

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND**  
**SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.516, 517, 526 and 527 /Chny/2023

निर्धारण वर्ष /Assessment Years: 2015-16, 2016-17, 2017-18 & 2018-19

**Joint Commissioner of Income**  
**Tax(OSD),**  
**Corporate Circle-1(1),**  
**Chennai**

**M/s.Indian Bank,**  
**No.254-260, Avvai Shunmugam Salai,**  
**Royapettah,**  
**Chennai-600 041.**  
**Erode. [PAN: AAACI1607G]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Assessee by

: Shri M.Sanjeev Aditya, C.A

प्रत्यर्थी की ओर से /Revenue by

: Ms.Nayani Swapna,CIT

सुनवाई की तारीख/Date of Hearing

: 26.09.2024

घोषणा की तारीख /Date of Pronouncement

: 20.11.2024

**आदेश / ORDER**

**PER AMITABH SHUKLA, A.M. :**

These four appeals are filed by the revenue against the order bearing DIN & Order No.ITBA / NFAC / S /250 / 2022-23 / 1048327954(1), No.ITBA / NFAC / S /250 / 2022-23 / 1048320600(1), No.ITBA / NFAC / S / 250 / 2022-23/1048323698(1) and No.ITBA / NFAC / S / 250 / 2022-23/1048321468(1), dated 29.12.2022 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi, for the assessment years 2015-

16, 2016-17, 2017-18 & 2018-19. Through the aforesaid the Revenue has challenged order u/s 250 dated 29.12.2022 passed by NFAC, Delhi. All the above appeals are centered around three common issues and hence are being adjudicated by way of this common order.

2.0 The first issue raised by the revenue for assessment years 2015-16, 2016-17, 2017-18 & 2018-19 vide ITA Nos. 516, 517, 526 and 527 respectively is regarding its claim of deduction of bad debts u/s 36(1)(vii). The Ld. Counsel for the assessee informed that the Ld. AO has disallowed the assessee's claim of deduction of Rs.606,01,00,000/- u/s 36(1)(vii) on account of bad debts technical write off. The Ld. AO placed reliance upon the on the premise that the write off of advances made by the assessee was lesser than the provisions made during the year. Placing reliance upon provisions of 36(1)(vii) r.w.s 36(2)(v) the Ld. AO held that write off is to be allowed only if it is over and above the provision. The Ld. Counsel submitted that the Ld. First Appellate Authority allowed the assessee's claim by relying upon the decision of Coordinate Bench of this Tribunal in assessee's own case for AY-2011-12 vide ITA No.1992/Chny/2015. The Ld. Counsel for the assessee submitted that the Income Tax Act, 1961 provides for certain Socio-Economic benefits to organizations operating under specific sectors like

financial services, power, infrastructure, agriculture etc. In respect of Banks and financial services, the Income Tax Act, with a view to promote rural business and to assist the scheduled commercial banks in making adequate provisions in relation to their rural advances has provided for a benefit to all Banks and Financial Institutions that any provision that is made by the Banks towards bad and doubtful debts shall be allowed as deduction subject to limits specified under Section 36(1)(viiia) of the Act.

3.0 Relying upon judicial pronouncements, the Ld. AR further pointed out that the decision of Hon'ble Coordinate Bench of this Tribunal in its own case for AY 2014-15 is post amendment and is in its favour. Further it was submitted that the Hon'ble ITAT, Chennai in the case of M/s. City Union Bank Limited vide ITA Nos. 1120 & 1121/CHNY/2019 and 672/Chny/2020 dated 11.03.2024 which is for assessment year post amendment had considered the amendments made in detail and has, held that when it comes to deduction towards provision for bad and doubtful debts u/s. 36(1)(viiia) of the Act and write off of bad debts deductible u/s. 36(1)(vii) of the Act, the advances given by rural branches alone needs to be considered, without any adjustment towards provisions credited for non-rural advance and actual write off of non-rural

advance. The assessee referred to para 10.5 of the impugned order as below:

*“.....10.5 In this view of the matter and by respectfully following the decision of coordinate bench of ITAT Bangalore in the case of **Karnataka Bank vs DCIT (Supra)**, which has been further strengthened by the decision of Hon’ble Delhi High Court in the case of **Oriental Bank of Commerce vs PCIT (supra)**, we are of the considered view that, the bad debts written off relating to non-rural advances is not required to be adjusted against provision for bad and doubtful debts allowed u/s. 36(1)(viia) of the Act and thus, we direct the Assessing Officer to re-compute deduction in respect of write off of non-rural debts without any adjustment to credit balance in the provision for bad and doubtful debts account in respect of rural advance....”*

4.0 It was further submitted that following the above, the Hon’ble ITAT Chennai, in case of M/s. Karur Vysya Bank Ltd vide ITA Nos: 677 & 678/CHNY/2019 and ITA Nos: 1343 & 1321/CHNY/2019 dated 09.04.2024, following the case of coordinate bench in the case of City Union Bank Limited has held that there is no requirement of adjusting the non-rural advances write off against the provision for bad and doubtful debts made u/s 36(1)(viia) of the act.. The relevant para 9.4 of the impugned order was extracted as under:-

*“....9.4 Since the facts of both the cases are same, respectfully following the above decision of the co-ordinate bench in the case of City Union Bank Ltd, we hold that the bad debts written off relating to non-rural advances is not required to be adjusted against provision for bad and doubtful debts made u/s. 36(1)(viia) of the Act and quash the enhancement made by the CIT(A) allowing the ground of assessee’s appeal by directing the AO to delete the addition. Since we have decided this issue on merits, the issue on technical ground is left open....”*

