IN THE INCOME TAX APPELLATE TRIBUNAL
"C''BENCH: BANGALORE

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.210/Bang/2024
AssessmentYear: 2017-18

M/s Canara Bank FM wing, Head Office, 112, J.C. Road Bangalore 560002 **PAN NO : AAACC6106G**	**Vs.**	DCIT Circle-2(1)(1) Bangalore
APPELLANT		**RESPONDENT**

ITA No.222/Bang/2024
AssessmentYear: 2017-18

DCIT Circle-2(1)(1) Bangalore	**Vs.**	M/s Canara Bank FM wing, Head Office, 112, J.C. Road Bangalore 560 002
APPELLANT		**RESPONDENT**

ITA No.1154/Bang/2023
AssessmentYear:2018-19

M/s Canara Bank FM wing, Head Office, 112, J.C. Road Bangalore 560 002 **PAN NO :AAACC6106G**	**Vs.**	DCIT Circle-2(1)(1) Bangalore
APPELLANT		**RESPONDENT**

ITA No.297/Bang/2024
AssessmentYear: 2018-19

DCIT Circle-2(1)(1) Bangalore	**Vs.**	M/s Canara Bank FM wing, Head Office, 112, J.C. Road Bangalore 560 002
APPELLANT		**RESPONDENT**

Appellant by	:	Sri Abharana &Anantham, A.Rs
Respondent by	:	Ms. Neera Malhotra, D.R.

Date of Hearing	:	22.10.2024
Date of Pronouncement	:	17.01.2025

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

These are cross appeals filed by the assessee as well as revenue which are against the orderdated 11/12/2023vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1058652337(1) passed by the ld. CIT(A)/NFAC for the AY 2017-18 and order dated 06/11/2023 vide DIN & Order No.ITBA/NFAC/S/250/2023-24/1057736394(1) passed by the ld. CIT(A)/NFAC for the AY 2018-19 u/s 250 of the Income Tax Act, 1961 (in short "The Act"). Since the issues inall these cross appeals are common, these are clubbed together, heard together and disposed of by this common order for the sake of convenience.

2. The grounds raised by the assessee for the Asst. year 2017-18 in ITA No.210/Bang/2024 are taken as base for deciding the appeals of the assessee. The Grounds raised are as follows:

1. The order of the learned CIT(A) is against the law and facts of the case.
2. The learned CIT(A) erred in not deleting disallowance u/s 14A of the Act r.w. Rule 8D amounting to Rs. 11,41,31,065/-
   2.1. The learned CIT(A) erred in directing the Assessing Officer to pass a speaking order on the issue considering the judgment of Hon'ble Supreme Court of India in the case of South India Bank Ltd and other judicial pronouncements pointed out by the appellant.
   2.2. The CIT(A) failed to appreciate the fact that no disallowance can be made u/s 14A in the case of the Bank based on the facts of the case.
3. The learned CIT(A) erred in upholding the decision of the learned Assessing Officer with regard to the taxing of the profits from the sale of share of CanFin Homes Ltd. under the head Profits and Gains of Business instead of taxing the same under the head Capital Gains.

3.1. The learned CIT(A) failed to appreciate the fact that the shares held by the bank in CanFin Homes Ltd. are to be treated as capital asset.

3.2. The learned CIT(A) failed to appreciate the fact that it was strategic investment by the bank.

3.3. The learned CIT(A) erred in not following the CBDT circular.

4. The learned CIT(A) erred in upholding the decision of the learned Assessing Officer with regards to applicability of the provisions of Section 115JB of Act to the Appellant Bank.

4.1. The learned CIT(A) failed to appreciate that provisions of Section 115JB of the Act are not applicable to the appellant and as such, is not liable to pay tax under the said provisions.

5. Without prejudice to the above, the learned CIT(A) erred in not deleting the various additions made to the Book Profits computed u/s 115JB.

5.1. The learned CIT(A) erred in remanding the matter to the learned Assessing Officer to pass a speaking order without giving specific finding on each of the items.

The appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal. The appellant prays that, for the aforementioned grounds or any other grounds that may be pressed at the time of hearing, the appeal of the appellant be allowed.

2.1 Further the grounds raised by the revenue for the Asst. year 2017-18 in ITA No.222/Bang/2024 are taken as base for deciding the appeals of the Revenue. The Grounds raised are as follows:

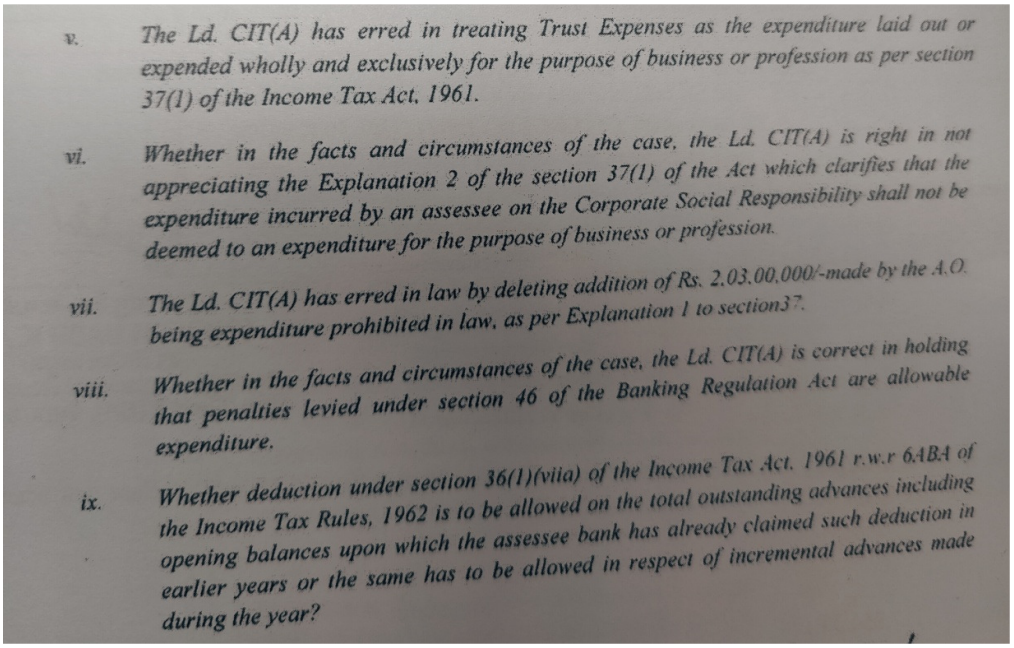
Grounds of appeal:

i. *The Ld. CIT(A) has erred in law by deleting addition and thereby allowing deduction u/s 36(1) (vii).*

ii. *The Ld. CIT(A) has not appreciated the fact that the Explanation 2 of 36(1)(vii) clarifies that for the purpose of 36(1) (viia) r.w.s 36(2)(v), there shall be only 'one' provision account with respect to bad and doubtful debts and such accounts relates to all types of advances including advances made by Rural Branches.*

iii. *The Ld. CIT(A) has erred in law by deleting addition of Rs. 28,30,03,864/- made by the Assessing Officer.*

iv. *Whether in the facts and circumstances of the case, the Ld. CIT(A) is correct in holding that Companies Act, 2013, is not applicable in the case of the assessee being a banking company and hence explanation 2 to section 37(1) of the Income Tax Act, 1961, is not applicable.*



v. *The Ld. CIT(A) has erred in treating Trust Expenses as the expenditure laid out or expended wholly and exclusively for the purpose of business or profession as per section 37(1) of the Income Tax Act, 1961.*

vi. *Whether in the facts and circumstances of the case, the Ld. CIT(A) is right in not appreciating the Explanation 2 of the section 37(1) of the Act which clarifies that the expenditure incurred by an assessee on the Corporate Social Responsibility shall not be deemed to an expenditure for the purpose of business or profession.*

vii. *The Ld. CIT(A) has erred in law by deleting addition of Rs. 2,03,00,000/-made by the A.O. being expenditure prohibited in law, as per Explanation 1 to section37.*

viii. *Whether in the facts and circumstances of the case, the Ld. CIT(A) is correct in holding that penalties levied under section 46 of the Banking Regulation Act are allowable expenditure.*

ix. *Whether deduction under section 36(1)(viia) of the Income Tax Act, 1961 r.w.r 6ABA of the Income Tax Rules, 1962 is to be allowed on the total outstanding advances including opening balances upon which the assessee bank has already claimed such deduction in earlier years or the same has to be allowed in respect of incremental advances made during the year?*

3. The facts of the case are that the assessee is a Government of India undertaking & carrying on the business of banking. For the A.Y.2017-18, the return of income was filed by the assessee on 27.11.2017,declaring a total income of Rs.3082,00,22,427/- and claimed a refund of Rs.603,01,96,587/-. After the scrutiny of the return, the JCIT, LTU, Bangalore (the AO), completed the assessment u/s 143(3) of the Act on 20.2.2019 by making following additions and disallowance of claims made/deduction claimed by the assessee.

