested that the policy adopted by the assessee is not in accordance with RBI guidelines, the incidence of taxation of interest on bad and doubtful debts will be either when the same is credited to the profit and loss account for the year or in the year in which it is actually received. Mere crediting of the interest to a reserve cannot be said to be an incidence by which the said interest could be charged to tax. Hence, we delete the addition of interest income and allow this issue of assessee's appeal.*

*5.2 Since the issue-in-dispute before us of taxability of interest on Non-peforming assets/Account is exactly identical to what has been decided by the Tribunal (supra). Therefore, respectfully following the finding of the Tribunal, being a binding precedent, the finding of the Ld. CIT(A) on the issue-in-dispute is set aside and the Ld. A.O. is directed to delete the addition-in-dispute. The ground No. 1 of the appeal of the assessee is accordingly allowed".*

26. We also notice that as similar view has been expressed by the Co-ordinate Bench in the case of ICICI Bank Ltd. Vs. ACIT (ITA No. 3215/Mum/2019 dated 22.08.2022). The facts in assessee's case on this issue is identical and therefore

respectfully following the decisions of the Co-ordinate Bench, we uphold the decision of the CIT(A) in deleting the addition made towards interest on NPA.

**Deduction u/s 36(1)(viii)**

27. During the year under consideration the assessee has claimed deduction of Rs. 192 crores u/s 36(1)(viii). The AO recomputed the deduction at Rs. 97.18 crores and accordingly made a disallowance of Rs. 94.82 crores. The CIT(A) remitted the issue back to the AO with a direction to recomputed the deduction based on actual interest on eligible advances after deducting cost and expenses on reasonable basis as has been held in assessee's own case for AY 2010-11 (ITA No. 1627/Mum/2014 dated 08.01.2016).

28. The ld. AR brought o our attention the below observations of the Co-ordinate Bench in assessee's own case for AY 2014-15 (ITA No. 1807/Mum/2018 dated 27.11.2020) where it has been held that

> "16. Both sides heard and orders of authorities below examined on this issue. We find that the issue with respect to computation of deduction under section 36(1)(viii) had come up before the Tribunal in ITA NO.1627/Mum/2014(supra). The Tribunal vide order dated 08/01/2016 has remitted the issue back to the file of Assessing Officer to allow the deduction based on actual interest earned from eligible advances after deducting cost and expenses on reasonable basis. The CIT(A) has restored the issue to Assessing Officer to follow the directions of Tribunal. The Id. Departmental Representative has not brought before the Bench any material to controvert the findings of Tribunal in immediately preceding assessment year. We see no infirmity in the findings of CIT(A), hence, the same are upheld. The ground No.3 of appeal by the revenue is dismissed."

29. For the year under consideration the CIT(A) has followed the decision of the coordinate bench and therefore respectfully following the above decision we hold

that there is no infirmity in the directions given by the CIT(A) and therefore we see no reason to interfere with the decision of the CIT(A).

**Sale of Asset to Asset Reconstruction Company (ARC)**

30. During the year under consideration, the assessee has incurred loss on sale of assets to ARC to the tune of Rs. 31 crores. The AO disallowed the said claim rejecting the contention of the assessee that the said amount has been debited in accordance with RBI Guidelines. The CIT(A) deleted the disallowance made by the AO by holding that

> *"6.8.1 The appellant's submissions and its enclosures were perused. On perusal of the submissions made by the appellant it is noticed that the appellant has sold NPAs to Asset Reconstruction Companies (ARCs) at loss. As per the RBI's instructions, the appellant did not claim loss in the profit and loss account and the claim was made in the return of income and computation of income. In this regard, in the decision of the Hon'ble ITAT in the case of DCIT vs Bank of India in ITA No.2833/Mum/2015 for AY 2009-10 on similar facts, it was held that....considering the fact that the assessee had suffered loss while carrying out normal business activity i.e. selling its assets Therefore, we hold that there was no justification for disallowing the loss suffered in the transaction."*
>
> *6.8.2 Respectfully following the decision of Hon'ble ITAT mentioned supra, this appellate authority is of the considered opinion that the disallowance made by the Assessing Officer on this ground cannot be sustained and needs to be deleted.*
> *Thus, Ground No.8 raised by the appellant is allowed."*

31. We notice that the Co-ordinate Bench in the case of Bank of India Vs. DCIT (ITA No.3082 and 2833/Mum/2015 dated 08.11.2017) has considered a similar issue and held that