5.0 The Ld. AR invited our attention to the statutory provisions of Section 36(1)(viiia) of the Act stipulating that the provisions made for bad and doubtful debts shall be allowed as an expenditure subject to a limit of a sum of 10% of aggregate average rural advances and 8½% of the total income. This section had been first introduced by the Finance Act, 1979 w.e.f. 1st April, 1980. The section as existed at the time of insertions read as under:

*"...in respect of any provision for bad and doubtful debts made by a scheduled bank in relation to the advances made **by its rural branches**, an amount not exceeding one and a half per cent of the aggregate average advances made by such branches, computed in the prescribed manner.*

*Explanation: For the purposes of this clause, -*

*(i) "rural branch" means a branch of a scheduled bank situated in a place which has a population of not more than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year;*

*(ii) "scheduled bank" has the same meaning as in the Explanation at the end of cl. (b) of sub-section (2) of section 11 but does not include a co-operative bank...."*

6.0 It was argued that a careful reading of the above makes it evident that the deduction was originally allowed in respect of the provisions made for bad and doubtful debts in respect of rural branches alone inferring that any provision made by the Banks towards urban advances shall not be allowed as a deduction. This section was subsequently amended in the various years and finally in

1985 the section was amended by the Finance Act 1985 with effect from 1.4.1985 and the amended section was reproduced as below:

*".....in respect of any provision for bad and doubtful debts made by a scheduled bank [not being a bank approved by the Central Government for the purposes of cl. (viiia) or a bank incorporated by or under the laws of a country outside India] or a non-scheduled bank, an amount not exceeding ten per cent of the total income (computed before making any deduction under this clause and Chapter VI-A) or an amount not exceeding two per cent of the aggregate average advances made by the rural branches of such banks, computed in the prescribed manner, whichever is higher...."*

7.0 The Ld. Counsel pleaded that the effect of the above amendment is that the provisions for bad and doubtful debts made irrespective of whether they are towards rural or urban shall be allowed as a deduction subject to the limits. The substance of these amendments was that the provision for bad and doubtful debts shall be allowed as deduction irrespective of whether they are towards rural or non-rural branches. Pursuant to this, all banks, including the assessee bank, had been claiming the provisions made towards bad and doubtful debts debited to the Profit and Loss account as expenditure subject to limits specified under the section.

8.0 The Ld. Counsel informed that with reference to above amendments in the Act and also the legislative intent, the Karnataka Tribunal as early as 2013 itself in the case of ING Vysya Bank in ITA Nos.53 & 54/Bang/2013 had held as under:

*“.....37. Though under Stage-II and Stage-III of the provisions of Sec.36(1)(viiia) of the Act, PBDD has to be created by debiting the profit and loss account of the sum claimed as deduction, the condition that the provision should be in respect of rural advances is not necessary. At stage-II of the provisions of Sec.36(1)(viiia) of the Act, this condition was done away with and it was only necessary to create PBDD in the books of accounts and debit to profit and loss account. The quantification of the maximum deduction permissible u/s.36(1)(viiia) of the Act had to be done. Firstly it has to be ascertained as to what is 10% of the aggregate average advances made by rural branches, if the Bank has rural branches, otherwise that part of the deduction u/s.36(1)(viiia) of the Act will not be available to the bank. The second part of the deduction u/s.36(1)(viiia) has to be ascertained viz., 7.5% seven and one-half per cent of the total income (computed before making any deduction under this clause and Chapter VI-A). The above are the permissible upper limits of deductions u/s.36(1)(viiia) of the Act. The actual provision made in the books by the Assessee on account of PBDD (irrespective of whether it is rural or nonrural) has to be seen. To the extent PBDD is so created, then subject to the permissible upper limits referred to above, the deduction has to be allowed to the Assessee. The question of bifurcating the PBDD as one relating to rural advances and other advances (Non-rural advances) does not arise for consideration....”.*

9.0 The Ld. Counsel for the assessee submitted that While under Section 36(1)(viiia), an incentive is given for the banks for the provision for bad and doubtful debts made by them, the Act in order to provide benefit to the Banks for any write off of advances has provided under section 36(i)(vii) r.w.s 36(2)(v) as under:

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

*Section 36(2)(v) reads as under:*

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

10.0 Thus it was argued that the Act by the above section provides that the write offs made by the banks in respect of advances will be allowed as deduction subject to the provisions of Section 36(2)(v). A coordinating reading of 36(2)(v) and 36(1)(vii) will provide that that write offs in respect of advances for which the provisions were not allowed as deduction under Section 36(1)(viiia) are eligible for claim as a deduction. Accordingly, since under Section 36(1)(viiia), the deduction is for promotion of rural branches, the Bank has been claiming the write offs both normal as well as technical write offs in respect of urban branches as a deduction under Section 36(1)(vii) till the assessment year 2014-2015. This claim of the bank has been accepted by all the appellate authorities. Further the Hon'ble Supreme court of India too in the case of Catholic Syrian bank vs. CIT [2012] 18 taxmann.com 282 was reported to have held as under:

*“....40. It is useful to notice that in the proviso to Section 36(1)(vii), the explanation to that Section, Section 36(1)(viiia) and 36(2)(v), the words used are 'provision for bad and doubtful debts' while in the main part of Section 36(1)(vii), the Legislature has intentionally not used such language. The proviso to Section 36(1)(vii) and Sections 36(1)(viiia) and 36(2)(v) have to be read and construed together. They form a complete scheme for deductions and prescribe the extent to which such deductions are available to a scheduled bank in relation to rural loans etc., whereas Section*

*36(1)(vii) deals with general deductions available to a bank and even non-banking businesses upon their showing that an account had become bad and written off as irrecoverable in the accounts of the assessee for the previous year, satisfying the requirements contemplated in that behalf under Section 36(2). The provisions of Section 36(1)(vii) operate in their own field and are not restricted by the limitations of Section 36(1)(viiia) of the Act. In addition to the reasons afore-stated, we also approve the view taken by the Special Bench of ITAT and the Division Bench of the Kerala High Court in the case of South Indian Bank (supra).*