Sl. No.	Nature of additions/disallowances	Amount in Rs.
1.	Disallowance of Bad debts written off u/s 36(1)(vii)	4745,39,23,677
2.	Disallowance of Expenditure towards CSR	28,30,03,864
3.	Disallowance of Trust Expenses	7,00,00,000
4.	Excess Claim of Depreciation on ATM, Note Counting Machine & Weighing Machine	3,05,59,246
5.	Penalty under Explanation to Section 37(1)	2,03,00,000
6.	Disallowance u/s 14A	11,41,31,065
7.	Depreciation on Leased Assets	1,02,865
8.	Long Term Capital Gain on Sale of Shares of CanFin Home Ltd	703,92,01,889
9.	Disallowance of Provision for Bad & Doubtful Debt U/s 36(1)(viia)	1569,59,38,804
10.	Short Allowance of Tax Deducted at Source.	15,10,41,394
11.	Short Allowance of Tax Paid by Overseas Branch u/s 90/91	7,17,62,335
12.	Applicability of Provisions of MAT u/s 115JB	-
	TOTAL	**7092,99,65,139**

3.1 The ld. AO also computed the income of the assessee u/s 115JB of the Act by adding various items not covered by the Explanation to section 115JB(2) of the Act and determined book profit of Rs.1605,72,87,823/- and tax liability of Rs.342,68,82,138/-. The ld. AO has raised a demand of Rs.1086,07,00,024/- after charging interest u/s 234B of the Act as per the normal provisions of the Act.

3.2 Aggrieved by the order of the ld. AO, the assessee went in appeal before ld. CIT(A)/NFAC. The ld. CIT(A) partly allowed the appeal of the assessee. Aggrieved, both the parties are before us by way of cross Appeals.

4. The first ground of appeal raised by the assessee bank is general in nature, which in our opinion does not require any adjudication.

5. Ground No.2 is with regard to applicability of section 14A of the Act.

5.1 Before us the ld. AR of the assessee submitted that the ld. CIT(A) erred in partly allowing the Appeal with a direction to the AO to pass speaking order in light of the decision of Hon'ble SC in the case of South Indian Bank Ltd. & others financial pronouncement as referred by the Assessee.

5.2 The ld. DR on the other hand intensely supported the order of the ld. CIT(A).

6. We have heard both the parties and perused the materials available on record. We are of the opinion that similar issue came for consideration before this Tribunal in assessee's own case in ITA Nos.1219/Bang/2019 & ITA No.186/PAN/2019 dated 8.8.2024, wherein the Tribunal held as under:

"14. *After hearing both the parties, we are of the opinion that similar issue came for consideration before this Tribunal in case of Canara Bank Vs. DCIT in ITA Nos.390 & 501/Bang/2023 for the assessment years 2016-17 & 2017-18, the Tribunal vide order dated 25.10.2023 held as under:*

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

> *" 4. Even though four substantial questions of law are raised in the appeal Memorandum cited supra, among them, substantial question of law Nos.2 & 4 are covered by the judgment and are answered by the co-ordinate bench of this court vide judgment dated 31..01.2020 in ITA No.481/2014. Paras 8 to 10 of the said judgment dated 31.01.2020 passed in the aforesaid case, reads as under:*
>
> *"8. We have considered the submissions made by learned counsel for the parties and have perused the record. Before proceeding further, it is apposite to take note of Section 14A of the Act:*
>
> *Section 14A (1) For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.*
>
> (2) *The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form*

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

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

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

9. *From perusal of Section 14A of the Act, it is evident that for the purposes of computing the total income under this chapter, no deduction shall be allowed in respect of the expenditure incurred by the assessee in relation of the income which does not form part of his total income under the Act. The expenditure, the return of investment and cost of requisition are distinct concepts. Therefore the word 'incurred' in Section 14A of the Act have to be read in the context of the scheme of the Act and if so read, it is clear that it disallows certain expenditures incurred to earn exempt income from being deducted from other incomes which is includable in the total income for the purposes of chargeability to the Lax. It i4 equally well settled that expenditure is a pay out. In order to attract applicability of section 14,4 of the Act, there has to be a pay out and return of investment or a pay back is not such a debit item. [See: WALFORT SHARE AND STOCK BROKERS (P) LTD SUPRA as well as M.4XOP INVESTMENTS LTD SUPRA]. In the instant case, the assessee has admittedly not incurred any expenditure. This case pertains to income on dividend, which by no stretch of imagination can be treated to be an expenditure to attract the provisions of Section 14A of the Act. In view of aforesaid enunciation of law by the Supreme Court, the first substantial question of law framed by this court is answered in favour of the assessee and against the revenue.*

10. *Learned counsel for parties, have fairly admitted that in case this court frames a substantial question of law that whether provisions of Section 115JA apply to the Banking Companies are not the remaining substantial questions of lay,/ would be reduced otiose. This court has already framed a substantial question of law in this regard today. This court by an order passed on 16.01.2020 passed in ITA No.13/2014 has already held that the provisions of Section 11514 do not apply to the banking companies. Therefore, the substantial questions of law Nos_3, 4 and 5 and substantial question of law framed in ITA 99/2010 are rendered academic and need not be answered. So*

far as substantial; question of law No.2 in ITA No.97/2010 is concerned, the same is squarely covered by the decision of the Supreme Court in 'CIT VS. ESSAR TELEHOLOINGS LTD.',(2018) 401 ITR 445, wherein it has been held that provisions of Section 14A read with rule 8D of the Income Tax Rules are prospective in nature and cannot be applied to any assessment year prior to Assessment Year 2008-09. Accordingly, the aforesaid substantial question of law is answered against the revenue and in favour of the assessee."

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

"MEMO ON BEHALF OF THE APPELLANT

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

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

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

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

14.1 *In view of this, we dismiss the above ground taken by the revenue on disallowance u/s 14A of the Act."*

6.1 In view of the above order of this Tribunal cited (supra), taking a consistent view, we allow this ground taken by the assessee.

7. Ground No.3 is with regard totaxing of the profit from the sale of shares of Can Fin Homes Ltd./CARE Ltd as business income instead of income from capital gains.

7.1. At the outset the ld. AR of the assessee submitted that this issue has been accepted by the Revenue as no substantial question of law raised on this ground, though an appeal was filed before the Hon'ble Karnataka High Court against the Order on other grounds. The ld. A.R. also submitted that the identical issue in the assessee's own case came for adjudication before this Tribunal for the Asst. year 2013-14 in which the shares of care Ltd were sold and the gains were treated as exempt from tax u/s 10(38) of the Act by the assessee. This Tribunal directed to undertake a factual finding to check whether the corresponding assets were held in the past as stock in trade or as investments. If held as stock in trade then the profits arising thereof would have to be treated as business income. Accordingly, the issue was set-aside to the file of AO. In the present case, from the very beginning, the shares of Can Fin Homes Ltd. were held as an Investment, as the assessee being the promoter & declared the same under category of HTM. Further the ld. AR of the assessee submitted that the assesseein its Balance sheet also treated the shares of Can Fin Homes Ltd. as investments under the title 'Associates'. Further the investment in subsidiaries, joint ventures and associated companies are brought under Held to Maturity (HTM) category of investment which cannot even stretch of imagination be considered as Stock in Trade. Lastly the ld. AR of the assessee also relied upon the judgment of the Apex Court in the case of Bank of Rajasthan Ltd v. Commissioner of Income Tax as well as the circular No. 6/2016 dated 29-02-2016.

7.2. The ld. D.R. relied on the order of the authorities below and also heavily relied on the judgment of the Hon'ble Supreme Court in the case of Commissioner of Income Tax, Jalandhar v. Navanshahar Central Co-operative Bank Ltd reported in (2007) 289 ITR 6 as well as another judgment of the Apex Court in the case of Bank of Rajasthan Ltd v. Commissioner of Income Tax. Further ld. DR also

relied upon the circular No. 4/2007 dated 15-06-2007. Lastly the ld. DR submitted that it is well settled that in banking business, securities purchase by the banks, per se constitute stock in trade of the bank as normal and ordinary banking business is to deal in money credit. The money is parked in readily marketable securities so that it is available to meet the demand of depositors.

