| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |

IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER

I.T.A. No. 3691/Mum/2023
Assessment Year: 2015-16

DBS Bank Ltd. (DBS Bank Ltd. India branches now converted into wholly owned subsidiary DBS Bank India Limited) First Floor, Express Tower Nariman Point Mumbai - 400021 **[PAN: AAACT 4652 J]**	Vs	**Officer of the Deputy Commissioner of Income Tax (International taxation) -2(1)(2)**
अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

I.T.A. No. 4722/Mum/2023
Assessment Year: 2015-16

DCIT(IT)-2(1)(2) **Air Building, Narimal Point, Mumbai**	Vs	**DBS Bank Ltd.** 14th Floor, The Ruby 29, Senapati Bapat Marg, Dadar (W) Mumbai - 400028 **[PAN: AAACT 4652 J]**
अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri P.J. Pardiwala/Shri Madhur Agarwal, A/Rs
Revenue by :	Shri Vivek Permpurna, CIT, D/R

सुनवाई की तारीख/**Date of Hearing : 11/11/2024**
घोषणा की तारीख/**Date of Pronouncement : 21/11/2024**

आदेश/O R D E R

PER NARENDRA KUMAR BILLAIYA, AM:

I.T.A. No. 3691/Mum/2023 & I.T.A. No. 4722/Mum/2023, are cross-appeals by the assessee and the revenue preferred against the very same order of the ld. CIT(A)-56, Mumbai, dt. 14/08/2023, pertaining to AY 2015-16.

2. Both these appeals were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. We first take up the assessee's appeal in ITA No. 3691/Mum/2023.

4. The assessee has raised the following grounds of appeal:-

"1. The Commissioner of Income-tax (Appeals) - 56, Mumbai [herein after referred to as the "CIT(A)"] erred in upholding the action of the Assessing officer ("AO") in not allowing the deduction for bad debts written off of Rs.427,46,46,000 net of sale consideration of the non-performing asset (NPA), under section 36(i)(vii) of the Income tax Act, 1961 ("the Act").

The Appellants submit that the bad debts written off of Rs.427,46,46,000 ought to be allowed as deduction under section 36(1)(vii) of the Act read with section 36(2) of the Act.

2. The CIT(A) erred in applying the decision of the Supreme Court in the case of Southern Technologies (2010) 187 Taxman 346 (SC) without appreciating that the decision is not applicable to the facts of the case.

3. The CIT(A) erred in not following the binding decision of the Mumbai Tribunal in the case of Bank of India (ITA No. 2833/Mum/2015) dated 08 November 2017
4. Without prejudice to ground nos. (1) to (3) above, the CIT(A) erred in upholding the action of the AO in not allowing deduction of Rs.427,46,46,000 under section 37(1) of the Act.

5. Without prejudice to ground nos. (1) to (4) above, the CIT(A) erred in not allowing deduction of Rs.427,46,46,000 under section 28 of the Act.

6. The CIT(A) erred in upholding the action of AO in not allowing deduction for bad debts written off of Rs.3,28,68,000 on conversion of debt to equity shares of the borrower, under section 36(I)(vii) of the Act.

The Appellants submit that the bad debts written off of Rs.3,28,68,000 ought to be allowed as deduction under section 36(1)(vii) of the Act read with section 36(2) of the Act.

7. Without prejudice to ground no. (5) above, the CIT(A) erred in upholding the action of AO in not allowing deduction for bad debts written off of Rs.3,28,68,000, under section 37(1) of the Act.

8. Without prejudice to ground nos. (5) and (6) above, the CIT(A) erred in not allowing deduction for Rs.3,28,68,000 under section 28 of the Act.

9. The CIT(A) erred in not deleting the disallowance under section 14A of the Act read with Rule 8D of the Income tax Rules, 1962, for the year under consideration.

10. The CIT(A) erred in upholding action of the AO in not including the amount taxed as income of the HO while working out adjusted total income for computing the deduction under section 36(1)(viia) and section 44C of the Act.

11. The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the impugned order dated 13 February 2018 passed u/s 143(3) r.w.s. 144C(3) of the Income-tax Act, 1961 is ab-initio void being barred by limitation and hence, ought to be struck down.

The appellants crave leave to add, to amend, alter, vary, omit or substitute the aforesaid grounds of appeal or add a new ground or grounds of appeal at any time before or at the time of hearing of the appeal as they may be advised."

5. Ground Nos. 1 to 5 relate to the denial of claim of bad debts written off amounting to Rs. 4,27,46,46,000/- being net of sale consideration of the non-performing asset (NPA) u/s 36(1)(vii) of the Act.

6. Representatives of both the sides were heard at length. Case records carefully perused and the relevant documentary evidence brought on record duly considered in the light of Rule 18(6) of the ITAT Rules.

7. Briefly stated the facts of the case are that the assessee is a non-resident banking company operating in India as a branch of DBS Bank Ltd. Singapore. The assessee is engaged in banking activities permitted by the Reserve Bank of India (RBI), which includes corporate and institutional banking, retail banking, trade finance, transactional and treasury solutions. During the year under consideration, the assessee bank was operating from twelve branches in India. The bank was involved in wholesale lending (both loans and trade based) to its corporate customers. It also offered treasury solutions to its clients. The assessee was not involved in credit card services , auto loans, portfolio management and financial planning for clients.

7.1. While scrutinising the return of income, the AO noticed that the assessee has claimed a sum of Rs. 8,02,67,53,014/- as bad debt written off excess over opening provisions u/s 36(1)(viia) of the Act. The assessee was requested to explain and justify its claim for bad debts. The assessee furnished the following breakup of bad debts claimed in the computation of income:-

Sl No	Particulars	Amount in INR 000
1	Write Off of Bad Debts	43,66,698
2	Loss on Sale of NPA	42,74,646
3	Loss on Conversion of Debt	32,868
4	Less: Adjsuted from Opening Balance of 36(1)(viia) Provision	6,47,460
5	Net Bad Debt Claimed	80,26,752

7.2. After considering the aforementioned chart, the assessee was asked to explain how the loss on sale of NPA amounting to Rs. 4,27,46,46,000/- is allowable u/s 36(1)(viia) of the Act. The assessee was also asked to explain as to how the loss of conversion of debt amounting to Rs.3,28,68,000/- is an allowable claim u/s 36(1)(viia) of the Act, though, this issue is related to the subsequent grounds of appeal.