**41.** *To conclude, we hold that the provisions of Sections 36(1)(vii) and 36(1)(viiia) of the Act are distinct and independent items of deduction and operate in their respective fields. The bad debts written off in debts, other than those for which the provision is made under clause (viiia), will be covered under the main part of Section 36(1)(vii), while the proviso will operate in cases under clause (viiia) to limit deduction to the extent of difference between the debt or part thereof written off in the previous year and credit balance in the provision for bad and doubtful debts account made under clause (viiia). The proviso to Section 36(1)(vii) will relate to cases covered under Section 36(1)(viiia) and has to be read with Section 36(2)(v) of the Act. Thus, the proviso would not permit benefit of double deduction, operating with reference to rural loans while under Section 36(1)(vii), the assessee would be entitled to general deduction upon an account having become bad debt and being written off as irrecoverable in the accounts of the assessee for the previous year. This, obviously, would be subject to satisfaction of the requirements contemplated under Section 36(2)....”*

11.0 It was argued that pertinently as per the RBI Guidelines, no Bank can write off an asset by debiting the profit and loss account. Any write off has to be by debiting the provision account only. Therefore there can never be a scenario that the provision for bad and doubtful debt account can have a credit balance to allow a claim of deduction of write off as contemplated by 36(1)(vii) r.w.s 36(2)(v) and hence what has been dealt with in the Act to eliminate double

claim is only in respect of rural advances, as for rural advances the provision is allowed as a deduction under section 36(1)(viia) subject to limits and the write off can also be claimed under section 36(1)(vii). Therefore, the possibility of double deduction for urban advances can never arise and this inherent logic of the Act has been confirmed by the Supreme Court of India in the case quoted supra above.

12.0 Subsequent to the above judgement of the Supreme court of India the CBDT vide Finance Act 2013 w.e.f 1.4.2014 amended section 36(i)(vii) to include an explanation as under:

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

13.0 The Ld. Counsel submitted that pursuant to this insertion, any write off of advances, be it Rural or Urban advance has to be made in the provision for bad and doubtful debts created and allowed under section 36(i)(viia). Therefore, write off of even the urban advances will be allowable only if the same is over and above the credit balance in the provision account created and allowed under section 36(i)(viia). It is pertinent to note that the above amendment is w.e.f 1.4.2014 only and not retrospective accordingly the assessee bank is rightfully eligible for any claim of provision of bad and doubtful debts created in the earlier years upto 31.3.2014. However, there

may be situations which will result in the claim under section 36(i)(viia) being Rs. Nil or lesser than the provision made because of inadequate profits in that year or because of disallowances during the course of assessment. By the above amendment the government has made it almost impossible for any claim of write off of bad debts. However, it is only fair in law and justice to allow the assessee bank the eligible claim in respect of the years wherein the act permitted such claim. Accordingly, the assessee bank during the year has claimed write off of bad debts of Rs. 606,01,00,000 against the unallowed write off in the earlier years.

**14.0** The Ld. Counsel informed that the Coordinate Bench of this Tribunal in assessee's own case for the years 2012-13 to 2014-15 vide its order dated 28.08.2019 ruled in assessee's favour and that the decision of the tribunal was after the amendment and more importantly for AY 2014-15. Para-10 of the impugned order of the tribunal was extracted as under:-

*"....10. The Tribunal has followed the decision of Co-ordinate Bench of this Tribunal in assessee's own case in ITA No.880/Mds/2010. Vide its order dated 30.11.2015. Consequently, respectfully following the decision of Co-ordinate Bench of Chennai Tribunal referred to supra, the findings of Id.CIT(A) on this issue stands confirmed. Consequently Ground No.3 consisting of grounds 3.1 to 3.4 stands dismissed...."*

15.0 The Ld. DR argued that the action of the Ld. AO is correct in view of the amendment made to 36(1)(vii) and that post amendment the assessee was not eligible for allowance of its claim. It was submitted that the Hon'ble Coordinate Bench of this Tribunal in the case of City Union Bank Limited in ITA Nos. 1120 & 1121/Chny/2019 and 672/Chny/2020 dated 11.03.2024 which is for assessment years post amendment had comprehensively considered the impugned amendment and held that when it comes to claim of deduction towards write off of debts u/s 36(1)(vii) the advances given by rural branches alone need to be considered without any adjustment of provisions for non-rural branches.

16.0 We have heard rival submissions in the light of material available on records. We have noted that the case of the assessee is fairly covered by the decisions relied upon by it including those delivered by the Hon'ble Coordinate Bench of this Tribunal. We have noted that **I.T.A.Nos.650, 648 & 2149/Chny/2017** / Assessment years 2012-13, 2013-14 & 2014-15 in assessee's own case the Hon'ble Coordinate Bench of this Tribunal has held as under:-

"....9. In respect of Ground No.3 consisting of grounds 3.1 to 3.4, it was fairly agreed by both the sides that the issue was against the action of Id.CIT(A) in allowing the assessee's claim towards deduction of bad debts written off (technical write off). It was fairly agreed by both the Counsels that the issue raised in this ground was squarely covered by the decision of Co-ordinate Bench of this Tribunal in assessee's

own case for assessment year 2011-12 in ITA No.1992/Chny/2015 vide order dated 11.13.2016 wherein it has been held as follows:-

*“26. The next ground taken by the Revenue in its appeal is that the CIT(Appeals) is erred in allowing the assessee’s claim towards deduction of bad debts written off.*

*27. After hearing both the parties, we are of the opinion that similar issue was considered by the Tribunal in assessee’s own case*

*in ITA No.880/Mds/2010. Vide its order dated 30.11.2015, the Tribunal observed as under:*

*“44. We have heard both sides, perused the materials on record and gone through the orders of authorities below.*