> *"13.3. We have heard the rival submissions and perused the material before us. We find the assessee had sold NPA.s to ARCIL, that as per the RBI*

*instructions it did not claim the loss in the profit and loss account, that the claim was made before the Department authorities that it had suffered a loss on sale of NPA.s, that the AO and the FAA held that the assessee had not suffered real loss ie. it was notional loss only. There is no doubt about selling of assets to ARCIL, that ARRIL is not a fake or bogus entity, that the sale has not been doubted by the AO/FAA, that the entry in the books of accounts have been made as per the instructions of the RBI. In our opinion, following of RBI instruction by a banking company cannot be basis for denying or allowing any claim.It is said that the entries in the books of accounts are not conclusive proof of taxability of any income. What has to be seen is the substance of the transaction. Considering the fact that the assessee had suffered loss while carrying out normal business activity i.e. selling its assets. Therefore, we hold that there was no justification for disallowing the loss suffered in the transaction. Reversing the order of the FAA, we decide Ground no.8 in favour of the assessee."*

32. Respectfully following the above the decision of the Co-ordinate Bench, we uphold the decision of the CIT(A) in deleting the disallowance made by the AO.

33. Ground No.6 raised by the Revenue is with regard to disallowance u/s 14A in computing book profit. In view of our decision while considering the assessee's appeal (Ground No.1) that no disallowance u/s 14A can be made in assessee's case, the ground raised by the Revenue has become academic not warranting any adjudication and dismissed accordingly.

**ITA No. 1441/Mum/2023 –Assessee's appeal**

34. From the issues contended by the assessee as tabulated in the earlier part of this order, it is clear that ground no. 1 to 4 raised by the assessee for AY 2017-18 is identical to the grounds raised for AY 2016-17. Accordingly, our decision with regard to ground no. 1 to 4 of AY 2016-17 is mutatis mutandis applicable to AY 2017-18 also. Ground No.1 to 4 raised for AY 2017-18 are decided accordingly.

**ITA No. 1818/Mum/2023 – Revenue's appeal**

35. From the issues contended by the Revenue as tabulated in the earlier part of this order, it is clear that ground no. 1 to 4 and ground no.6 raised by the revenue for AY 2017-18 is identical to the ground no. 1 to 4 and ground no.6 raised for AY 2016-17. Accordingly, our decision with regard to ground no. 1 to 4 and ground no.6 of AY 2016-17 is mutatis mutandis applicable to AY 2017-18 also. Ground No. 1 to 4 and ground no.6 raised for AY 2017-18 are decided accordingly.

36. Ground No.5 of the Revenue is with regard to the disallowance on payment made to RBI for not following the internal regulations laid down by the AO which the CIT(A) deleted during appellate proceedings. The AO noticed from the P&L A/c of the assessee that an amount of Rs. 8,43,401/- on account of penalty is debited. The AO disallowed the said amount for the reason that the assessee has not furnished any details pertaining to the same. The assessee submitted before the CIT(A) that the impugned amount is not an expenditure incurred for any purchase which is an offence or which is prohibited by law. The assessee further submitted that it was paid to RBI for deficiencies found in the working of currency chest on various parameters i.e. soiled and mutilated notes, cut notes, fake notes. The assessee also submitted that the charges for non-compliance of internal guidelines and not for violation of any law or offence. Accordingly, the assessee submitted before the CIT(A) that Explanation-1 to section 37(1) of the Act is not applicable for the impugned expenditure and hence should be allowed. The CIT(A) allowed the claim of the assessee by placing reliance on the decision of the Co-ordinate Bench in the case of IDBI Bank Vs. DCIT (ITA No. 3394/Mum/2019 dated 09.02.2021).

37. We heard the parties and perused the material on record. We notice that the Co-ordinate Bench in the case of IDBI Bank (supra) has considered a similar issue and held that

*"12. We have heard the rival submissions and perused the relevant materials on record. In M/s Stock & Bond Trading Company (supra) one of the questions was whether the Tribunal was justified in deleting the additions made by the AO under provisions to section 37(1) being penalty imposed by the National Stock Exchange on the assessee. The Hon'ble High Court held that :*

> *"3 As regards the second question is concerned, the finding of fact recorded by the CIT(A) and upheld by the ITAT is that the payments made by the Assessee to the Stock Exchange for violation of their regulation are not on account of an offence or which is prohibited by law. Hence, the invocation of explanation to section 37 of the Income Tax Act, 1961 is not justified. In our opinion, in the facts and circumstances of the present case, no fault can be found with the decision of the ITAT. Accordingly, the second question cannot be entertained."*