7.2.1. The assessee explained that it assigned outstanding loans due from Tecpro Systems Ltd. to Edelweiss Asset Reconstruction Company Limited, and submitted a copy of the assigning agreement. It was explained that the loan outstanding and amount of provision was Rs.537.47 Crores as on the date of assigning. It was further explained that the consideration for the assignment was Rs.110 Crores and both the sale consideration and the bad debt arising out of the assignment were duly recognized in the financial statement of the bank. It was explained that the amount of balance in the debtors account, net of sale consideration has

been written off as bad debts and debited to the profit and loss account for the year under consideration and accordingly, a provision for doubtful debts of Rs.147 Crores has been reversed and credited to the profit and loss account and, therefore, in the computation of income, loss on sale of NPA Rs.427.46 Crores has been claimed as bad debts allowable u/s 36(1)(vii) of the Act. It was brought to the notice of the AO that the reversal of provision for doubtful debts of Rs.147 Crores, has been claimed as not taxable since the said amount was added back and offered to tax in the year when the provision was made.

7.3. The claim and the submissions made by the assessee did not find any favour with the AO who was of the opinion that the loss incurred by sale of NPA is not a bad debt to be considered u/s 36(1)(viia) of the Act. The assessee has debited the loss on sale of NPA as bad debt in view of the RBI prudential norms but the deduction u/s 36(1)(vii) of the Act is allowable to any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year. Drawing support from the decision of the Hon'ble Madras High Court in the case of *Tower finance infrastructure Development Corporation Limited v. JCIT 280 ITR 491 (Mad)*, the AO was of the opinion that the RBI guidelines cannot override the statutory provisions of Income-tax. Further heavily relying upon the decision of the Hon'ble Supreme Court in the case of *Southern Technologies Limited vs. JCIT 320 ITR 577 (SC)*, the AO came to the conclusion that the claim of the assessee for bad debt on account of loss on sale of NPA are not bad debt written off as irrecoverable in the accounts and not allowable u/s 36(1)(vii) of the Act.

8. The assessee carried the matter before the ld. CIT(A) but without any success.

9. Before us, the ld. Counsel for the assessee reiterated the claim of write off as bad debt. It is the say of the ld. Counsel for the assessee that both the lower authorities have grossly erred in placing heavy reliance on the decision of the Hon'ble Supreme Court in the case of *Southern Technologies Limited (supra)*, which is totally on different context and, therefore, not applicable on the facts of the case in hand.

Per contra, the ld. D/R strongly supported the findings of the ld. CIT(A).

10. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that Tecpro Systems Ltd. was a customer of the assessee bank since 2009 and started defaulting in servicing of the outstanding loans since 2014 and due to persistent default, Tecpro Systems Ltd., turned into a NPA and as per the regulatory requirements due provisions were made in the books of the assessee. Since there was no recovery forthcoming, the assessee decided to assign the outstanding loans due from Tecpro Systems Ltd. to Edelweiss Asset Reconstruction Company Limited, for a sale consideration of Rs.110 Crores against the outstanding loans of Rs. 537.47 Crores. The sale consideration was duly recognized in the financial statement of the assessee and balance in debtors account was actually written off as bad debts.

11. At this juncture, it is to be understood that on the date of assignment, the loan outstanding in the account of Tecpro Systems Ltd. was a debt in the books of the assessee as per the provisions of Section 36(2) of the Act,

which means that the assessee could have written off the same as bad debt and claimed as such instead, as a prudent business man it sold the debt to Edelweiss Asset Reconstruction Company Limited, for a consideration of Rs.110 Crores. Assuming, yet not accepting, that it is not a bad debt then also the loss is definitely a business loss incurred in the ordinary course of business of money lending.

12. Coming to the decision of the Hon'ble Supreme Court in the case of *Southern Technologies Limited (supra)*, we must first understand the context in which it was delivered. The Hon'ble Supreme Court was seized with the following question of law:-

> *"**2.** An interesting question of law which arises for determination in these Civil Appeals filed by Non-Banking Financial Companies ("NBFCs" for short) is :—*
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> *"Whether the Department is entitled to treat the "Provision for NPA", which in terms of RBI Directions, 1998 is debited to the P&L Account, as "income" under section 2(24) of the Income-tax Act, 1961 ("Income-tax Act" for short), while computing the profits and gains of the business under sections 28 to 43D of the Income-tax Act?"*
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> ***8.** Appellant made "Provision for NPA" amounting to Rs. 81,68,516 for the financial year ending 31-3-1998. This was calculated as per Para 8 of the Prudential Norms, 1998. Accordingly, the P & L Account was debited and corresponding amount was shown in the Balance Sheet. The Department sought to add back Rs. 81,68,516 to the taxable income on the ground that the provision for bad and doubtful debt was not allowable under section 36(1)(vii) of the Income-tax Act. The appellant claimed that the "Provision for NPA", however, represented "loss" in the value of assets and was, therefore, allowable under section 37(1) of the Income-tax Act. This claim of the appellant was dismissed on the ground that the provisions of section 36(1)(vii) of the Income-tax Act could not be by-passed.*
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> ***25.** Prior to 1-4-1989, the law, as it then stood, took the view that even in cases in which the assessee(s) makes only a provision in its accounts for bad debts and interest thereon and even though the amount is not actually written off by debiting the P&L Account of the assessee and crediting the amount to the account of the debtor, assessee was still entitled to deduction under section 36(1)(vii). See CIT v. Jwala Prasad Tewari [1953] 24 ITR 537 (Bom.) and Vithaldas H. Dhanjibhai Bardanwala's case (supra). Such state of law prevailed up to and including assessment year 1988-89. However, by insertion (with effect from 1-4-1989) of a new Explanation in section 36(1)(vii), it has been clarified that any bad debt written off as irrecoverable in the account of the assessee will*

not include any provision for bad and doubtful debt made in the accounts of the assessee. The said amendment indicates that before 1-4-1989, even a provision could be treated as a write off. However, after 1-4-1989, a distinct dichotomy is brought in by way of the said Explanation to section 36(1)(vii). Consequently, after 1-4-1989, a mere provision for bad debt would not be entitled to deduction under section 36(1)(viii). To understand the above dichotomy, one must understand "how to write off". If an assessee debits an amount of doubtful debt to the P&L Account and credits the asset account like sundry debtor's Account, it would constitute a write off of an actual debt. However, if an assessee debits "provision for doubtful debt" to the P&L Account and makes a corresponding credit to the "current liabilities and provisions" on the Liabilities side of the balance sheet, then it would constitute a provision for doubtful debt. In the latter case, assessee would not be entitled to deduction after 1-4-1989.