8. We have heard both the parties and perused the materials available on record. It is an undisputed fact that M/s. Can Fin Homes Ltd. (CFHL), a housing finance company was incorporated in 1987 jointly by 5 institutional investors one of which is Canara Bank. The assessee was having a stake in the company as a strategic investment to the tune of 43.5%. Before us, ld. A.R. of the assessee submitted that the substantial stake in M/s. Can Fin Homes Ltd. was acquired itself shows that the intention to acquire the shares in the subject company was to hold as a strategic investment for a long period. Furtheron account of substantial shareholding in Can Fin Homes Ltd., assessee bank has treated the same as a strategic investment but not as stock in trade and disclosed the same as an "Associate" in the annual reports. During the financial year 2016-17, relevant to assessment year 2017-18, the bank has divested its stake of 13.45% in Can Fin Homes Ltd. with a view to augment resources to improve the capital base as advised by RBI and accordingly long term capital gain of Rs.699,46,75,749/- relating to a strategic sale is offered to tax. It is also not disputed fact that the funds deployed in Can Fin Homes Ltd./CARE Ltd. are classified as investment and declared under the category HTM (Held to Maturity). Therefore, in our view, these shares cannot be treated as stock in trade as the assessee itself opts to treat them as Investments i.e. a capital Asset. Further, the CBDT vide circular No.6/2006 dated 29.2.2016 had categorically instructed that the AO in holding whether the surplus generated

from sale of listed shares or other securities would be treated as capital gain or business income, shall take in to account the following:

a) Where the assessee itself, irrespective of the period of holding the listed shares and securities, opts to treat them as stock in trade, the income arising from transfer of such shares/securities would be treated as its business income.
b) In respect of listed shares and securities, held for a period of more than 12 months, immediately preceding the date of its transfer, if the **assessee desires** to treat the income arising from the transfer thereof as capital gain, the same shall not be put to dispute by the AO. However, this stand, once taken by the assessee in a particular assessment year, shall remain applicable in subsequent assessment years also and the tax payer shall not be allowed to adopt a different/contrary stand in this regard in subsequent years.
c) In all other cases, the nature of transaction i.e. whether the same is in the nature of capital gain or business income shall continue to be decided, keeping in view the aforesaid circulars issued by the CBDT.

8.1 Therefore, on plain reading of the above it is clear that it is the assessee's desire how to treat the income arising from the transfer & once the particular stand taken by the assessee in a particular Asst year, then tax payers shall not be allowed to adopt a different/contrary stand in this regard in subsequent years.

8.2 The authorities below as well as the ld. D.R. heavily relied on the judgment of Hon'ble Supreme Court in the case of Navanshahar Central Co-operative Bank Ltd. (supra) and CBDT Circular No.18/2015 dated 2.11.2015, where all investments held by the banking concern are held as part of the business of banking and

accordingly pleaded that the profit on sale of such investments are to be treated as business profit u/s 28 of the Act.

8.3 We are of the considered opinion that the entire facts of the present case are different from that as that of case laws relied upon by them. In the case of Navanshahar Central Co-operative Bank Ltd. (supra), the issue was Whether where a Co-operative bank, carrying in business of banking, is statutorily required to place a part of its fund in approved securities, income arising from such investment is deductible under section 80P. The Apex court had categorically held that investments made by a banking concern are part of the business of banking. In the present case also the investments held by banks are treated only as part of the business of banking only but not as a Stock in Trade but as a Capital Asset.

8.4 Further, both the parties also relied upon the judgment of the Apex Court in the case of Bank of Rajasthan Ltd. v. Commissioner of Income Tax in Civil Appeal Nos. 3291-3294 of 2009 dated 16/10/2024 wherein the Apex court held that as per the RBI's guideline dated 16/10/2000, there are three categories of securities i.e. HTM, AFS and HFT. As far as AFS and HFT concerned, there is no difficulty. When these two categories of securities are purchased, obviously, the same are not investments but are always held by Banks as stock-in-trade. In the present case the shares of CARE Ltd./ Can Fin Homes Ltd. are held as Investment under the category of HTM & therefore it cannot be treated at par with AFS & HFT categories.

8.5 We are of the opinion that similar issue came for consideration before this Tribunal in assessee's own case in ITA No.1900/Bang/2017 dated 28.9.2018 for the AY 2013-14, wherein the Tribunal held as under:

13.5.1 We have heard the rival contentions, perused and carefully considered the material on record. It is a settled principle that it is based on the intention at the time of purchase and also treatment in the books that the issue of whether in the case on hand the profits arising on sale of shares of CARE Ltd. by the assessee in the year under consideration are to be treated as business income on account of holding shares as stock-in-trade, as held by Revenue OR as Capital Gains since they are investments, as claimed by the assessee. In this regard in the light of the principles stated in CBDT Circulars on the subject (supra), the Hon'ble Gujarat High Court in the case of Prin. CIT Vs. Ramniwas Ramjivan Kasat reported in (2017) 82 taxmann.com 458 (Guj.) has held as under at paras 6 to 8 thereof :-

" 6. Whether to tax the income generated from the sale of shares as capital gain or business income is an issue of frequent dispute between the revenue and the assessees. The Courts in the past have had occasions to consider such issue and through judicial pronouncement various parameters have been laid down to check whether the sale of shares would lead to business income or capital gain. Despite several judicial pronouncements, the controversy did not subside. Each case would have to be considered individually leading to long drawn litigations. The CBTD therefore in order to reduce the litigations, issued the said circular dated 29.2.2016, relevant portion which reads as under:-

"2. Over the years, the courts have laid down different parameters to distinguish the shares held as investments from the shares held as stock-in-trade. The Central Board of Direct Taxes ('CBDT') has also, through Instruction No. 1827, dated August 31, 1989 and Circular No. 4 of 2007 dated June 15, 2007, summarized the said principles for guidance of the field formations.

3. Disputes, however, continue to exist on the application of these principles to the facts of an individual case since the taxpayers find it difficult to prove the intention in acquiring such shares/securities. In this background, while recognizing that no universal principal in absolute terms can be laid down to decide the character of income from sale of shares and securities (i.e. whether the same is in the nature of capital gain or business income), CBDT realizing that major part of shares/securities transactions takes place in respect of the listed ones and with a view to reduce litigation and uncertainty in the matter, in

partial modification to the aforesaid circulars, further instructs that the Assessing Officers in holding whether the surplus generated from sale of listed shares or other securities would be treated as Capital Gain or Business Income, shall take into account the following-

(a) Where the assessee itself, irrespective of the period of holding the listed shares and securities, opts to treat them as stock-in-trade, the income arising from transfer of such shares/securities would be treated as its business income,

(b) In respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of its transfer, if the assessee desires to treat the income arising from the transfer thereof as Capital Gain, the same shall not be put to dispute by the Assessing Officer. However, this stand, once taken by the assessee in a particular Assessment Year, shall remain applicable in subsequent Assessment Years also and the taxpayers shall not be allowed to adopt a different/contrary stand in this regard in subsequent years;

(c) In all other cases, the nature of transaction (i.e. whether the same is in the nature of capital gain or business income) shall continue to be decided keeping in view the aforesaid Circulars issued by the CBDT.

5. It is reiterated that the above principles have been formulated with the sole objective of reducing litigation and maintaining consistency in approach on the issue of treatment of income derived from transfer of shares and securities. All the relevant provisions of the Act shall continue to apply on the transactions involving transfer of shares and securities."

7. Two things emerge from this circular. One is that the CBDT desires to obviate the difficulties of the assessees and simultaneously to reduce the litigation. In paragraph 3 of the circular, certain parameters have been laid down. Clause (b) thereof in particular provides that in respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of its transfer, if the assessee desires to treat the income arising from the transfer thereof as Capital Gain, the same shall not be put to dispute by the Assessing Officer. In other words, the Revenue would not pursue this issue if the necessary ingredients are satisfied, only rider being the stand taken by the assessee in a particular year would be followed in the subsequent years also and the assessee would not be allowed to adopt a contrary stand in such subsequent years.

8. The circular applies with full force in the present case. The Tribunal therefore correctly accepted the assessee's stand."