*The Tribunal, while deciding the group cases of the assessee in I.T.A. Nos. 470 to 472/Mds/2010 for the assessment years 2004-05 to 2006-07 vide order dated 11.06.2012, has followed its own decision in I.T.A. No.1082/Mds/2003 dated 30.06.2011, wherein, the issue stands settled in favour of the assessee by the decision of the Hon’ble Supreme Court in the case of Vijaya Bank v.CIT 323 ITR 166 and the Tribunal in its order dated 11.06.2012 has held as under:*

*“11. We have perused the orders of lower authorities and heard the rival contentions.*

*We find that the issue regarding allowance of bad debts written off on technical reasons stand decided in favour of assessee by this Tribunal in ITA No.1082/Mds/2003 for Assessment Year 1998-99. It was held by this Tribunal at para Nos. 43 & 44 of its order dated*

*30/06/11 as under:-*

*42. First issue raised by the assessee is regarding disallowance of its claim for bad debt – technical write off.*

*43. A.O. had disallowed a part of the claim of bad debt on a reasoning that the write-off was purely technical, since assessee had not reduced the written off amounts from the individual debtors account, though the total amount of write off was deducted from total of the advances.*

*44. We find this issue now stands settled in favour of the assessee by Hon'ble Apex Court, vide its decision in Vijaya Bank v. CIT (323 ITR 166). Crux of this decision as appearing from the head note runs as under:-*

*“Business expenditure – Bad debt – Debt written off in the books – After insertion of Explanation to s. 36(1)(vii), assessee is required not only to debit the P&L a/c but simultaneously also- reduce loans and advances or the debtors from the assets side of the balance sheet to the extent of the corresponding amount so that at the end of the year the amount of loans and advances/debtors is shown as net of provision for impugned bad debt – In the instant case, besides debiting the P&L a/c and creating a provision for bad and doubtful debts, the assessee bank had simultaneously obliterated the said provision from its accounts by reducing the corresponding amount from loans and advances/debtors on the assets side of the balance sheet and consequently, at the end of the year, the figure of loans and advances/debtors was shown as net of the provision – Therefore, assessee is entitled to benefit of deduction under s. 36(1)(vii) – Contention that it is imperative for the assessee-bank to close the individual account of each debtor in its books and a mere reduction in the “loans and advances account” or debtors to the extent of the provision for bad and doubtful debt is not sufficient, is not sustainable – Apprehension that if the assessee fails to close each and every individual account of its debtors, it may result in claiming deduction twice over is not correct – It is always open to the AO to call for details of individual debtor’s account if he has reasonable grounds to believe that the assessee has claimed deduction twice over – Contention that where a borrower’s account is written off by debiting P&L a/c and crediting loans and advances or debtors account, it would result in escapement of income from assessment if the borrower repays the loan in the subsequent years as the assessee would credit the*

*repaid amount to loans and advances account and not to the P&L a/c has no merit – In such circumstances the amounts are duly offered for tax and the AO is sufficiently empowered to tax such subsequent repayments under s. 41(4).” Hence this issue stands decided in favour of the assessee.”*

*Respectfully following the decision of Co-ordinate Bench of this Tribunal, we are inclined to allow the claim of assessee. This issue is decided in favour of assessee.”*

*45. Respectfully following the above decision of the Coordinate Bench of the Tribunal, wherein the decision of the Hon'ble Supreme Court is followed, we set aside the order of the Id. CIT(A) on this issue and direct the Assessing Officer to delete the disallowance made on this issue. Thus, the ground raised by the assessee is allowed.” Respectfully following the above order of the Tribunal, this ground raised by the Revenue is dismissed.”*

10. The Tribunal has followed the decision of Co-ordinate Bench of this Tribunal in assessee's own case in ITA No.880/Mds/2010. Vide its order dated 30.11.2015. Consequently, respectfully following the decision of Co-ordinate Bench of Chennai Tribunal referred to supra, the findings of Id.CIT(A) on this issue stands confirmed. Consequently Ground No.3 consisting of grounds 3.1 to 3.4 stands dismissed.....”

17.0 In respectful compliance to the decision of Hon'ble Coordinate Bench of this Tribunal in cases cited supra, we are of the view that there is no case for any interference to be made, at behest of the revenue, in the order of Ld. CIT(A) in respect of ITA Nos. 516, 517, 526 and 527 for assessment years 2015-16, 2016-17, 2017-18 & 2018-19. Accordingly, we sustain the order of Ld. First Appellate Authority in allowing the deduction with respect to bad debts technical write off u/s 36(1)(vii) and dismiss the grounds of appeal raised by the revenue.

18.0 The next issue raised by the revenue for assessment years 2015-16, 2016-17 & 2017-18 vide ITA Nos. 516, 517 and 526 respectively is regarding its claim of deduction of bad debts u/s 36(1)(viiia). The Ld. Counsel for the assessee submitted that the Ld.

AO did not concur with the computational methodology adopted by it for working out deduction u/s 36(1)(viiia). The Ld.AO subscribed to the view that the balances on the last day of the month would not be included in the overall claim of deduction and that the statute provided only incremental advances for consideration. The Ld. AO concluded that the appellant was eligible for only deduction of Rs. 313,28,74,000/- and proceeded to disallow Rs.975,23,37,141/-. The Ld. Counsel for the assessee informed that the Ld. First Appellate Authority considered the issue of interpretation of Rule-6ABA for the purposes of section 36(1)(viiia) and granted relief to the assessee. While doing so, he relied, inter-alia, upon the decision of Coordinate Bench of this Tribunal in the case of Karur Vyas Bank in ITA No.1497/Chny/2013 dated 28.02.2019. The Ld. Counsel for the assessee submitted that assessee Bank had claimed deduction in respect of the provisions made for non-performing assets i.e., provisions for bad and doubtful debts and as per the provisions of Section 36(1)(viiia), a banking company would be entitled to deduction computed in the manner provided therein subject to prescribed threshold stipulations. It was submitted that the methodology of computation of average rural advances has been prescribed in Rule 6 ABA of the Income Tax Rules, 1962 which requires computation of

average outstanding advances at the end of each month. and that the assessee had computed the deduction accordingly. It was submitted that on the question of whether the aggregate average advances have to be computed based on the incremental average or the aggregate average of monthly balances outstanding, the Honorable High Court of Calcutta, in the case of Principal Commissioner of Income Tax, Jalpaiguri Vs. Uttarbanga Kshetriya Gramin Bank by Judgement dated 7<sup>th</sup> May 2018 (94 taxmann.com 90) held the issue in favour of the assessee as under:

*"5. The assessee's appeal, however, was allowed by the Tribunal. The Tribunal's interpretation of the aforesaid statutory provisions would appear from the following passage:—*

*"From this Rule, it is apparent that for the purpose of section 36(1) (viiia), the aggregate average advance made by the rural branches of as scheduled bank shall be computed by taking the amount of advances made by each rural branch as outstanding at the end of the last day of each month comprised in the previous year has to be aggregated separately. The CIT (Appeals) instead of giving the direction to the Assessing Officer to take the amount of advances as outstanding at the end of the last day of each month in the previous year directed the Assessing Officer to take loans and advances made during the year only, we therefore, set aside the order of CIT (Appeals) on this issue and amend the direction of the CIT (Appeals) and direct the Assessing Officer to compute 10% of the aggregate monthly average advances made by the rural branch of such Bank by taking the amount of advances by each rural branch of such Bank by taking the amount of advances by each rural branch as outstanding at the end of the last day of each month comprised in the previous year and aggregate the same separately as given under Rule 6ABA of the Income Tax Rules, 1962."*

*8. We find from the amended direction made by the Tribunal that such direction is in terms of Rule 6ABA. The ITO had made the computation of aggregate monthly*

*advances taking loans and advances made during only the previous year relevant to assessment year 2009-10 as confirmed by CIT (A). The Tribunal amended such direction, in our view, correctly applying the rule.....”*

**19.0** The Ld. Counsel for the assessee further submitted that on the issue of whether only the Provision for bad and doubtful debt of rural branches is allowable, the Honorable Tribunal Bangalore, in the case of ING Vysya Bank in ITA. Nos. 53 & 54/Bang/2013 by the order dt. 25-10-2013 has held that there is no restriction on the claim of Provision for bad and doubtful debts of non-rural branches also. The extract of the case is as under:

*“...24. We have considered the rival submissions. To appreciate the contention put forth by the learned counsel for the Assessee, we need to look into the history of Sec.36(1)(viiia) as it exists in the present form.*

*Stage-I:*

*Sec.36(1)(viiia) was inserted by the Finance Act, 1979 w.e.f. 1st April, 1980 and at the time of its insertion, this clause read as under :*

*"(viiia) in respect of any provision for bad and doubtful debts made by a scheduled bank in relation to the advances made by its rural branches, an amount not exceeding one and a half per cent of the aggregate average advances made by such branches, computed in the prescribed manner.*

*Explanation : For the purposes of this clause,-*

*(i) "rural branch" means a branch of a scheduled bank situated in a place which has a population of not more than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year;*

*(ii) "scheduled bank" has the same meaning as in the Explanation at the end of cl. (b) of sub-section (2) of section 11, but does not include a co-operative bank."*

*This clause, as explained in para 13 of the CBDT Circular No. 258, dt. 14th June, 1979, was inserted to promote rural banking and to assist the scheduled commercial banks in making adequate provisions in relation to their rural advances. The Circular reads thus:-*

*“Deduction in respect of provisions made for bad and doubtful debts relating to rural branches of scheduled commercial banks — Sec. 36(1)(viiia)*

13.1 Under s. 36(1)(viiia) of the IT Act, a taxpayer carrying on business or profession is entitled to a deduction, in the computation of the taxable profits, of the amount of any debt which is established to have become bad during the previous year, subject to certain conditions. However, a mere provision for bad and doubtful debts is not allowed as a deduction in the computation of the taxable profits.

13.2 In order to promote rural banking and assist the scheduled commercial banks in making adequate provisions from their current profits to provide for risks in relation to their rural advances, the Finance Act has inserted a new cl. (viiia) in sub-s. (1) of s. 36 of the IT Act to provide for a deduction, in the computation of the taxable profits of all scheduled commercial banks, in respect of provisions made by them for bad and doubtful debts relating to advances made by the rural branches.....

13.3 It may be relevant to mention that the provisions of new cl. (viiia) of s. 36(1) relating to the deduction on account of provisions for bad and doubtful debts is distinct and independent of the provisions of s. 36(1)(vii) relating to allowance of the bad debts. In other words, the scheduled commercial banks would continue to get the full benefit of the write off of the irrecoverable debts under s. 36(1)(vii) in addition to the benefit of deduction of the provision for bad and doubtful debts under s. 36(1)(viiia).

13.4 This provision will take effect from 1st April, 1980 and will accordingly apply in relation to the asst. yr. 1980-81 and subsequent years.....”

*Stage-II*

*Deduction enhanced - Amendment by the Finance Act, 1985*

27. For the portion beginning with the words "in respect of any provision" and ending with the words "in the prescribed manner", the following was substituted w.e.f. 1st April, 1985 :

*"in respect of any provision for bad and doubtful debts made by a scheduled bank [not being a bank approved by the Central Government for the purposes of cl. (viiia) or a bank incorporated by or under the laws of a country outside India] or a non-scheduled bank, an amount not exceeding ten per cent of the total income (computed before making any deduction under this clause and Chapter VI-A) or an amount not exceeding two per cent of the aggregate average advances made by the rural branches of such banks, computed in the prescribed manner, whichever is higher....."*

*Stage-III:*

31. The IT (Amendment) Act, 1986 substituted the present cl. (viiia) for the one as substituted by the Finance Act, 1985. These provisions came into effect from 1.4.1987.