26. *We have examined the P&L Account of First Leasing Company of India Limited for the year ending 31-3-2003. On examination of Schedule J to the P&L Account which refers to operating expenses, we find two distinct heads of expenditure, namely, "Provision for Non-performing Assets" and "Bad Debts/Advances Written Off". It is for the appellant(s) to explain the difference between the two to the Assessing Officer. Which of the two items will constitute expenditure under the Income-tax Act has to be decided according to the Income-tax Act. In the present case, we are not concerned with taxability under the Income-tax Act or the accounting treatment. We are essentially concerned with presentation of financial statements by NBFCs under the 1998 Directions. The point to be noted is that even according to the assessee "Bad debts/Advances Written Off" is a distinct head of expenditure vis-a-vis "Provision for Bad Debt". One more aspect needs to be highlighted. It is true that under Part I of Schedule VI to the Companies Act, 1956 an amount could be first included in the list of sundry debtors/loans and then deducted from the list as "provision for doubtful debts". However, these are matters of Presentation of Provisions for doubtful debts even under the Companies Act and have nothing to do with taxability under the Income-tax Act. One more aspect needs to be mentioned. Section 36(1)(vii) is subject to sub-section (2) of section 36. The condition incorporated in section 36 of the Income-tax Act, which was not there in section 10(2)(xi) of the 1922 Act, is that the amount of debt should have been taken into account in computing the income of the assessee in the previous year. Under the Income-tax Act, the emphasis is not on the assessee being the creditor but taking into account of the debt in computing the business income. [See section 36(2)]. In CIT v. T. Veerabhadra Rao, K. Koteswara Rao & Co. [1985] 155 ITR 152 at 157 (SC), it was found that the debt was taken into account in the income of the assessee for the assessment year 1963-64 when the interest accruing thereon was taxed in the hands of the assessee. The said interest was taxed as income as it represented accretion accruing during the earlier year on the moneys owed to the assessee by the debtor. It was held that transaction constituted the debt which was taken into account in computing the income of the assessee of the previous years.*

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40. *Section 36(1)(vii) provides for a deduction in the computation of taxable profits for the debt established to be a bad debt.*

> ***40.1*** *Section 36(1)(viia) provides for a deduction in respect of any provision for bad and doubtful debt made by a Scheduled Bank or Non-Scheduled Bank in relation to advances made by its rural branches, of a sum not exceeding a specified percentage of the aggregate average advances by such branches. Having regard to the increasing social commitment, section 36(1)(viia) has been amended to provide that in respect of provision for bad and doubtful debt made by a scheduled bank or a non-scheduled bank, an amount not exceeding a specified per cent of the total income or a specified per cent of the aggregate average advances made by rural branches, whichever is higher, shall be allowed as deduction in computing the taxable profits.*
> ***40.2*** *Even section 36(1)(vii) has been amended to provide that in the case of a bank to which section 36(1)(viia) applies, the amount of bad and doubtful debt shall be debited to the provision for bad and doubtful debt account and that the deduction shall be limited to the amount by which such debt exceeds the credit balance in the provision for bad and doubtful debt account.*
> ***41.*** *The point to be highlighted is that in case of banks, by way of incentive, a provision for bad and doubtful debt is given the benefit of deduction, however, subject to the ceiling prescribed as stated above. Lastly, the provision for NPA created by a scheduled bank is added back and only thereafter deduction is made permissible under section 36(1)(viia) as claimed.*

13. A perusal of the above extracts from the judgment of the Hon'ble Supreme Court show that it was delivered totally on different facts and on a different context. Therefore, in our considered opinion, the same is not applicable to the facts of the case in hand. As mentioned elsewhere, the claim of the assessee as a bad debt is as per the provisions of the Act and also allowable as a business loss. Therefore, we do not find any merit in the impugned addition. The AO is directed to delete the addition of Rs.4,27,46,46,000/-. Ground Nos. 1 to 5, are accordingly allowed.

14. Before parting, the AO has also relied upon the decision of the Hon'ble Madras High Court in the case of *Tower finance infrastructure Development Corporation Limited v. JCIT (supra).* Again, this decision is on a different context in respect of the provision for bad and doubtful debts whereas the claim of the assessee is actually write off of bad debts and not provision and as mentioned elsewhere the provisions of bad and doubtful

debts have been written back in the financial statement of the assessee. The relevant findings of the Hon'ble Madras High Court read as under:-

> "***4.*** *Even though the assessee has raised a ground to the effect that the debts have been incurred in the course of business and the purpose for which the finance was used by the other party is not relevant for allowing the deduction of debts written off and hence, section 36(1)(vii) would apply, learned counsel appearing for the assessee has fairly submitted that the assessee is not entitled to deduction, in view of the Explanation to section 36(1)(vii) which says that the provision for bad and doubtful debts made in the accounts of the assessee is not an allowable deduction.*
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> ***5.*** *Further, the Commissioner (Appeals), on the facts of the case, found that merely because the Reserve Bank of India has directed the assessee to provide for non-performing assets, that direction cannot override the mandatory provisions of the Income-tax Act contained in section 36(1)(viia) which stipulate for deduction not exceeding 5 per cent of the total income only in respect of the provision for bad and doubtful debts which are predominately revenue in nature or trade related and not for provision for non-performing assets which are of predominately capital nature, and held that the Assessing Officer was right in disallowing the provision of Rs. 30 lakhs debited in the profit and loss account of the assessee towards non-performing assets.*
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> ***6.*** *In this view of the matter, we are of the view that the Appellate Tribunal was right in upholding the order of the Commissioner of Income-tax (Appeals) in disallowing provision for non-performing assets which was debited to the profit and loss account. Accordingly, the question of law is answered in the affirmative, against the assessee and in favour of the revenue. The appeals are dismissed. No costs."*

15. Ground Nos. 6 to 8 relates to the denial of deduction for bad debts written off Rs.3,28,68,000/- u/s 36(1)(vii) r.w.s. 36(2) of the Act and also u/s 37(1) of the Act.