13.5.2 In an appraisal of the material in the case on hand, it is seen that the assessee invested in the purchase of shares of CARE Ltd.; in 1993. While there are contrasting claims of Revenue that the said shares were held as stock-in-trade and that of the assessee that the shares were all along held as investments, what is important in the treatment given to these scrips / shares in the assessee's books of accounts; which has to be verified. If the assessee bank has included the shares of CARE Ltd., as Investments in the relevant Balance Sheets, only then these investments can be treated as capital asset and the gains arising there from can be treated as LTCG. If these shares are found to be held as stock-in-trade then the profits arising from sale thereof would have to be treated as Business Income. These facts require examination and verification by the Assessing Officer. We, therefore, remand this issue / matter to the file of the Assessing Officer for fresh examination, verification and adjudication in the light of the judicial observations / findings on the subject (supra) and our above

observations after affording the assessee adequate opportunities of being heard and to file details / submissions in this regard, which shall be considered by the Assessing Officer before deciding this issue. We hold and direct accordingly. Consequently, ground No.9 of assessee's appeal is allowed for statistical purposes.

8.6 In view of the above order of this Tribunal cited (supra), as well as discussed above this ground of the appeal is allowed in favour of the assessee bank.

9. Ground No.4 of the appeal is with regard to the applicability of the provisions of section 115JB of the Act.

9.1 The A.R of the assessee submitted that the ld. CIT(A) erred in concurring the view taken by the AO by observing that since the assessee bank is an Indian company for the purposes of I.T. Act, 1961 and therefore liable to pay Minimum Alternate Tax on the book profits, as per the provisions of section 115JB of the Act, for the year under consideration. Accordingly, ld. CIT(A) dismissed the ground of appeal of the assessee on this issue.

9.2 The ld. DR on the other hand vehemently supported the order of the ld. CIT(A).

10. We have heard both the parties and perused the materials available on record. We are of the opinion that similar issue came for consideration before this Tribunal in assessee's own case in ITA Nos.1219/Bang/2019 & ITA No.186/PAN/2019 dated 8.8.2024, wherein the Tribunal held as under:

*"**9.** After hearing both the parties, we are of the opinion that similar issue came for consideration in the case of Canara Bank in ITA Nos.391 & 392/Bang/2023 for the assessment year 2019-20. The Tribunal vide order dated 22.12.2023 held as under:*

*"**11.** **Ground No.4** raised by assessee is on applicability of provisions of section 115JB of the Act.*

The Ld.AR submitted that, the assessee does not fall within definition of banking company as defined under Companies Act, 1956 and therefore it is not covered by proviso to section 211(2) of the Companies Act. The Ld. AR thus submitted that provisions of s. 115JB are not applicable to assessee. In support of this submission, he placed reliance on decision of Hon'ble Delhi High Court in the case of CIT v Punjab National Bank Ltd. (successor of erstwhile Oriental Bank of Commerce) in ITA 594/2023 by order dated 20/10/2023, wherein the question of law considered by the court is proposed in question (e) has been dismissed. The said order of Hon'ble Delhi High Court in the case of CIT v Punjab National Bank Ltd. (successor of erstwhile Oriental Bank of Commerce) (supra) is placed at page 35-37 of the PB.

The Ld.AR further relied on decision of Hon'ble Delhi Tribunal in the case of Oriental Bank of Commerce v. ACIT reported in [2022] TIOL 331 ITAT-DEL. The Ld.AR submitted that, the provisions of section 115JB, as it stood prior to its amendment by virtue of Finance Act, 2012, would not be applicable to a banking company. He submitted that coordinate Bench of Delhi Tribunal considered this issue by observing as under:-

> *"51. This issue is no longer res-judicata following judgments of the tribunals and the High Courts wherein it is categorically held that MAT provision u/s 115JB will not apply to a Banking Company:*
> - *Canara Bank vs JCIT, LTU in ITA No. 530/Bng/2010 & other dtd. 30.03.2016 = 2016-TIOL-1120-HC-P&H-IT*
> - *M/s. Canara Bank vs CIT(LTU) In ITA No. 305/Bang/2011 dtd. 18.06.2012*
> - *Krung Thai Bank PCI vs Joint Director of Income Tax (ITAT) (Mumbai) in ITA No.3390/Mum/09 dtd. 30.09.2010 reported in (2010) 45 DTR 218*
> - *Union Bank of India vs ACIT, LTU (ITAT) (Mumbai) in ITA Nos.4702 to 4706/Mum/2010 dtd. 30.06.2011*
> - *Indian Bank vs Addl. CIT (ITAT) (Chennai) in ITA No.469/Mds/2010 dtd. 03.08.2011*
> - *Union Bank of India (ITAT Mumbai) in ITA Nos. 4155 to4161 of 2011 dtd. 27.03.2012*
>
> - *Oriental Insurance Co. Ltd. vs. DCIT I ITA No.447/2015 dtd 30.08.2017 = 2017-TIOL-1714-HC-DEL-IT*
> - *CIT vs Union Bank of India (2019) 308 CTR 797 (Bom) HC*
>
> *52. In the above referred judgment of the Bombay High Court, at relevant page 8, para no.11 (paper book page no.13) the court has held as under:*
> *"This legal dichotomy emerging from the provisions of subsection (2) of Section 115JB particularly having regard to the first proviso contained therein in case of banking company, would convince us that machinery provision provided in sub- section (2) of section 115JB of*

the Act, would be rendered wholly unworkable in such a situation. In a well known judgment the Supreme Court in case of Commissioner of Income-Tax, Bangalore vs B.C. Shrinivasa Setty, Vo. 128 ITR 294 = 2002-TIOL-587-SC-IT-LB, had observed that in the Income Tax Act, a charging section and the computing provisions together constitute an integrated code. In a case where the computation provision cannot apply, it would be evident that such a case was not intended to fall within the charging section. It was a case of charging a partnership firm for transfer of a capital asset in the nature of goodwill. The Supreme Court was of the opinion that it would not be possible to envisage a cost of acquisition of goodwill. Since computation of capital gain cannot be done without ascertaining the cost of acquisition, it was held that no capital gain tax can be levied. " 53. Concluded at page 12 para 21 as under:

"27. In the result, we hold that sub-section 115JB as it stood prior to its amendment by virtue of Finance Act, 2012, would not be applicable to a banking company. We answer the question No. 2 in favour of the assessee and against the revenue. In view of this, question of correctness of the order of rectification passed by the Assessing Officer becomes unimportant. Question No. 1 is therefore not answered. All the appeals are dismissed."

54. For the AY 2013-14 and onwards, vide ground no. ground no. 3 of ITA no. 1582/Del/2Q17 (AY 13-14), ITA no. 1583/Del/2017 (AY 14-15) and ground no. 6 of ITA no. 1199/Del/2018 (AY 15-16), the assessee has contended that provisions of section 115JB (MAT) will not apply as the assessee is a Nationalized Bank under the Banking Company (Acquisition and Transfer of Undertaking) Act, 1980.

55. The provisions of section 115JB as amended by the Finance Act, 2012 w.e.f. 1.4.2013, inserting clause (a) and clause (b) in sub-section (2) to section 15JB are as under:

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

(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 profit and loss account for the relevant previous year in accordance with the provisions of Part II of Schedule VI to the Companies Act, 1956 (1 of 1956); or

(b) being a company, to which the proviso to sub-section (2) of section 211 of the Companies Act, 1956 (1 of 1956) is applicable, shall, for the purposes of this section, prepare its profit and loss

account for the relevant previous year in accordance with the provisions of the Act governing such company:]

Provided that while preparing the annual accounts including profit and loss account,- (i) the accounting policies;

(ii) the accounting standards adopted for preparing such accounts including profit and loss account;

(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 profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956):

Provided further that where the company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under this Act,-

(i) the accounting policies;

(ii)the accounting standards adopted for preparing such accounts including profit and loss account;

(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 profit and loss account for such financial year or part of such financial year falling within the relevant previous year. "

56. Thus, the understanding of the above amendment to section 115JB is where a company which are not required u/s 211 (129) of the Companies Act to prepare their P&L account in accordance with Schedule - VI of the Companies Act, 1956 profit & loss account prepared in accordance with the provisions of their Regulatory Acts shall be taken as a basis for computing the book profit u/s 115JB.

57. The assessee's contentions for non-applicability of 115JB provisions are:

"(i) It is a case of Nationalized Bank, under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980.

(ii) Assessee is not a company incorporated under the Companies Act, 1956, nor recognized under section 3 of the Companies Act.

(iii) The second proviso to sub-section (1) of section 129 (earlier provision 211) of the Companies Act, 2013 is not applicable to the assessee.

(iv) Under section 11 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980 provides that "for the purposes of the Income-tax Act, 1961, every corresponding new bank shall be deemed to be Indian company and a company in which public is substantially interested".

(v) It is settled principle of law where deeming fiction is created by the legislature it has to be confined to the purpose for which it is

created. CIT, Panji vs Dempo Company Limited reported in (2016) 74 TAXMAN.com 15 (SC) = 2016-TIOL-164-SC-IT. Therefore, the Income-tax Act must recognize such banking company for the purpose section 115JB in order to make the provisions applicable.