*In Bapunagar Mahila Co-operative Bank Ltd. (supra), the Tribunal held that :*

> *"20. We come to the assessee's first substantive ground. The RBI imposed a penalty of Rs.5 lacs (supra) u/s. 47A (1)(b) of the Banking Regulation Act,1947 alleging violation of KYC norms. Both the authorities below hold that a penalty imposed does not give rise to any corresponding revenue expenditure being penal in nature.*
>
> *21. It has come on record that this penalty arises from the assessee's action in opening 250 FDRs (supra) already dealt in Revenue's appeal. The question that arises for our consideration is as to whether the word 'penalty' results in a blanket disallowance or facts involved therein still need to be examined. The hon'ble Kerala high court (2004) 265 ITR 177 CIT v/s. Catholic Syrian Bank holds that an important test in such a case is as to whether the penalty for non compliance entails compensatory or penal consequences. And also that if any criminal liability or prosecution is provided, a levy is*

*penal in nature. Section 46 r.w.s. 47A(1)(b) of the Banking Regulation law does not stipulate any such criminal liability. We follow the aforestated case law in these facts and direct the assessing authority to allow the assessee's claim of Rs.5 lacs as revenue expenditure."*

*In Mangal Keshav Securities Ltd. (supra), the assessee was engaged in the business of share/stock broking. It paid a sum of fine/penalty to stock exchange for non-maintenance of KYC forms etc. Said penalty was disallowed by the AO by invoking Explanation 1 to section 37. The Tribunal held that :*

*"The assessee-company is engaged into stock broking activities and also in financial services which involves substantial compliance requirements with various regulatory authorities, e.g., BSE, NSE, CDSL, NSDL and SEBI, etc. In the regular course of the business of the assessee-company, certain procedural non-compliance are not unusual, for which the assessee is required to pay some fines or penalties. These routine fines or penalties are 'compensatory' in nature; they are not punitive. These fines are generally levied to ensure procedural compliances by the concerned persons. Only those payments, which have been made by the assessee for any purpose which is an 'offence' or which is 'prohibited by law', shall alone would be hit by the Explanation to section 37. Thus impugned amount of penalty was allowable as deduction."*

*12.1 In the instant case, as recorded by the AO the assessee has claimed expenses on account of penalty of Rs.15,00,000/- imposed by the RBI u/s 47A of the Banking Regulation Act, 1949 and Rs.94,200/- for non-compliance of guidelines on customer service, guidelines in respect of exchange of coins and small de-nomination notes and mutilated notes. The ratio laid down in the decisions mentioned at para 12 is squarely applicable to the instant case instead of the decision in ANZ Grindlays Bank (supra) relied on by the Ld. DR. Therefore, following the decisions mentioned at para 12 above, we delete the disallowance of Rs.15,94,200/- levied by the AO. Accordingly, the 2nd ground of appeal is allowed."*

38. It is relevant to note that the Explanation-1 to section 37 provides that any expenditure incurred by the assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to be incurred wholly and exclusively for

the purpose of business or profession and no deduction shall be allowed in respect of such expenditure. In the above decision of the Co-ordinate Bench the ratio laid down is that the penalty levied by RBI for violation of internal regulations does not fall within the purview of Explanation-1 to section 37. In the given case, the amount claimed as deduction by the assessee is with regard to the levy by the RBI for non-compliance of internal regulations with respect to maintenance of currency chest. Accordingly, in our considered view, the ratio laid down by the Co-ordinate Bench is applicable to assessee's case also and therefore we see no infirmity in the decision of the CIT(A) to delete the disallowance made by the AO.

39. In result, the appeal of the assessee in **ITA.No.1440 & 1441/Mum/2023** for AY 2016-17 and 2017-18 are partly allowed. The appeal of the Revenue in **ITA.No.1819 & 1818/Mum/2023** for AY 2016-17 and 2017-18 are dismissed.

*Order pronounced in the open court on 27-09-2024.*

| | |
|---|---|
| ***Sd/-*** | ***Sd/-*** |
| **(ANIKESH BANERJEE)** | **(PADMAVATHY S)** |
| **Judicial Member** | **Accountant Member** |

**SK, Sr. PS*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
**ITAT, Mumbai**