15.1. The underlying facts in the issue show that the assessee had Rs. 162.75 Crores worth of loan outstanding from its customer PSL Limited which signed a Master Restructuring Agreement dated 19/11/2013 with the monitoring bank and various banks and financial institutions as CDR lenders. Pursuant to a scheme of Corporate Debt Restructuring (CDR), of the company, a part of loan amounting to Rs.7.83 Crores was converted into 30,15,380 equity shares of PSL Limited. These shares were allotted by the company on 30/12/2014 and were credited into the assessee's D-Mat

account on 06/02/20215. These shares were issued to assessee on preferential basis @ Rs.26/- per share fully converting the loan of Rs.7.83 Crores into equity shares of Rs.10/- each. However, when the shares were credited into the D-Mat account, the market value was Rs.15.1/- per share, thereby giving a loss of Rs.3.29 Crores which was claimed as loss on account of bad debt.

15.2. Referring to the analysis given for the denial of bad debt write off of NPA of Rs.427.46 Crores considered vide Ground No. 1 to 5 above, the AO also denied the claim of this loss on conversion of debt.

15.3. When the matter was agitated before the ld. CIT(A), the assessee could not get any success.

16. Before us, the ld. Counsel for the assessee reiterated its claim of loss on conversion of debt to equity share u/s 36(1)(vii) of the Act and in alternative claimed it as a loss incurred in the ordinary course of business u/s 37(1) / u/s 28 of the Act.

Per contra the ld. D/R strongly supported the findings of the ld. CIT(A) and read the operative part.

17. We have given a thoughtful consideration to the orders of the authorities below. The claim of loss can be understood from the following chart:-

A	Loan Outstanding	7.84
B	No. of Shares Issued on 30 December 2014	30,15,380
C	Value of Shares at the Preferential Issue Price @ INR 26 each	7.84
D	Date of Receipt of Shares by Bank in Demat Account	06th Feb, 2015
E	Closing Price of Shares on 06th Feb 2015 on NSE INR 15.1 each (Refer Annexure to this Note)	4.55
F	Loss on Conversion of Loan ('C)-(E)	3.29

17.1. On perusal of the aforementioned chart in a very simple analysis, the assessee had assets of Rs.7.84 Crores (being loan outstanding). The assessee was assigned assets, market value of which was Rs.4.55 Crores (being price of shares on NSE on the date of credit in the D-Mat account). Thus, the assets of Rs.7.84 Crores was exchanged for another asset for Rs.4.55 Crores and hence the loss of Rs.3.29 Crores, which is nothing but a business loss and deserves to be allowed.

18. The reasons for denial of the claim have been considered while deciding Ground Nos. 1 to 5 *(supra)* and for our detailed reasoning therein, this claim of loss is also allowed. Ground Nos. 6 to 8 are accordingly allowed.

19. Ground No. 9 relates to the disallowance u/s 14A r.w.r. 8D.

19.1. The underlying facts show that the assessee claimed exempt income of Rs. 3,25,11,604/- on which *suo moto* disallowance u/s 14 of the Act was computed at Rs.4,72,34,861/- by applying Rule 8D. The said disallowance was made out of abundant precaution, though, no disallowance was warranted as the shares held by the assessee were held as stock-in-trade. Since the disallowance was made by the assessee itself, the same was not disturbed by the ld. First Appellate Authority.

20. Before us, the ld. Counsel for the assessee drew our attention to the decision of the Hon'ble Supreme Court in the case of *Maxopp Investment Ltd. v. CIT (2018) 402 ITR 640 (SC)* and pointed out that when the shares are held as stock-in-trade and not as investments, no disallowance is to be made u/s 14A r.w.r. 8D and further drew our attention to the decision of the Hon'ble Madras High Court in the case of *Marg Ltd. Vs. CIT* reported

in *120 taxmann.com 84 (Madras)* and pointed out that even if *suo moto* disallowance is made, the same has to be ignored.

Per contra, the ld. D/R strongly supported the findings of the lower authorities.

21. We have given a thoughtful consideration to the orders of the authorities below. There is no dispute that shares were held as stock-in-trade. Whether disallowance u/s 14A of the Act can be made in the case of shares held as stock-in-trade was considered by the Hon'ble Supreme Court in the case of *Maxopp Investment Ltd. vs. CIT [2018] 402 ITR 640 (SC)*. The relevant findings read as under:-

> *"36) There is yet another aspect which still needs to be looked into. What happens when the shares are held as 'stock-in-trade' and not as 'investment', particularly, by the banks? On this specific aspect, CBDT has issued circular No. 18/2015 dated November 02, 2015.*
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> *37) This Circular has already been reproduced in Para 19 above. This Circular takes note of the judgment of this Court in Nawanshahar case wherein it is held that investments made by a banking concern are part of the business or banking. Therefore, the income arises from such investments is attributable to business of banking falling under the head 'profits and gains of business and profession'. On that basis, the Circular contains the decision of the Board that no appeal would be filed on this ground by the officers of the Department and if the appeals are already filed, they should be withdrawn. A reading of this circular would make it clear that the issue was as to whether income by way of interest on securities shall be chargeable to income tax under the head 'income from other sources' or it is to fall under the head 'profits and gains of business and profession'. The Board, going by the decision of this Court in Nawanshahar case, clarified that it has to be treated as income falling under the head 'profits and gains of business and profession'. The Board also went to the extent of saying that this would not be limited only to co-operative societies/Banks claiming deduction under Section 80P(2)(a)(i) of the Act but would also be applicable to all banks/commercial banks, to which Banking Regulation Act, 1949 applies.*
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> *38) From this, Punjab and Haryana High Court pointed out that this circular carves out a distinction between 'stock-in-trade' and 'investment' and provides that if the motive behind purchase and sale of shares is to earn profit, then the same would be treated as trading profit and if the object is to derive income by way of dividend then the profit would be said to have accrued from investment. To this extent, the High*