#### SECTION 36 - OTHER DEDUCTIONS

The section reads as under :

Other deductions.- (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28 -

viiia) in respect of any provision for bad and doubtful debts made by -

(a) a scheduled bank [not being a bank incorporated by or under the laws of a country outside India] or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, an amount not exceeding seven and one-half per cent of the total income (computed before making any deduction under this clause and Chapter VI-A) and an amount not exceeding ten per cent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner;

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

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

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

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

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

*(b) a bank, being a bank incorporated by or under the laws of a country outside India, an amount not exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VI-A).....;*

33. To complete the sequence of amendments, we may also make a reference to the Amendment to sec.36(1)(vii) of the Act by the Finance Act, 2013. By the Finance Act, 2013, in section 36 of the Income-tax Act, in sub-section (1), with effect from the 1st day of April, 2014, in clause (vii), the Explanation was numbered as Explanation 1 thereof and after Explanation 1 as so numbered, the following Explanation was inserted, namely:—

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

34. It can be seen from the history of Sec.36(1)(vii) of the Act that at stage-I the deduction was allowed in respect of any provision for bad and doubtful debts made by a scheduled bank in relation to the advances made by its rural branches. At this stage the Provision for Bad and Doubtful Debts (PBDD) had to be linked to the advances made by Bank's rural branches. At stage-II of Sec.36(1)(vii), the deduction while computing the taxable profits was allowed of an amount not exceeding ten per cent of the total income (computed before making any deduction under the proposed new provision) or two per cent of the aggregate average advances made by rural branches of such banks, whichever is higher. At this stage also the PBDD had to be created and debited to the profit and loss account but it was not required to be done in relation to advances made by Bank's rural branches and can be in relation to any debt. PBDD need not be in relation to rural advances but can be in relation to any advances both rural and non-rural advances. The two percent Aggregate Average Advances (AAA) made by rural branches of such banks had to be computed and the PBDD made in books has to be in relation to rural advances. The other eligible sum which can be considered for deduction u/s.36(1)(vii) of the Act viz., ten per cent of the total income (computed before making any deduction under the proposed new provision) does not require computation in relation to rural advances. Nevertheless the debit of PBDD to Profit

*and Loss account is necessary of the higher of the two sums to claim deduction u/s.36(1)(viiia) of the Act. If the concerned bank does not have rural branches then they could not claim the deduction. Therefore, the deduction was confined only to banks that had rural branches.....*

*37. Though under Stage-II and Stage-III of the provisions of Sec.36(1)(viiia) of the Act, PBDD has to be created by debiting the profit and loss account of the sum claimed as deduction, the condition that the provision should be in respect of rural advances is not necessary. At stage-II of the provisions of Sec.36(1)(viiia) of the Act, this condition was done away with and it was only necessary to create PBDD in the books of accounts and debit to profit and loss account. The quantification of the maximum deduction permissible u/s.36(1)(viiia) of the Act had to be done. Firstly it has to be ascertained as to what is 10% of the aggregate average advances made by rural branches, if the Bank has rural branches, otherwise that part of the deduction u/s.36(1)(viiia) of the Act will not be available to the bank. The second part of the deduction u/s.36(1)(viiia) has to be ascertained viz., 7.5% seven and one-half per cent of the total income (computed before making any deduction under this clause and Chapter VI-A). The above are the permissible upper limits of deductions u/s.36(1)(viiia) of the Act. The actual provision made in the books by the Assessee on account of PBDD (irrespective of whether it is rural or nonrural) has to be seen. To the extent PBDD is so created, then subject to the permissible upper limits referred to above, the deduction has to be allowed to the Assessee. The question of bifurcating the PBDD as one relating to rural advances and other advances (Non-rural advances) does not arise for consideration.”*

20.0 The Ld. Counsel for the assessee argued that the Hon'ble Coordinate Bench of this Tribunal had allowed the issue in bank's favour for the Assessment Years 2005-06, 2007-08 & 2010-11 vide order dated 30.11.2015 and that in its latest order for AY 2012-13 to AY 2014-15 too this issue has been allowed in favour of the assessee bank in ITA NO. 738/CHNY/2017- (Para 25 Page 26). It was also

submitted that the Hon'ble Coordinate Bench of this Tribunal in the case of M/s. City Union Bank Limited vide ITA Nos. 1120 & 1121/Chny/2019 and 672/Chny/2020 dated 11.03.2024 held that the deduction shall be computed based on the outstanding advances at the end of the relevant financial year as against the incremental advances. Relevant para (12.5) is reproduced below:

*12.5 In this view of the matter and considering facts and circumstances of the case and also following the decision of Hon'ble High Court of Madras in assessee bank's own case for earlier years, we are of the considered view, that the Assessing Officer is erred in computing deduction u/s. 36(1)(viiia) of the Act, by considering only incremental advances made by rural branches of assessee bank as against the aggregate average advances made by rural branches of assessee bank **as outstanding at the end of the financial year** and thus, we direct the Assessing Officer to consider aggregate average advances outstanding at the end of the relevant financial year for the purpose of computing deduction u/s. 36(1)(viiia) of the Act. Further, to compute correct amount of deduction, the matter has been set aside to the file of the Assessing Officer with a direction to reconsider the issue in light of our discussions given herein above and also the details that may be filed by the assessee. The Ld. DR would like to rely upon the order of authorities down below.*