(vi) When the charging section and the computing provision together would constitute an integrated code. In case charging section does not apply then the computation section fails. CIT vs B C Shrinivas Setty 128 ITR 294 = 2002-TIOL-587-SC-IT-LB."

58. However, the plea of the assessee with respect to nonapplicability of section 115JB to the Banking Companies was rejected by the ITAT Mumbai "B" Bench in ITA No. 1767/Mum/2019 for the A.Y. 2015-16 in the case of Bank of India vs ACIT Mumbai vide order dated 11th December, 2020.

59. There is no jurisdictional High Court decision or for that matter any other High Court decision against the assessee. In view of the fact that two use are possible, the view that favour the assessee may kindly be considered, more so in the case of a Nationalized Bank as held by the Hon'ble Supreme Court in the case of CIT vs Vegetable Products Ltd. 88 ITR 192 = 2002TIOL-574-SC-IT-LB."

12. The Ld. DR though could not controvert the above observation by Hon'ble Delhi Tribunal in the above own case, placed reliance on the decision of Ld.CIT(A).

13. We have perused submissions advanced by both sides in light ofrecord placed before us. We note that decision of Hon'ble Delhi TribunalinOriental Bank(supra) has been upheld by Hon'ble Delhi High Court wherein Hon'ble High Court has categorically observed that the revenue in case of Punjab National Bank did not raise this issue which are identical to facts of the present assessee before us.

In view of the same, Ground No.4 raised by the assessee deserves to be allowed."

***9.1** In view of the above order of the Tribunal cited (supra), taking a consistent view, we allow this ground taken by the assessee."*

10.1 Further, similar issue came for consideration recently before the ITAT, 'Special Bench' Mumbai in the case of Union Bank of India Vs. DCIT in ITA No. 424/Mum/2020 for the Asst. year 2015-16 and Central Bank of India Vs. ACIT in ITA No. 3740/Mum/2018 for the Asst year 2013-14, in which the Special Bench of ITAT vide Order dated 06/09/2024 held 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 assessees. Sub-section (1) of Section 115JB mandates charge of income tax based on book profits subject to fulfillment of certain conditions and also provides the rate on which such tax shall be charged. The Section starts with non-obstante clause and therefore, it is a departure from normal charge of tax on the total income of the company. Sub-section (2) is the computation provision dealing with the manner in which such book profits are to be computed. Upto A.Y.2012-13, subsection (2) of Section 115JB applied only to such companies which were required to prepare its profit and loss account in accordance with part II & III of Schedule VI to the Companies Act 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 subsection (1) of Section 129 of the Companies Act is applicable, who are required to prepare its statement of profit and loss account in accordance with provisions of the Act governing such company. For the sake of ready reference the amended subsection (2) of Section 115JB is again reproduced hereunder:- (2) Every assessee,— (a) being a company, other than a company referred to in clause (b), shall, for the purposes of this section, prepare its statement of profit and loss for the relevant previous year in accordance with the provisions of Schedule III to the Companies Act, 2013 (18 of 2013); or (b) being a company, to which the second proviso to subsection (1) of section 129 of the Companies Act, 2013 (18 of 2013) is applicable, shall, for the purposes of this section, prepare its statement of profit and loss for the relevant previous year in accordance with the provisions of the Act governing such company: Provided that while preparing the annual accounts including statement of profit and loss,— (i) the accounting policies; 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'ble Jurisdictional High Court in the case of the assessee (cited supra).

42. Now for Clause (b), following conditions need to be satisfied for applying section 115JB in the case of a company:-i. it applies to a company to which the second proviso to subsection (1) of section 129 of the Companies Act, 2013 is applicable; ii. once this condition is fulfilled, it requires such assessee for the purpose of this section to prepare its profit and loss account in accordance with the provisions of the Act governing such company.

43. Since 115JB is applicable to the company to which second proviso to Section 129(1) applies, therefore, it would be relevant to quote Section 129 of the Companies Act which reads as under:- "129. Financial statement-(1) The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be 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 subsection shall apply to any insurance or

banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company Provided also that the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose (a) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938 (4 of 1938), or the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), (b) in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949 (10 of 1949), (c) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003 (36 of 2003), (d) in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law."

44. The second proviso applies to any insurance company, banking company or any company engaged in the generation or supply of electricity or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company. In so far as the present 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 sociedadesanonimas";"

50. The assessee bank was neither formed nor 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'ble Supreme Court in the case of Rustom Cavasjee Cooper v. Union of India (supra) as noted above, the Hon'ble Supreme Court had held that only undertaking was acquired for the banking companies acquisition and transfer of invoking ordinance which was promulgated on 19/06/1969, which culminated into the Act of Banking Companies (Acquisition and Transfer of Undertaking) Act,1970. Thus, assessee cannot be treated as a company under the Companies Act, because it was never registered under the Companies Act. Ergo, the deeming fiction by way of Section 11 of the Acquisition Act has to be read purely in the context for the purpose of Income Tax Act where the corresponding new bank have been deemed to be an Indian Company and a company in which public are substantially interested. This deeming section cannot be extended to a company registered under the Companies Act to which alone Section 115JB is applicable.

56. Thus, we hold that Section 11 of the Acquisition Act which deals a corresponding new bank treated as Indian company for the purpose of Income Tax, however, Clause (b) in Sub-Section 2 to Section 115JB does not permit treatment of such bank as a company for the purpose of the said clause, because it should be 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, ld. Counsel has given various references under the Income Tax Act itself where the corresponding new bank and a banking company have been treated separate and independent from each other for which our reference was also drawn to Section 36(1)(viii) & 72A. Apart from that, it is noticed that, Section 194A(1) of the Act which provides that if any specified person is responsible for paying to a resident any income by way of interest is obliged to deduct tax at source, however, Section 194A(3) provides that Section 194A(1) shall not apply if the payment has been made to certain entities. Clause (iii) of subsection (3) of

section 194A, deals with such entities. The said clause reads as under:- iii) to such income credited or paid to- (a) any banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies, or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank), or (b) any financial corporation established by or under a Central, State or Provincial Act, or 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;]

57. 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:-

58. 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, DevkaranNanjee 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, WalchandHirachand 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."

10.2 In view of the above orders of the Tribunal cited (supra), taking a consistent view, we allow this ground taken by the assessee bank.

11. Ground No.5 is the consequential ground with regard to adjustments to book profits and computation of income u/s 115JB of the Act.

11.1 Since the ground No.4 of the assessee's appeal deciding on the issue of applicability of provisions of section 115JB of the Act is already allowed in favour of the assessee bank by following the earlier order of this Tribunal cited (supra) as well as respectfully following the decision of the ITAT, 'Special Bench' Mumbai, the ground no.5 of the assessee's appeal becomes infructuous. Accordingly appeal of the assessee is allowed in ITA No.210/Bang/2024 for the AY 2017-18.

Since the appeal of the assessee is allowed on above terms as indicated above, the other appeal of the assessee in ITA No.1154/Bang/2023 for the AY 2018-19 is also allowed.

12. Now we adjudicate the cross appeals of the revenue by taking ITA Nos.222/Bang/2024 for the AY 2017-18 as base which are as follows:

12.1 The 1st & 2nd grounds of appeal of revenue are with regard to disallowance u/s 36(1)(vii) of the Act.

12.2. The ld. A.R. relied on the orders of the ld. CIT(A)/NFAC.

12.3. The ld. D.R. on the other hand relied upon the order of the Assessing Officer.

13. We have heard the rival submissions and perused the materials available on record. Similar issue came for consideration before the ITAT in assessee's own case in ITA Nos.1219/Bang/2019 & ITA No.186/PAN/2019 for the AY 2015-16 dated 8.8.2024 wherein the Tribunal held as under:

*"**4.** After hearing both the parties, we are of the opinion that this issue came for consideration before this Tribunal in assessee's own case in ITA Nos.390 & 501/Bang/2023 for the AYs 2016-17 & 2017-18 dated 25.10.2023, wherein the Tribunal held as under:*

"11.We have heard the rival submissions and perused the material on record. We notice that the from the decisions of the coordinate Bench quoted by the assessee in ITA No. 1885/Bang/2018 for AY 2014-15 (supra) in its own case, the issue has been decided in favour of the assessee as under:-