Court may be correct. At the same time, we do not agree with the test of dominant intention applied by the Punjab and Haryana High Court, which we have already discarded. In that event, the question is as to on what basis those cases are to be decided where the shares of other companies are purchased by the assessees as 'stock-in-trade' and not as 'investment'. We proceed to discuss this aspect hereinafter.

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

40) We note from the facts in the State Bank of Patiala cases that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8D of the Rules and holding that section 14A of the Act would be applicable. In spite of this exercise of apportionment of expenditure carried out by the AO, CIT(A) disallowed the entire deduction of expenditure. That view of the CIT(A) was clearly untenable and rightly set aside by the ITAT. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of the ITAT, though we are not subscribing to the theory of dominant intention applied by the High Court. It is to be kept in mind that in those cases where shares are held as 'stock-in-trade', it becomes a business activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits. The situation here is, therefore, different from the case like Maxopp Investment Ltd. where the assessee would continue to hold those shares as it wants to retain control over the investee company. In that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee. In contrast, where the shares are held as stock-in-trade, this may not be necessarily a situation. The main purpose is to liquidate those shares whenever the share price goes up in order to earn profits. In the result, the appeals filed by the Revenue challenging the judgment of the Punjab and Haryana High Court in State Bank of Patiala also fail, though law in this respect has been clarified hereinabove."

22 The same view was followed by the Hon'ble Supreme Court in the case of *South Indian Bank Ltd. vs. CIT [2021] 438 ITR 1 (SC).* The relevant findings read as follows:-

> *"23. It would now be appropriate to advert in some detail to Maxopp Investment Ltd. v. CIT10. This case interestingly is relied by both sides' counsel. Writing for the Bench, Justice Dr. A.K. Sikri noted the objective for incorporation of Section 14A in the Act in the following words: -*
>
> > *"3……. The purpose behind Section 14-A of the Act, by not permitting deduction of the expenditure incurred in relation to income, which does not form part of total income, is to ensure that the assessee does not get double benefit. Once a particular income itself is not to be included in the total income and is exempted from tax, there is no reasonable basis for giving benefit of deduction of the expenditure incurred in earning such an income……..."*
>
> *The following was written explaining the scope of Section 14-A(1):*
>
> > *"41. In the first instance, it needs to be recognised that as per Section 14-A(1) of the Act, deduction of that expenditure is not to be allowed which has been incurred by the assessee "in relation to income which does not form part of the total income under this Act". Axiomatically, it is that expenditure alone which has been incurred in relation to the income which is includible in total income that has to be disallowed. If an expenditure incurred has no causal connection with the exempted income, then such an expenditure would obviously be treated as not related to the income that is exempted from tax, and such expenditure would be allowed as business expenditure. To put it differently, such 10 (2018) 15 SCC 523 expenditure would then be considered as incurred in respect of other income which is to be treated as part of the total income."*
>
> *Adverting to the law as it stood earlier, this Court rejected the theory of dominant purpose suggested by the Punjab & Haryana High Court and accepted the principle of apportionment of expenditure only when the business was divisible, as was propounded by the Delhi High Court.*
>
> *Finally adjudicating the issue of expenditure on shares held as stock-in-trade, the following key observations were made by Justice Sikri:*
>
> > *" 50. It is to be kept in mind that in those cases where shares are held as "stock-in-trade", it becomes a business activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits. The situation here is, therefore, different from the case like Maxopp Investment Ltd. [Maxopp Investment Ltd. v. CIT, 2011 SCC OnLine Del 4855 : (2012) 347 ITR 272] where the assessee would continue to hold those shares as it wants to retain control over the investee company. In that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of*

investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee. In contrast, where the shares are held as stock- in-trade, this may not be necessarily a situation. The main purpose is to liquidate those shares whenever the share price goes up in order to earn profits……."

The learned Judge then considered the implication of Rule 8D of the Rules in the context of Section 14-A(2) of the Act and clarified that before applying the theory of apportionment, the Assessing Officer must record satisfaction on Suo Moto disallowance only in those cases where, the apportionment was done by the assessee. The following is relevant for the purpose of this judgment:

51. ……..It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect……."

24. Another important judgment dealing with Section 14A disallowance which merits consideration is Godrej and Boyce Manufacturing Company Ltd. V. DCIT11. Here the assessee had access to adequate interest free funds to make investments and the issue pertained to disallowance of expenditure incurred to earn dividend income, which was not forming part of total income of the Assessee. Justice Ranjan Gogoi writing the opinion on behalf of the Division Bench observed that for disallowance of expenditure incurred in earning an income, it is a condition precedent that such income should not be includible in total income of assessee. This Court accordingly concluded that for attracting provisions of Section 14A, the proof of fact regarding such expenditure being incurred for earning exempt income is necessary. The relevant portion of Justice Gogoi's judgment reads as follow:

"36. …… what cannot be denied is that the requirement for attracting the provisions of Section 14-A (1) of the Act is proof of the fact that the expenditure sought to be disallowed/deducted had actually been incurred in earning the dividend income……."

25. Proceeding now to another aspect, it is seen that the Central Board of Direct Taxes (CBDT) had issued the Circular no. 18 of 2015 dated 02.11.2015, which had analyzed and then explained that all shares and securities held by a bank which are not bought to maintain Statutory Liquidity Ratio (SLR) are its stock-in-trade and not investments and income arising out of those is attributable, to business of banking. This Circular came to be issued in the aftermath of CIT Vs. Nawanshahar Central Cooperative Bank Ltd.12 wherein this Court had held that investments made by a banking concern is part of their banking business. Hence the income earned through such investments would fall under the head Profits & Gains of business. The Punjab and Haryana High Court, in the case of Pr. CIT, vs. State Bank of Patiala13 while adverting to the CBDT Circular, concluded correctly that shares and securities held by a bank are stock in trade, and all income received on such shares and securities must be considered to be business income. That is why Section 14A would not be attracted to such income."