21.0 We have heard rival submissions in the light of material available on records. We have noted that the case of the assessee on this issue is fairly covered by the catena of decisions relied upon by it including those delivered by the Hon'ble Coordinate Bench of this Tribunal. We have noted the decision of Co-ordinate Bench of this Tribunal in the case of Karur Vysya Bank in ITA No.1497/Chny/2013 dated 28.02.2019 where it has been held as under:-

"14. Grounds of appeal No.3 & 4 challenges the direction of id. CIT(A) to delete the addition made u/s. 36(1)(vii) of the Act. The AO allowed deduction of Rs. 8,63,72,774/- as against the claim of Rs. 24,34,18,374/-. The difference in the amount claimed by the assessee-bank and allowed by the AO had arisen on account of methodology adopted under Rule 6AB of the Act Rules for the purpose of working out of the average rural advances. The AO has considered only incremental advances, whereas the assessee- bank considered the outstanding advances for the purpose of calculating the average rural advances on each calendar month. The Id. CIT(A) directed the AO to follow the decision of this Tribunal in the case of City Union Bank, Lakshmi Union Bank etc. and set aside the issue for verification of the AO. This issue was discussed at length by the Co-ordinate Bench of Tribunal, Bangalore in the case of Canara Bank v. JCrr 60 TR (Trib.) 1 (Ban.), wherein it was held vide relevant paras 18.2 & 18.3 relevant paragraphs is extracted below:

"18.2 We heard rival submissions and perused the material on record. The Finance Act, 1979 inserted a new clause (vii) in subsection (1) of section 36 to provide for deduction in computation of taxable profits of schedule bank in respect of provision made for bad and doubtful debts relating to advances made by the rural branches computed in the manner prescribed under IT Rules, 1962. For this purpose, 'rural branches' has been defined to mean 'branch of schedule bank situated at place with population not exceeding 10,000 according to last census'. Rule 6BA of the Income-tax Rules provides the procedure for computing AAA for the purpose of provisions of section 36(1)(vii) which reads as under: "6ABA. Computation of aggregate average advances for the purposes of clause (vii) of sub-section (1) of section 36 - For the purposes of clause (vii) of sub-section (1) of section 36, the aggregate average advances made by the rural branches of a scheduled bank shall be computed in the following manner, namely:

- a. the amounts of advances made by each rural branch as outstanding at the end of the last day of each month comprised in the previous year shall be aggregated separately
- b. the sum so arrived at in the case of each such branch shall be divided by the number of months for which the outstanding advances have been taken into account for the purposes of clause (a)

- c. *the aggregate of the sums so arrived at in respect of each of the rural branches shall be the aggregate average advances made by the rural branches of the scheduled bank.*

*Explanation : In this rule, rural branch and scheduled bank shall have the meanings assigned to them in the Explanation to clause (vii) of sub-section (1) of section 36."*

*From a bare reading of the above rule it is crystal clear that the said rules prescribe three steps for computing AAA in the following manner:*

*Step One - In respect of each rural branch, note down the amounts of advances outstanding at the end of the last day of each month comprised in the previous year and aggregate the amounts so noted*

*Step Two- Divide the aggregate amount arrived at in Step One by the number of months for which the outstanding amounts have been taken into account for the purpose of Step One.*

*Step Three- Aggregate the amounts arrived at under Step Two in respect of all the rural branches.*

*Thus, it is clear that the said Rules do not provide for only fresh advances made by each rural branch during each month alone is to be considered It only prescribes that the amount of advances made by rural branch and is outstanding at the end of the last day of each month shall be aggregated. Having regard to the plain provisions of the IT Rues, it cannot be construed that only fresh loans made by rural branches outstanding at the end of each month should be considered for the purpose of calculating AAA It is trite law that the condition not imposed by the statute cannot be imported while construing a particular provision of Rules or statutes. Thus, the reasoning adopted by the AO as well as the CIT(A) does not stand the test of law. Furthermore, co-ordinate bench of Hyderabad Tribunal/ in the case of Nizamabad District Co- operative Central Bank Ltd (supra) held as follows:*

*"8. We have considered the submissions of the parties and perused the orders of revenue authorities as well as other materials on record. Before going into the issue, it is necessary to look into the relevant statutory provisions. Section 36(1)(vii) provides for deduction on account of bad debts actually written off in the books of account. However, proviso to 36(1)(vii) makes an exception by providing that in case of an assessee to which clause (vii) applies the claim of bad debt shall be limited to the amount by which such debt exceeds the credit balance in the provision for bad and doubtful debts made under clause (vii). Clause (vii)*

*permits a cooperative bank to claim deduction of provision made for bad and doubtful debts as per the prescribed conditions. As has been correctly observed by Id. CIT(A), the only dispute and department is in respect of working out 10% of aggregate average rural advances. While assessee has made such working by considering the entire outstanding advances at the end of each month, AO has worked out by considering the aggregate average rural advances of each month and not on the entire outstanding advances. However, a perusal of the provision contained u/s 36(1)(viia) and rule 6ABA, would make it clear that the 10% of aggregate average advances has to be worked out on the entire outstanding advances and not the advances of that month alone. That being the case, we agree with the view held by Id. CIT(A).*

*9. Now coming to the quantum of deduction claimed u/s 36(1)(vii) and 36(1)(viia), law is well settled that an assessee can claim deduction under both the clauses subject to the condition imposed under the proviso to 36(1)(vii). As can be seen from the working submitted by Id. AR, the provision created during the year u/s 36(1)(viia) read with rule 6ABA, amounts to Rs. 16,35,55,829.00 whereas assessee has claimed deduction of Rs. 5,16,46,976, which is well within the provision permissible under section 36(1)(viia). Therefore, there cannot be any doubt with regard to the allowability of deduction claimed by the assessee u/s 36(1)(viia). Accordingly, we do not find any infirmity in the order of Id. CIT(A) in deleting addition of Rs. 3,88,25,673. However, as far as deduction of Rs. 18,79,704 is concerned, the same cannot be allowed u/s 36(1)(vii) considering the fact such amount has not exceeded the provision for bad and doubtful debts u/s 36(1)(viia). At the same time, alternative claim of the assessee that it is to be allowed u/s 37(1), in our view, is acceptable. On a perusal of the assessment order and the facts and materials available on record, it is quite evident that the amount was waived at the direction of the State Govt. Department has not controverted this fact. Therefore, in our view, the waiver of interest at the instance of the State Government, has to be allowed as business expenditure u/s 37(1). Accordingly, we uphold the order of Id. CIT(A) in deleting addition of Rs. 18,79,704 though, for a different reason. The grounds raised by the department are dismissed."*