> *"12.3 We have heard rival submissions and perused the material on record. We notice that the CIT(A) had expressed the view that provision allowed u/s 36(1)(viia) of the Act would apply to non-rural advances also. An identical issue has been examined by the Hyderabad Bench of the ITAT in the case of State Bank of Hyderabad v. DCIT in ITA No.450/Hyd/2015, ITA No.498 and 499/Hyd/2015 (order dated 14.08.2015) wherein the Tribunal had not accepted the above said view*

expressed by the CIT(A). The Bangalore Bench of the Tribunal in assessee's own case for assessment year 2013-2014 by following the Hyderabad Bench order of the Tribunal in the case of State Bank of Hyderabad (supra), had set aside the view expressed by the CIT(A) that proviso to section 36(1)(vii) which requires adjustment of bad debts against the provisions allowed u/s 36(1)(viia) would apply to non-rural advances also. The relevant finding of the Bangalore Bench of the Tribunal in assessee's own case for assessment year 2013- 2014 reads as follows:-

"6.4 We heard the parties on this issue and perused the record. We notice that the Ld CIT(A) has expressed the view that the provision allowed u/s 36(1)(viia) of the Act would cover bad debts pertaining to non-rural advances also. An identical issue has been examined by Hyderabad bench of ITAT in the case of State Bank of Hyderabad vs. DCIT (ITA No.450/Hyd/2015, ITA No.498 and 499/Hyd/2015 dated August 14, 2015), wherein the Tribunal has not accepted the above said view expressed by Ld CIT(A). The relevant observations made by the Tribunal are extracted below:-

> *"19. We have considered the rival submissions and perused the materials on record as well as the orders of revenue authorities. As could be seen from the finding of AO as well as ld. CIT(A), only reason for which claim of deduction for Rs. 209,07,50,831 representing actual write off of bad debts relating to non-rural advances u/s 36(1)(vii) was denied is, assessee having already availed deduction u/s 36(1)(viia), it is not eligible to claim deduction u/s 36(1)(vii) as it will amount to double deduction. In our view, both AO as well as ld. CIT(A) have committed fundamental error by mixing up provisions of sections 36(1)(vii) and 36(1)(viia). While 36(1)(vii) speaks of actual write off of bad debts in the books of account, section 36(1)(viia) even allows provision made towards bad and doubtful debts in respect of rural advances to the extent of provision made in the books of account subject to the ceiling fixed under clause (viia) of section 36(1). Proviso to section 36(1)(vii) operates only in a case where deduction is also claimed under section 36(1)(viia). In other words, proviso to section 36(1)(vii) applies to write off of bad debts relating to rural advances to the extent it exceeds the provision made u/s 36(1)(viia). If we examine the facts of the present case in the context of aforesaid statutory provision, it will be evident that assessee, though, has written off in the books of account an amount of Rs. 210.74 crore, but, in the computation of total income, the actual deduction claimed u/s 36(1)(vii) is Rs. 209.08 crore representing bad debts written off relating to nonrural/urban advances. The balance amount of bad debts relating to rural advances was not claimed as deduction by assessee in terms with the proviso to section 36(1)(vii) as it has not exceeded the provision for bad and*

doubtful debts relating to rural advances created u/s 36(1)(viia). Both AO and ld. CIT(A) have misconstrued the statutory provisions while observing that proviso to section 36(1)(vii) would also apply in case of bad debts relating to non-rural advances. The Hon'ble Supreme Court in case of Catholic Syrian Bank Vs. CIT (supra) while analyzing provisions of section 36(1)(vii) and 36(1)(viia) have observed that section 36(1)(viia) applies only to rural advances. The observations made by Hon'ble Apex Court in this regard in paras 26 & 27 of the judgment is extracted hereunder for convenience.

> *"26. The Special Bench of the Tribunal had rejected the contention of the Revenue that proviso to s. 36(1)(vii) applies to all banks and with reference to the circulars issued by the Board, held that a bank would be entitled to both deductions, one under cl. (vii) of s. 36(1) of the Act on the basis of actual write off and the other on the basis of cl. (viia) of s. 36(1) of the Act on the mere making of provision for bad debts. This, according to the Revenue, would lead to double deduction and the proviso to s. 36(1)(vii) was introduced with the intention to prevent this mischief. The contention of the Revenue, in our opinion, was rightly rejected by the Special Bench of the Tribunal and it correctly held that the Board itself had recognized the position that a bank would be entitled to both the deductions. Further, it concluded that the proviso had been introduced to protect the Revenue, but it would be meaningless to invoke the same where there was no threat of double deduction.*
>
> *27. As per this proviso to cl. (vii), the deduction on account of the actual write off of bad debts would be limited to excess of the amount written off over the amount of the provision which had already been allowed under cl. (viia). The proviso by and large protects the interests of the Revenue. In case of rural advances which are covered by cl. (viia), there would be no such double deduction. The proviso, in its terms, limits its application to the case of a bank to which cl. (viia) applies. Indisputably, cl. (viia)(a) applies only to rural advances."*

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

> *"2. Under Section 36(1)(vii) of the ITA 1961, the tax payer carrying on business is entitled to a deduction, in the computation or taxable profits, of the amount of any debt which is established to have become a bad debt during the previous year, subject to certain conditions. However, a mere provision for bad and doubtful debt(s)*

is not allowed as a deduction in the computation of taxable profits. In order to promote rural banking and in order to assist the scheduled commercial banks in making adequate provisions from their current profits to provide for risks in relation to their rural advances, the Finance Act, inserted clause (viia) in subsection (1) of Section 36 to provide for a deduction, in the computation of taxable profits of all scheduled commercial banks, in respect of provisions made by them for bad and doubtful debts relating to advances made by their rural branches. The deduction is limited to a specified percentage of the aggregate average advances made by the rural branches computed in the manner prescribed by the IT Rules, 1962. Thus, the provisions of clause (viia) of Section 36(1) relating to the deduction on account of the provision for bad and doubtful debt(s) is distinct and independent of the provisions of Section 36(11(vii) relating to allowance of the bad debt(s). In other words, the scheduled commercial banks continue to get the full benefit of the write off of the irrecoverable debt(s) under Section 36(1)(vii) in addition to the benefit of deduction for the provision made for bad and doubtful debt(s) under section 36(1)(viia). A reading of the Circulars issued by CBDT indicates that normally a deduction for bad debt(s) can be allowed only if the debt is written off in the books as bad debt(s). No deduction is allowable in respect of a mere provision for bad and doubtful debt(s). But in the case of rural advances, a deduction would be allowed even in respect of a mere provision without insisting on an actual write off However, this may result in double allowance in the sense that in respect of same rural advance the bank may get allowance on the basis of clause (viia) and also on the basis of actual write off under clause (vii). This situation is taken care of by the proviso to clause (vii) which limits the allowance on the basis of the actual write off to the excess, if any, of the write off over the amount standing to the credit of the account created under clause (viia). However, the Revenue disputes the position that the proviso to clause (vii) refers only to rural advances. It says that there are no such words in the proviso which indicates that the proviso apply only to rural advances. We find no merit in the objection raised by the Revenue. Firstly, CBDT itself has recognized the position that a bank would be entitled to both the deduction, one under clause (vii) on the basis of actual write off and another, on the basis of clause (viia) in respect of a mere provision. Further, to prevent double deduction, the proviso to clause (vii) was inserted which says that in respect of bad debt(s) arising out of

rural advances, the deduction on account of actual write off would be limited to the excess of the amount written off over the amount of the provision allowed under clause (viia). Thus, the proviso to clause (vii) stood introduced in order to protect the Revenue. It would be meaningless to invoke the said 1 proviso where there is no threat of double deduction. In case of rural advances, which are covered by the provisions of clause (viia), there would be no such double deduction. The proviso limits its application to the case of a bank to which clause (viia) applies. Clause (viia) applies only to rural advances. This has been explained by the Circulars issued by CBDT. Thus, the proviso indicates that it is limited in its application to bad debt(s) arising out of rural advances of a bank. It follows that if the amount of bad debt(s) actually written off in the accounts of the bank represents only debt(s) arising out of urban advances, the allowance thereof in the assessment is not affected, controlled or limited in any way by the proviso to clause (vii)."

Thus, considered in light of principle laid down as referred to above, when the proviso to section 36(1)(vii) applies to bad debts written off relating to rural advances, the same cannot be applied for disallowing deduction claimed on account of write off of bad and doubtful debts relating to nonrural/urban advances. As far as application of explanation to section 36(1)(vii) is concerned, we agree with the ld. AR that its operation will be prospective and will not apply to the impugned AY. For this proposition, we rely upon the decision of the ITAT Mumbai in case of Bank of India Vs. Addl. CIT (supra). Even otherwise also, careful reading of explanation to section 36(1)(vii) would indicate that nowhere it suggests that the proviso to section 36(1)(vii) would apply in respect of bad debt written off relating to non-rural advances. In the aforesaid view of the matter, we hold that assessee would be eligible to avail deduction of an amount of Rs. 209.94 crore representing actual write off in the books of account of bad debts relating to nonrural/urban advances in terms with section 36(1)(vii), as proviso to the said section would not apply to non-rural advances. Accordingly, we delete the addition made by AO and confirmed by ld. CIT(A)."