23. The Hon'ble High Court of Delhi in the case of *PCIT vs. Punjab National Bank* reported in *[2022] 140 taxmann.com 131 (Delhi),* had the occasion to consider a similar grievance and held as follows:-

> *"**19.** The Supreme Court in this judgment upheld the decision of the High Court of Punjab and Haryana arising under section 14A of the Act with respect to an assessee bank. It further held that when the shares were held as stock-in-trade and not as investment particularly by banks, the main purpose was to trade in those shares and earn profits there from and therefore section 14A of the Act was not attracted and the expenditure could not be disallowed. The judgment of Maxopp Investment Ltd. (supra) has been duly noted by the Tribunal in its impugned order and in our opinion the Tribunal has correctly disallowed the disallowance under rule 8D(2)(iii) of the Rules.*
> ***20.** In the present case as well, the Tribunal has considered that the Respondent was holding the shares as a stock-in-trade and has, therefore, disallowed the addition made by the JAO. Learned counsel for the Appellant has not disputed the fact that the shares are held as stock-in-trade by the Respondent.*
> ***21.** In the aforesaid view of the matter, the questions of law proposed by the Appellant do not arise for consideration either in fact or in law in view of the judgments of the Supreme Court, which have conclusively decided the questions sought to be canvassed by the Appellant."*

24. The Co-ordinate Bench in the case of *Religare Securities Ltd. in ITA No. 7291/Del/2019; AY 2015-16* has followed the view taken by the Hon'ble Supreme Court in the case of *Maxopp Investment Ltd. (supra)*.

24.1. The assessee while computing the income at Clause 8 of the notes to the computation of total income has made it abundantly clear that though the assessee has disallowed Rs.4,72,34,861/- u/s 14A r.w.r. 8D out of abundant caution, the bank reserves its right to claim that provision of Rule 8D should not be attracted in their case. This was in line with the judicial decisions prevailing at the time of filing of the return of income. However, now that the Hon'ble Supreme Court *(supra)* has settled the dispute, the assessee was not required to disallow any expenditure for earning the exempt income as mentioned

elsewhere. Therefore, the AO is directed to delete the *suo moto* disallowance. Ground No. 9 is accordingly allowed.

25. Ground No. 10 relates to the non-inclusion of the amount taxed as income of the head-office while working out adjusted total income for computing the deduction u/s 36(1)(viia) of the Act.

26. The underlying facts show that the AO has computed the adjusted total income without considering income of the head-office while working of deductions u/s 36(1)(viia) and Section 44C of the Act.

27. When this issue was brought to the notice of the ld. CIT(A), the ld. CIT(A) following the decision given in AY 2013-14 and earlier AYs, denied the claim.

28. After giving a thoughtful consideration to the orders of the authorities below, we are of the considered view that this issue needs a fresh look *qua* the decision taken in AY 2013-14 by the appellate authorities. Therefore, this issue is restored to the file of the AO and the AO is directed to decide it afresh after considering the facts of AY 2013-14.

29. Ground No. 10 is allowed for statistical purposes.

30. Ground No. 11 is not pressed and, therefore, is dismissed as not pressed.

31. Now, we take up the revenue's appeal in ITA No. 4722/Mum/2023.

31.1. This appeal is barred by limitation by 47 days. Since no objection has been raised by the ld. Counsel for the assessee, the delay is condoned.

32. The first ground relates to the deletion of disallowance of Rs. 8,83,41,015/-.

32.1. The underlying facts in the issue show that during the course of the assessment proceedings, the assessee was asked to explain and justify the expenses claimed in the profit and loss account. The assessee was specifically asked to justify the payment of professional fees amounting to Rs.8,83,41,015/- made to Mckinsey & Co. Inc.. In its submissions, the assessee explained that the fees were paid for services connected with developing India 2.0 plan for the Bank with focus on key areas like Macro and Regulatory Context, potential partnerships and inorganic play.

32.2. The assessee was asked to showcause why these expenses should not be disallowed as it was not related with day to day business of assessee and also expenses were related with expansion of the assessee's business. The assessee explained as under:-

> *"Mckinsey are a consultant and consultancy services taken from them was used by bank in its business right away once services were rendered. Bank has claimed this expense as Revenue Expenditure as it was not for acquiring any tangible or intangible capital asset but for conducting the business of banking better and more efficiently- not in future but in the present. There was no enduring asset or value that got created out of it.*
>
> *Every expense gives some advantage to the business but if the advantage consists merely in facilitating the bank's trading operations or enabling the management and conduct of the bank's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite period.*
>
> *The word capital connotes permanency and the capital expenditure therefore closely akin to the concept of securing something tangible or intangible property, corporeal or incorporeal rights so that it could be of a lasting or an enduring benefit to the enterprise. The revenue nature of expenditure, on the other hand, is operational in perspective, is solely intended for the furtherance of the enterprise. Therefore, not all one-time payments are capital in nature. As long as, such payments are for furtherance of an enterprise and do not bring into existence any tangible or intangible property, they would retain the character of revenue expense.*

33. The above explanation of the assessee was dismissed by the AO who was of the firm belief that the expenditure was incurred for the purpose of expansion of the assessee's business and was not for the day to day business of the assessee. The professional fees were paid for developing the plan to be used by the assessee in future and, therefore, the expenditure was resulting in enduring benefit to assessee. Accordingly, the expenditure was not revenue expenditure and the AO added back the same.