*18.3 In the light of the above, we hold that the methodology adopted by the AO for the purpose of computing AAA is against the plain provisions of rules and also against the ratio of the decision of the co-ordinate bench in the cases cited supra. However, remit this issue back to the file of the AO to identify rural*

*branches less than 10,000 population as per last census and the AAA of such rural branches alone should be considered for the purpose of this deduction. Thus, these grounds of appeal are allowed for statistical purposes."*

*The reasoning of this Tribunal was approved by the Hon'ble Calcutta High Court in the case of PCIT v. Uttarbanga Kshetriya Gramina Bank [2018] 408 ITR 393 (Cal), wherein the Hon'ble Calcutta High Court upheld the interpretation of the provisions of Rule 6ABA of the Rules for the purpose of s. 36(1)(viiia) of the Act that only aggregate average advance made by rural branches of a scheduled bank should be computed by aggregate separately the advance made by each rural branch as outstanding at the end of the last day of the each months comprised in the previous year. The Hon'ble High Court had categorically held that the method of taking the loans and advances made during the year only is not correct.*

*14.2 Therefore, in view of the above legal position, we direct the A.O. to consider only the outstanding rural advances not the incremental advances made by the rural branches for the purpose of calculating the deduction u/s.36((viiia) of the act. The direction of the Id. CIT(A) are in consonance with the law enunciated the above. Therefore, we do not find any reason to interfere with the order of Id. CIT(A) on this issue.*

*14.3 In the result, the grounds of appeal N03 and 4 filed by the revenue are dismissed. ..."*

**22.0** In respectful compliance to the decision of Hon'ble Coordinate Bench of this Tribunal in cases cited Supra, we are of the view that there is no case for any interference to be made, at behest of the revenue, in the order of Ld. CIT(A) in respect of ITA Nos. 516, 517, and 526 for assessment years 2015-16, 2016-17 and 2017-18. Accordingly, we sustain the order of Ld. First Appellate Authority in allowing the deduction with respect to bad debts u/s 36(1)(viiia) and dismiss the grounds of appeal raised by the revenue.

**23.0** The next issue raised by the revenue for assessment years 2015-16, 2016-17, 2017-18 & 2018-19 vide ITA Nos. 516, 517, 526 and 527 respectively is regarding applicability of provisions of section 115JB in its case. The Ld. AO had queried as to how section 115JB is not applicable in its case. The assessee had argued that 115JB is not applicable to Nationalized Banks like it and also that it is not a company registered under the companies Act. The Ld. AO observed that even though the jurisdictional tribunal had decided in favour of assessee, however, since department had contested the matter before the Hon'ble High Court it chose to make the impugned disturbance to assessee's business results. The Ld. First Appellate Authority ruled in favour of the assessee by relying upon the department. Before us the Ld. Counsel for the assessee pleaded that the issue is now squarely settled by the order of Hon'ble Special Bench in the case of Union Bank of India vide ITA No.424/Mum/2020. The Ld. DR fairly conceded that the matter is settled by the cited Special Bench decision Supra.

24.0 We have heard the rival submissions in the light of material available on records. We have noted the decision of Hon'ble Special Bench in the case of Union Bank of India vide ITA No.424/Mum/2020 Supra. Relevant part are extracted as under:-

*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 assessee. 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, sub-section (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 ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 34 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 sub-section (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 sub-section (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 sub-section (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; ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 35*

*(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 ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 36 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<sup>ble</sup> 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 sub-section (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 ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 37 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 sub-section 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 ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 38 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: ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 39

"(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; ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 40(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, ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 41 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 ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 42 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 ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 43 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<sup>ble</sup> Supreme Court in the case of Rustom Cavasjee Cooper v. Union of India (supra) as noted above, the Hon<sup>ble</sup> 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 ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 44 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, Id. 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 sub-section (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 ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 45 (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. ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 46 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 ITA No.424/Mum/2020 & 3740/Mum/2018 The Union Bank of India & Central Bank of India 47 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....”

25.0 We have also noted that the assessee is a Nationalized Bank like the Union Bank and Central Bank of India covered in the special bench decision supra and therefore the ratio laid therein would squarely apply in assessee's case also. Accordingly, in respectful compliance to the decision of Hon'ble Special Bench supra, we confirm the order of the Ld. CIT(A). Accordingly the grounds of appeal raised by the revenue for assessment years 2016-17, 2017-18 & 2018-19 vide ITA Nos. 517, 526 and 527 are dismissed.

26.0 In the result, the appeals of the revenue are decided as under:-

ITA Nos	Assessment Year	Result
516/Chny/2024	2015-16	Dismissed
517/Chny/2024	2016-17	Dismissed
526/Chny/2024	2017-18	Dismissed
527/Chny/2024	2018-19	Dismissed

Order pronounced on 20<sup>th</sup>, November-2024 at Chennai.

**Sd/-**  
**( एबी टी. वर्की )**  
**(ABY T VARKEY)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**  
**(अमिताभ शुक्ला)**  
**(AMITABH SHUKLA)**

लेखा सदस्य / **Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 20<sup>th</sup>, November-2024.

KB/-

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

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