6.5 Following the above said decision, we hold that the view expressed by Ld CIT(A) is not legally correct. Accordingly, we set aside the order passed by Ld CIT(A) with regard to his alternative decision, i.e., the view that the proviso to sec. 36(1)(vii) which requires adjustment of bad debts against provision allowed u/s 36(1)(viia) would apply to non-rural advances also. Accordingly, we direct the AO to delete the disallowance of Rs.1258.47 crores."

12.4 In view of the above co-ordinate Bench order of the Tribunal in assessee's own case for assessment year 2013- 2014 (supra), we hold that the view expressed by the CIT(A) is not correct. Therefore, the alternative decision taken by the CIT(A) (i.e. the proviso to section 36(1)(vii) which requires adjustment of bad debts against provision allowed u/s 36(1)(viia) would apply to non-rural advances also) is hereby set aside. Hence, we direct the A.O. to delete the disallowance made by the CIT(A). It is ordered accordingly."

11.1 Similar issue has also been decided by the coordinate Bench of the Tribunal in the case of Bank of Baroda v. Addl. CIT, LTU, in ITA No.321/Bang/2019 dated 25.4.2023 in favour of the assessee. The ld. DR has submitted that the Hon'ble Apex court has admitted the SLP filed by the revenue but the status of the same could not be furnished by the ld. DR, accordingly, we are bound by the order of the Jurisdictional High Court. Accordingly respectfully following the above decisions, we delete the addition made u/s. 36(1)(vii). This ground is allowed."

4.1 *In view of the above order of the Tribunal, taking a consistent view, we allow the above ground taken by the assessee."*

13.1 In view of the above order of the Tribunal in assessee's own case, taking a consistent view, we dismiss the above ground taken by the revenue.

14. Ground No.3 to 6 in revenue's appeal arewith regard to disallowance of CSR expenditure.

14.1. The ld. A.R. of the assessee relied on the order of the ld. CIT(A)/NFAC.

14.2. The ld. D.R. on the other hand relied upon the order of the Assessing Officer.

15. We have heard the rival submissions and perused the materials available on record. Similar issue came for consideration before the ITAT in assessee's own case in ITA No.391 & 392/Bang/2023 & ITA No.663/Bang/2023 dated 22.12.2023 for the AY 2019-20, wherein the Tribunal held as under:

***"24. Ground Nos. 3-4** is against allowing the claim of Rs.17,12,48,543/- by Ld.CIT(A) towards CSR expenditure. The Ld.AO disallowed the expenditure claimed by the assessee by holding that these expenditure were not for the purposes of business and were added back to the total income of assessee.*
The Ld.CIT(A) held as under:

> *"8.7 I have gone through the facts of the case and material available on record. Since the appellant is not a company, The Companies Act, 2013, is not applicable to him and explanation 2 to section 37(1) is out of picture. However, the allowability of business expenditure has to be decided based on business expediency. The appellant has submitted that these expenditure are incurred by the Assessee based on the CSR directions of the Government of India. Therefore the decision of jurisdictional ITAT in the case of Union Bank of India is directly applicable here. Accordingly, addition of Rs. 17,12,48,543/- made by the Assessing Officer is hereby deleted. Ground of appeal no. 7 is allowed.*
>
> *9. Ground of appeal no. 8 is related to disallowance of expenditure of Rs. 1,73,77,820/- made in order to comply with the guidelines on 'Rural Self Employment Training Institutes' (RSETIs) issued by Government of India. Ministry of Rural Development, the Appellant bank has contributed to 'Centenary Rural Development Trust' established under the above said guidelines and claimed the same as allowable expenditure u/s 37 of the Income Tax Act, 1961. As discussed above, the decision of jurisdictional ITAT in the case of Union Bank of India is directly applicable here also. Accordingly, addition of Rs. 1,73,77,820/- made by the Assessing Officer is hereby deleted. Ground of appeal no. 8 is allowed."*

The Ld. DR relied on the orders passed by the assessing officer in support of the argument that the expenditure are not allowable as it cannot be related to any of the business activities carried on by the assessee.

On the contrary, the Ld.AR relied on the decision of Coordinate Bench of this Tribunal in case of UCO Bank India Ltd. reported in (2023) 102 ITR (Trib) 235 and submitted that the view taken by Ld.CIT(A) deserves to be upheld.
We have perused the submissions advanced by both sides in the light of records placed before us.

We note that the Ld.CIT(A) while allowing the claim of the assessee has followed the decision of Union Bank of India vs. DCIT (supra) wherein the following observations have been made.

"11. The assessee is a public sector bank governed by the provisions of the Banking Regulation Act, 1949. Factually the contribution has been made by the assessee to Corporation Bank Economic Development Foundation which has its objects to set up training centre for educating and training people with a view to creating awareness, developing local leadership among the community, development through self help, utilization of local resources and talents. The Trust came into existence by virtue of a deed of declaration of trust dated 26.1.1992 with the object of taking up developmental activities particularly for the upliftment of the economically weaker sections of the society. The trust also played catalyst role in the process of social economic development. The Government of India, Ministry of Rural Development has instructed public sector banks to be lead institutions in managing and running such institutes. It is in this context that the assessee has contributed a sum of Rs.3,82,69,960/-. The Revenue authorities took the view that this was in the nature of donation which can be claimed as a deduction only under section 80G of the Act. The decision of the Hon'ble Karnataka High Court on this point is very clear and is to the effect that provisions of section 37(1) and 80G of the Act are not mutually exclusive if the contribution by the assessee in the form of donation of the category specified in section 80G of the Act but if it could be termed as an expenditure of the category falling under section 37(1) of the Act, then the right of the assessee to claim the whole of it as allowance under section 37(1) of the Act cannot be denied but such money must be laid out wholly or exclusively for the purpose of business. The decision of the Hon'ble Calcutta High Court in the case of CIT Vs. Eastern Coalfields Ltd., (supra) where Government of India framed guidelines on corporate social responsibility for central public sector enterprises, such public sector is bound to formulate a policy in terms of the said guidelines and if an obligation springs from complying with the said guidelines, it has to be regarded as expenditure incurred on grounds of commercial expediency and allowed as a deduction. Therefore the expenditure in question, on the facts of the present case, satisfies the requirements of Sec.37(1) of the Act. In view of the facts and circumstances of the given case. we are of the view that the deduction claimed by the assessee should be allowed in full. We hold and direct accordingly and allow ground No.3 raised by the assessee."

Nothing contrary to the above has been filed by the revenue in order to deviate from the above view taken. Respectfully following the same, we do not find any reason to interfere with the decision of the Ld.CIT(A).

Accordingly, this ground raised by revenue stands dismissed."

15.1 In view of the above order of the Tribunal in assessee's own case, taking a consistent view, we dismiss the above ground taken by the revenue.

16. Ground Nos.7 & 8 are with regard to penalty levied by RBI.

16.1 The ld. A.R. relied on the orders of the ld. CIT(A)/NFAC.

16.2 The ld. D.R. on the other hand relied on the order of the Assessing Officer.

17. We have heard the rival submissions and perused the materials available on record. Similar issue came for consideration before the ITAT in assessee's own case in ITA No.391 & 392/Bang/2023 & ITA No.663/Bang/2023 dated 22.12.2023 for the AY 2019-20, wherein the Tribunal held as under:

*"21. **Ground No.8** is raised by the assessee in respect of the disallowance made of the RBI Penalty paid by the assessee.*

***21.1** It is submitted that the assessee had made payment of Rs.1,00,000/- as penalty to RBI for non compliance of RBI guidelines which are submitted to be general in nature. The Ld.AO disallowed the same treating it to be in the nature of penal in nature.*

On an appeal before the Ld.CIT(A) the disallowance was upheld. Aggrieved by the order of the Ld.CIT(A) the assessee is in appeal before us now.

At the outset it is submitted that a similar disallowance was made in case of Union Bank of India vs. DCIT reported in (2022) (3) TMI 1131 by coordinate bench of this Tribunal. The Ld.AR placed reliance of the observation of the this tribunal in that case of Union Bank of India(supra) and submitted that the matter may be remanded to the Ld.AO for necessary verification in light of the directions therein.

The Ld. DR also did not object to the request of the Ld.AR in remanding the issue to the Ld.AO.

21.2 *We note that this Tribunal in case of Union Bank of India vs. DCIT (supra) observed and held as under:*

> *"16.4 We heard rival submissions and perused the materials on record. We notice that the Mumbai Tribunal in IDBI Bank Ltd., case (Supra) while considering a similar penalty payment to RBI has held that the amount paid by the assessee is not in the nature of penalty. The Hon'ble Mumbai Tribunal in this case has held that —*
>
> > *12.1 In the instant case, as recorded by the AO the assessee has claimed expenses on account of penalty of 15,00,000/- imposed by the RBI u/s 47A of the Banking Regulation Act, 1949 and 94,200/- for noncompliance of guidelines on customer service, guidelines in respect of exchange of coins and small de-nomination notes and mutilated notes. The ratio laid down in the decisions mentioned at para 12 is squarely applicable to the instant case instead of the decision in ANZ Grindlays Bank (supra) relied on by the Ld. DR. Therefore, following the decisions mentioned at para 12 above, we delete the disallowance of 15,94,200/- levied by the AO. Accordingly, the 2nd ground of appeal is allowed."*
>
> *16.5. We notice that the Hon'ble Mumbai Tribunal in the above case has analysed the provisions of the Banking Regulation Act to understand the nature of fine / penalty paid before coming to the conclusion that the amount claimed are routine fines or penalties and that they are compensatory' in nature not punitive. We further notice as observed by the CIT(A) in the order, the assessee has not furnished the full details of the nature of payment made to RBI. We are of the considered view that the provisions under which these payments are done need to be looked into in detail and it will not be correct to conclude without analyzing the same. We therefore remand the case back to the AO to look into the details of payments made to RBI to see if these are routine payments for a procedural noncompliance or whether they are punitive. We allow the appeal of the assessee for statistical purposes."*

Considering submissions of both sides, we remand this matter to file of AO to look into the details/nature of payments made by assessee to RBI in order to verify whether these are routine payments for procedural non-compliances or were punitive in nature. The Ld. AO is then directed to consider this issue in accordance with law.

Based on the above observation we remand this issue to the Ld.AO for necessary verification and consideration of the issue in accordance with law.

Accordingly Ground no.8 raised by the assessee stands partly allowed for statistical purposes."

17.1 In view of the above order of the Tribunal in assessee's own case, taking a consistent view, we remit the issue/matter to the file of AO for fresh consideration with the above observation and accordingly, we partly allow the ground of revenue for statistical purposes.

18. Ground No.9 is with regard to disallowance u/s 36(1)(viia) of the Act and computation u/r 6ABA.

18.1 The ld. A.R. relied on the orders of the ld. Cit(A)/NFAC.

18.2 The ld. D.R. on the other hand, relied upon the order of the Assessing Officer.

19. We have heard the rival submissions and perused the materials available on record. Similar issue came for consideration before the ITAT in assessee's own case in ITA Nos.1219/Bang/2019 & ITA No.186/PAN/2019 for the AY 2015-16 dated 8.8.2024 wherein the Tribunal held as under:

"16. *We have heard the rival submissions and perused the materials available on record. With regard to disallowance u/s 36(1)(vii)(a) of the Act on computation under Rule 6ABA, this issue came for consideration before this Tribunal in ITA Nos.390 & 501/Bang/2023 for the assessment years 2016-17 & 2017-18 dated 25.10.2023 wherein held as under:*

"17. After considering the rival submissions, we find that this issue was considered by this Tribunal in the latest judgement in assessee's own case for AYs 2014-15 & 2015-16 in ITA Nos.388 &
389/Bang/2023 by order dated 26.09.2023 and it was held as under:-

> *"9. After considering rival contentions, we note that the issue of allowance u/s. 36(1)(viia) has been settled by the Hon'ble jurisdictional High Court of Karnataka in the case of CIT, LTU v. Canara Bank, [2023] 147 taxmann.com 171 (Karnataka)[05-12-2022] in which it has been held as under:-*
>
> *"6. Insofar as question No. 4 is concerned, adverting to section 36(1)(viia) of the Income-tax Act, 1961, Shri Aravind submitted that the word used in the statute is aggregate average advances "made" by the rural branches. To quote an example, he submitted that for A.Y. is 2013-14 (F.Y. 2012-13) if the bad debt as on 31-3-2012 is considered to be as Rs. 1 Crore by virtue of making provisions subsequently, the*

assessee will be entitled for double benefit because provisions in respect of 10% of the bad debt of provisions of Rs. 1 Crore towards bad debt was already made as on 31-3-2012. Therefore, if the same amount is carried forward for the next F.Y., the assessee will be entitled for the double benefit because it would be making a provision for Rs. 1 Crore in addition to the 10% to the bad debt made in the relevant F.Y.

7. Shri Suryanarayana, adverting to the Para 7 of the impugned order, submitted that in identical circumstances, in assessee's own case, the assessee had made provision in similar manner as made in A.Y. 201314. A co-ordinate bench of the Tribunal had accepted the provision made by the assessee benefit in Canara Bank v. Jt. CIT [2018] 99 taxmann.com 357/[2017] 60 ITR (Trib.) 1 (Bengaluru - Trib.). He further submitted that the said order has been followed by the Tribunal in Vijaya Bank v. Jt. CIT [IT Appeal Nos. 915 & 845 (Bang.) of 2017, dated 5-1-2018] and the said method of making provision has been approved by the Calcutta High Court in Uttarbanga Kshetriya Gramin Bank case.

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

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

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

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

"Mr. Khaitan, learned senior Advocate appeared on behalf of the assessee and submitted that the computation to be made as prescribed by rule 6ABA is for the purpose of fixing the limit of the deduction available under section 36(1)(viia). Clauses (a) and (b) in rule 6ABA cannot be given the restricted interpretation. The amounts of advances as outstanding at the last day of each month would be a fluctuating figure depending on the outstanding as increased or reduced respectively by advances made and repayments received. The assessee might provided for bad and doubtful debts but the deduction would only

be allowed at the percentage of aggregate average advance, computation of which is prescribed by rule 6ABA.

We find from the amended direction made by the Tribunal that such direction is in terms of rule 6ABA. The ITO has made the computation of aggregate monthly advances taking loans and advances made during only the previous year relevant to assessment year 2009-10 as confirmed by CIT(A). The Tribunal amended such direction, in our view, correctly applying the rule."

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

10. Respectfully following the above judgment of the jurisdictional High Court, we hold that while calculating average aggregate advances of rural branches under section 36(1)(viia), both advance outstanding as well as fresh advances are to be considered. Ground No.3 is allowed."

17.1 Following the above decision, we hold that the while calculating average aggregate advances of rural branches under section 36(1)(viia), both advance outstanding as well as fresh advances are to be considered. We further note that AO has reverted a clear factual finding in the assessment order that population in these 37 branches exceeded ten thousand as per Census 2011. Before that CIT (A) the assessee could not produce credible evidence. Considering the totality of facts, we remit this issue to the CIT(A) for verification of population of 2011 Census of 37 branches and the assessee is directed to produce the documentary evidence in support of its claim.
Accordingly this ground is partly allowed for statistical purpose."

16.1 *In view of this, the issue relating to computation of deduction u/s 36(1)(vii)(a) of the Act under Rule 6ABA i.e. ground No.3.1 & 3.4 is decided in favour of assessee as discussed in the order cited (supra) in para 17 of that above order.*

19.1 In view of the above order of the Tribunal in assessee's own case, taking a consistent view, we dismiss the above ground taken by the revenue.

20. In the result, appeal of the revenue in ITA No.222/Bang/2024 for the AY 2017-18 is partly allowed for statistical purposes. Further, since the issues in cross appeal in ITA No.297/Bang/2024 for the AY 2018-19 are similar to that of cross appeal in ITA No.222/Bang/2024, this appeal of the revenue for the AY 2018-19 is also partly allowed for statistical purposes.

21. In the result, appeals of the assessee in ITA No.210/Bang/2024 & ITA No.1154/Bang/2023 are allowed and appeals of the revenue in ITA No.222 & 297/Bang/2024 are partly allowed for statistical purposes.

Order pronounced in the open court on 17th Jan, 2025

Sd/-	Sd/-
(Waseem Ahmed)	**(Keshav Dubey)**
Accountant Member	**Judicial Member**

Bangalore,
Dated 17th Jan, 2025.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5 Guard file

By Order

Asst. Registrar
ITAT BANGALORE