34. Aggrieved the assessee carried the matter before the ld. CIT(A) and strongly contended that the fees were paid for services connected with developing India 2.0 plan for the Bank with focus on key areas like Macro and Regulatory Context, Potential partnerships and inorganic play. It was explained that India 2.0 plan was about understanding the current thinking of the Bank and detailing plan across business mix distribution strategy, digital approach to inorganic and PSL + financial inclusion and economic model. It was strongly contended that the end objective of the plan was to have an overall business plan and a high level implementation roadmap. It was submitted that consultancy services used by the Bank in its business right away once services were rendered and such tangible or intangible capital asset but for conducting the business of banking better and more efficiently, not in future but in present.

34.1. Considering the facts and the submissions, the ld. CIT(A) was convinced that the said expenditure was of revenue in nature and allowed the same.

35. Before us, the ld. D/R strongly supported the findings of the AO and read the operative part.

Per contra, the ld. Counsel for the assessee strongly supported the findings of the ld. CIT(A).

36. We have given a thoughtful consideration to the orders of the authorities below and after considering the business background of the assessee *vis-à-vis* the fees paid to McKinsey & Co. Inc., we are of the considered view that the expenditure was incurred primarily and essentially related to the operation and working of the business of the assessee. It was an expenditure which was not for acquiring any tangible or intangible asset but for conducting the business of banking better and more efficiently in the present. It would be pertinent to refer to the observations of the Hon'ble Supreme Court in the case of *Empire Jute Co. Ltd vs Commissioner of Income* reported in (*124*) *ITR 1*, which read as under:-

> *"**8.** The decided cases have, from time to time, evolved various tests for distinguishing between capital and revenue expenditure but no test is paramount or conclusive. There is no all-embracing formula which can provide a ready solution to the problem; no touchstone has been devised. Every case has to be decided on its own facts keeping in mind the broad picture of the whole operation in respect of which the expenditure has been incurred. But a few tests formulated by the courts may be referred to as they might help to arrive at a correct decision of the controversy between the parties. One celebrated test is that laid down by Lord Cave, LC in British Insulated & Helsby Cables Ltd. v. Atherton 10 TC 155 where the learned Law Lord stated:*
> *"When an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capital."*
> *This test, as the parenthetical clause shows, must yield where there are special circumstances leading to a contrary conclusion and, as pointed out by Lord Radcliffe in CIT v. Nchanga Consolidated Copper Mines Ltd. [1965] 58 ITR 241 (PC), it would be misleading to suppose that, in all cases, securing a benefit for the business would be prima facie capital expenditure "so long as the benefit is not so transitory*

as to have no endurance at all". There may be cases where expenditure, even if incurred for obtaining advantage of enduring benefit, may, nonetheless, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage in a, commercial sence and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The test of enduring benefit is, therefore, not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case. But even if this test were applied in the present case, it does not yield a conclusion in favour of the revenue. Here, by purchase of loom hours, no new asset has been created. There is no addition to or expansion of the profit-making apparatus of the assessee. The income earning machine remains what it was prior to the purchase of loom hours. The assessee is merely enabled to operate the profit-making structure for a longer number of hours. And this advantage is clearly not of an enduring nature. It is limited in its duration to six months and, moreover, the additional working hours per week transferred to the assessee have to be utilised during the week and cannot be carried forward to the next week. It is, therefore, not possible to say that any advantage of enduring benefit in the capital field was acquired by the assessee in purchasing loom hours and the test of enduring benefit cannot help the revenue.

9. *Another test which is often applied is the one based on distinction between fixed and circulating capital. This test was applied by Lord Haldane in the leading case of John Smith & Son v. Moore 12 TC 266 where the learned Law Lord drew the distinction between fixed capital and circulating capital in words which have almost acquired the status of a definition. He said:*

"Fixed capital (is) what the owner turns to profit by keeping it in his own possession; circulating capital (is) what he makes profit of by parting with it and letting it change masters."

Now so long as the expenditure in question can be clearly referred to the acquisition of an asset which falls within one or the other "of these two categories, such a test would be a critical one. But this test also sometimes breaks down because there are many forms of expenditure which do not fall easily within these two categories and not infrequently, as pointed out by Lord Radcliffe in CIT v. Nchanga Consolidated Copper Mines Ltd. (supra), the line of demarcation is difficult to draw and leads to subtle distinctions between profit that is made "out of" assets and profit that is made "upon" assets or "with" assets. Moreover, there may be cases where expenditure, though referable to or in connection with fixed capita], is nevertheless allowable as revenue expenditure. An illustrative example would be of expenditure incurred in preserving or maintaining capital assets. This test is, therefore, clearly not one of universal application. But, even if we were to apply this test, it would not be possible to characterise the amount paid for purchase of loom hours as capital expenditure,

because acquisition of additional loom hours does not add at all to the fixed capital of the assessee. The permanent structure, of which the income is to be the produce or fruit, remains the same; it is not enlarged. We are not sure whether loom hours can be regarded as part of circulating capital like labour, raw material, power, etc., but it is clear beyond doubt that they are not part of fixed capital and hence even the application of this test does not compel the conclusion that the payment for purchase of loom hours was in the nature of capital expenditure.

10. *The revenue, however, contended that by purchase of loom hours the assessee acquired a right to produce more than what it otherwise would have been entitled to do and this right to produce additional quantity of goods constituted addition to or augmentation of its profit-making structure. The assessee acquired the right to produce a larger quantity of goods and to earn more income and this, according to the revenue, amounted to acquisition of a source of profit or income which though intangible was, nevertheless, a source or "spinner" of income and the amount spent on purchase of this source of profit or income, therefore, represented expenditure of capital nature. Now, it is true that if disbursement is made for acquisition of a source of profit or income, it would ordinarily, in the absence of any other countervailing circumstances, be in the nature of capital expenditure. But we fail to see how it can at all be said, in the present case, that the assessee acquired a source of profit or income when it purchased loom hours. The source of profit or income was the profit-making apparatus and this remained untouched and unaltered. There was no enlargement of the permanent structure of which the income would be the produce or fruit. What the assessee acquired was merely an advantage in the nature of relaxation of restriction on working hours imposed by the working time agreement, so that the assessee could operate its profit-earning structure for a longer number of hours. Undoubtedly, the profit-earning structure of the assessee was enabled to produce more goods, but that was not because of any addition or augmentation in the profit-making structure, but because the profit-making structure could be operated for longer working hours. The expenditure incurred for this purpose was primarily and essentially related to the operation or working of the looms which constituted the profit earning apparatus of the assessee. It was an expenditure for operating or working the looms for longer working hours with a view to producing a larger quantity of goods and earning more income and was, therefore, in the nature of revenue expenditure. We are concious that in law, as in life, and particularly in the field of taxation law, analogies are apt to the deceptive and misleading, but in the present context, the analogy of quota right may not be inappropriate. Take a case, where acquisition of raw material is regulated by quota system and in order to obtain more raw material, the assessee purchases quota right of another. Now, it is obvious that by purchase of such quota right, the assessee would be able to acquire more raw material and that would increase the profitability of his profit-making apparatus, but the amount paid for purchase of such quota right would indubitably be revenue expenditure, since it is incurred for acquiring raw material and is part of the operating cost. Similarly, if payment has to be made for securing additional power every week, such payment would also be part of the cost of operating the profit-making structure and hence in the nature of revenue expenditure, even though the effect of acquiring additional power would be to augment the productivity of the*

profit-making structure. On the same analogy, payment made for purchase of loom hours which would enable the assessee to operate the profit-making structure for a longer number of hours than those permitted under the working time agreement would also be part of the cost of performing the income-earning operations and hence revenue in character.

***11.** When dealing with cases of this kind where the question is whether expenditure incurred by an assessee is capital or revenue expenditure, it is necessary to bear in mind what Dixon, J., said in Hallstrom's Property Limited v. Federal Commissioner of Taxation 72 CLR 634:*

"What is an outgoing of capital and what is an outgoing on account of revenue depends on what the expenditure is calculated to effect from a practical and business point of view rather than upon the juristic classification of the legal rights, if any, secured, employed or exhausted in the process."

The question must be viewed in the larger context of business necessity or expediency. If the outgoing expenditure is so related to the carrying on or the conduct of the business that may be regarded as an integral part of the profit-earning process and not for acquisition of an asset or a right of a permanent character the possession of which is a condition of the carrying on of the business, the expenditure may be regarded as revenue expenditure. See Bombay Steam Navigation Co. [1953] (P.) Ltd. v. CIT [1965] 56 ITR 52 (SC). The same test was formulated by Lord Clyde, in Robert Addie & Sons Collieries Ltd. v. Inland Revenue 8 TC 671, in these words:

"Is it part of the company's working expenses, is it expenditure laid out as part of the process of profit earning? ; or, on the other hand, is it a capital outlay?, is it expenditure necessary for the acquisition of property or of rights of permanent character the possession of which is a condition of carrying on its trade at all ?"

It is clear from the above discussion that the payment made by the assessee for purchase of loom hours was expenditure laid out as part of the process of profit earning. It was, to use Lord Soumner's words, "an outlay of a business in order to carry it on and to earn profit out of this expense as an expense of carrying of carrying it on". It was part of the cost of operating the profit-earning apparatus and was clearly in the nature of revenue expenditure."

37. Respectfully following the decisions of the Hon'ble Supreme Court *(supra)*, we do not find any reason to interfere with the findings of the ld. CIT(A). This Ground is accordingly dismissed.

38. Ground Nos. 2 & 3 read as under:-

"2. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of interest of Rs. 46,65,45,531/- paid to Head office without appreciating the fact that interest payable by the Indian Permanent establishment of the Foreign Bank to its HO and other overseas branches is not deductible expenses in computing the total income."

3. "Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in deciding the issue of interest paid to HO by the Indian PE based on decision of Special Bench of ITAT Mumbai in Sumitomo Mitsui Banking Corp Vs DDIT(IT)(2012) without appreciating the fact that the relevant order was based on Article 7(2) and 7(3) along with Protocol 8 of the Indian Japan DTAA while no such provision as to Protocol 8 is present in India Singapore DTAA."

39. The assessed computation of income in the assessment order is as under:-

Particulars		**Break-Up**	**Amount**
Income of DBS Bank Ltd. Singapore			**6,99,64,70,117**
Income of DBS Bank FII			**36,40,56,783**
Gross Total Income As per the Return			**7,36,05,26,900**
Gross Income/(Loss) of India PE as per the Return		**(3,25,97,52,667)**	
Add : Provision for Doubtful Debts u/s 36(i)(viia)		-	
Add : Head Office Expenses (as per computation)		25,94,68,089	
Add: Bad Debt claimed by assessee		8,02,67,53,015	
Sub Total		**5,02,64,68,437**	
Less:Bad Debt Allowed (Refer para 3 of the Order)	4,36,66,97,957		
Less: Opeing provision of 36(1)(viia) as per the Assessment Order of AY 14-15	-16,77,81,681	4,19,89,16,276	
Add: Expenses disallowed as Capital Expense (Refer para 4 of the Order)		8,83,41,015	
Adjusted total income		91,58,93,176	
Less : Provision for Doubtful Debts u/s 36(i)(viia) being 5% of Gross Total Income		4,36,13,961	
Less : Head Office Expenses u/s 44C being 5% of Gross Total Income		4,36,13,961	
Assessed gross total income		82,86,65,255	
Less : Eligible donation u/s 80G of the Act		1,00,000	
Assessed Income from India PE		82,85,65,255	**82,85,65,255**
Assessed Net Total Income			**8,18,90,92,155**

40. It can be seen from the above that the issues raised vide Ground Nos. 2 & 3 by the revenue are not coming out from the assessment order or the order of the ld. CIT(A). Therefore, the same are dismissed.

41. In the result, appeal of the assessee in ITA No. 3691/Mum/2023 is partly allowed and the revenue's appeal in ITA No. 4722/Mum/2023 is dismissed.

Order pronounced in the Court on 21st November, 2024 at Mumbai.

Sd/-	*Sd/-*
(SUNIL KUMAR SINGH)	**(NARENDRA KUMAR BILLAIYA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dated 21/11/2024
SC SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , **आयकर अपीलीय अधिकरण, मुंबई** /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ **BY ORDER,**
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Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai