आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं /**ITA No.193/Hyd/2019** (निर्धारण वर्ष/Assessment Year:2015-16)	
Union Bank of India (Erstwhile Andhra Bank),Hyderabad. PAN AAACU0564G Vs. Deputy Commissioner of Income Tax, Circle-1(1), Hyderabad.	.....Appellant .....Respondent
आ.अपी.सं /**ITA No.316/Hyd/2019** (निर्धारण वर्ष/Assessment Year:2015-16)	
Dy. Commissioner of Income Tax, Circle-3(4), Mumbai. Vs. Union Bank of India, Mumbai.	.....Appellant .....Respondent

निर्धारिती द्वारा/Assessee by:	Shri S. Ananthan, C.A. & Smt. Lalitha Rameshwaran, C.A.
राजस्व द्वारा/Revenue by:	Ms. M Narmada, CIT-DR
सुनवाई की तारीख/Date of hearing:	10.02.2025
घोषणा की तारीख/Pronouncement:	21.04.2025

आदेश/ORDER

PER MADHUSUDAN SAWDIA, A.M. :

These cross appeals are filed by Union Bank of India ("the assessee") and the revenue, feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals)-1, Hyderabad ("Ld. CIT(A)"), dated

07.12.2018 for the A.Y. 2015-16. Since the issues are inter-connected, they are heard together and are being disposed of by this consolidated order.

02. The brief facts of the case are that the assessee is a PSU Bank, engaged in the business of banking and governed by Banking Company (Regulation Act, 1949) and Regulation from RBI. The assessee filed its original Return of Income ("ROI") for A.Y. 2015-16 on 30.10.2015 admitting total income at Rs.895,32,71,200/-. Subsequently, the assessee filed revised ROI on 17.03.2017 admitting total income at Rs.1828,23,32,080/-. The Learned Assessing Officer ("Ld. AO") completed the assessment u/s.143(3) of the Income Tax Act, 1961 ("the Act") on 30.12.2017 by making addition of Rs.1485,43,30,689/- towards provision for bad and doubtful debts u/s. 36(1)(viia) of the Act, Rs.190 Crores towards disallowance of deduction claimed u/s.36(1)(vii) of the Act, Rs.23,83,000/- towards disallowance u/s.14A of the Act, Rs.140,54,00,000/- towards disallowance of provisions for wage arrears, Rs.120,23,01,307/- towards disallowance of claim of depreciation on investments and Rs.10 lakhs towards penalty. Accordingly, the Ld. AO assessed the total income at Rs.3764,77,47,070/-.

03. Aggrieved with the order of Ld. AO, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) partly allowed the appeal of the assessee.

04. Aggrieved with the order of Ld. CIT(A), the assessee as well as the revenue are in appeal before us.

ITA No.193/Hyd/2019 (Assessee's appeal)

05. The assessee has raised the following grounds :

> *" 1. The order of the learned Commissioner of Income Tax (Appeals) is bad in law and against the facts of the case.*

2. The learned Commissioner of Income tax (Appeals) erred in law in confirming the action of the Assessing Officer in disallowing Rs. 1485,43,30,689/- claimed by the appellant bank u/s 36(1)(vila) of the Act. The tax effect relating to this ground of Rs. 504,89,87,001/-,

2.1. The learned Commissioner of Income tax (Appeals) erred in not appreciating the fact that provision created for Non Performing Asset (NPA) is a provision for bad & doubtful debts.

2.2. The Commissioner of Income tax (Appeals) failed to appreciate the fact that the deduction u/s 36(1) (viia) is allowed based on the provision for bad & doubtful debts created in the books without considering the elements of risk attached to it.

2.3. The learned Commissioner of Income tax (Appeals) failed to appreciate the fact that the Rule 6ABA does not prescribe that only bad debts are to be considered for arriving at Aggregate Average Rural Advances.

2.4. The learned Commissioner of Income tax (Appeals) erred in placing reliance on the decisions which are not applicable to the facts of the case.

2.5. The order of the learned Commissioner of Income tax (Appeals) is based on surmises and conjunctures.

3. The learned Commissioner of Income tax (Appeals) erred in law and on facts in remanding the issue to the learned Assessing Officer with a direction to allow the deduction u/s 36(1)(viii) instead of allowing the claim of the Appellant in full. The tax effect relating to this ground of Rs. 64,58,10,000/-.

4. The learned Commissioner of Income tax (Appeals) erred in law and on facts in remanding the issue to the learned Assessing Officer to work out the disallowance u/s 14A. The tax effect relating to this ground of Rs. 3,04,06,123/-.

4.1. The learned Commissioner of Income tax (Appeals) failed to appreciate the fact that no disallowance can be made u/s 14A on the facts of the case.

4.2. The learned Commissioner of Income tax (Appeals) failed to appreciate the fact that learned Assessing Officer erred in invoking the provisions of Rule 8D without recording the satisfaction as to how the disallowance made by the Appellant Bank was not correct.

4.3. Without prejudice to the above, the Commissioner of Income tax (Appeals) failed in not directing the Assessing Officer to consider only the tax-exempt investments to arrive at the disallowance u/r 8D(2)(iii).

5. The learned Commissioner of Income Tax (Appeals) erred in law and on facts in remanding the issue to the learned Assessing Officer to re-work the depreciation on investments by considering earlier years opening stock and closing balances.

5.1 The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that the investments of the appellant bank are stock in trade and the appellant bank is eligible to claim the loss arising out of the valuation of the stock at cost or market value whichever is lower.

5.2 The learned Commissioner of Income Tax (Appeals) erred in not following the decision of the Hon'ble Tribunal in the case of Appellant bank's own case.

5.3 The learned Commissioner of Income Tax (Appeals) erred in not following the binding decisions of the Hon'ble Supreme Court. The total tax effect relating to this ground is Rs. 40,86,62,214/-.

6. The learned Commissioner of Income tax (Appeals) erred in law and on facts in upholding the action of Assessing Officer in disallowing Rs.10,00,000/- being the penalty levied by Reserve Bank of India.

6.1 The learned Commissioner of Income tax (Appeals) erred in holding that the penalty is not a business expenditure and it is penal in nature.

6.2 The learned Commissioner of Income tax (Appeals) failed to appreciate the fact that the amount paid is not a penalty. The total tax effect relating to this ground is Rs. 3,39,900/-.

For all these and other grounds, which may be urged at the time of hearing, the appellant that its appeal be allowed."

06. The assessee has raised the additional ground as under :

" 1. The learned Assessing Officer be directed to allow the deduction of Rs.984,00,99,673/- being the debts written off by the non rural branches of the appellant Bank."

07. Having considered the rival submissions and careful perusal of the additional ground filed by the assessee, we find that the assessee has raised the additional ground involving the questions which are purely legal in nature and go to the roots of the matter. Thus having regard to the legal issues raised by the assessee in the additional ground and adjudication of the same does not require any verification or investigation of any material or fresh facts, the additional ground raised by the assessee is admitted for adjudication in the

light of the judgment of Hon'ble Supreme Court in the case of NTPC Ltd. Vs. CIT 229 ITR 383 (SC).

8. The Ld. AR submitted that the ground no.1 is general in nature and they are not pressing ground nos.3, 4 & 5 and hence no separate adjudication is required on these grounds. Accordingly, the ground nos.1, 3, 4 & 5 are dismissed being not pressed.

9. Ground no.2 of the assessee is related to disallowance of deduction u/s.36(1)(viia) of the Income Tax Act, 1961 ('the Act') for Rs.1485,43,30,689/-. The Ld. AR submitted that the assessee has created a provision on account of Non-performing Assets ("NPA") in their books of account and finally claimed deduction of Rs.1485,43,30,689/- in their computation of income as per the provisions of section 36(1)(viia) of the Act. However, only due to the difference in nomenclature of the account i.e. "provision for NPA" instead of "provision for doubtful debts", the Ld. AO disallowed the deduction claimed by the assessee u/s. 36(1)(viia) of the Act. The Ld. AR further submitted that, the actual nomenclature used in the books of account as "provision for NPA" is nothing but the "provision for bad and doubtful debts". The nomenclature of "provision for NPA" has been used in books of accounts as per the guidelines of RBI. It is the substance, which is to be considered for deduction and not the nomenclature. Hence, the Ld. AR submitted that, the Ld. AO as well as the Ld. CIT(A) has disallowed the claim of the assessee without considering the substance of the deduction. The Ld. AR invited our attention to para nos.23 to 30 of the decision of this Tribunal in assessee's own case for A.Ys. 2013-14 and 2014-15 in ITA Nos.350 & 351/Hyd/2018 dated 24.01.2025, wherein the ITAT has held that although the provision has been created under the head

'provision for NPA', the assessee is eligible for the deduction u/s. 36(1)(viia) of the Act.

10. Per contra, the Ld. DR relying on the order of revenue authorities, submitted that, the provision created by the assessee on NPA consists of provision created on sub-standard assets and doubtful assets. Under both the categories, the advances are secured by various securities given by the borrower. However, while making provision in their books of account, the assessee has not considered the value of security before calculating the amount of provision. Finally, the Ld. DR submitted that the provision worked out by the assessee is not correct and require recomputation. Hence, the Ld. DR requested the bench to set aside the issue to the file of Ld. AO for recalculation.

11. In rejoinder, the Ld. AR invited our attention to provision of section 36(1)(viia) of the Act and submitted that, there is no requirement under the Act to consider the amount of security before making any provision on account of bad and doubtful debts. Accordingly, the Ld. AR reiterated before the bench that the deduction claimed by the assessee on account of bad and doubtful debts are correct and the same should be allowed.

12. We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. As far as the argument of Ld. DR that, the assessee has received security from borrower on advances made by the assessee and the value of security should be considered while making provision on account of bad and doubtful debts, it is crucial to go through the provisions of section 36(1)(viia) of the Act which is to the following effect :

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

(i) ……

(ii) ……..

…….

(viia) in respect of any provision for bad and doubtful debts made by—

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

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

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

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

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

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

12.1 On perusal of the provisions contained 36(1)(viia) of the Act, we found that, there is no requirement under the law to consider the amount of security while making provision on account of bad and doubtful debts. Hence, we do not find any merit in this argument of Ld. DR and accordingly reject this argument.

12.2 We also found that, the claim of the assessee u/s. 36(1)(viia) of the Act has been disallowed by the revenue authorities on the ground that the provisions made by the assessee is on account of 'provision for NPA' and not on account of 'provision towards bad and doubtful debts'. The similar issue has been decided in assessee's own case by this Tribunal for A.Y. 2013-14 and 2014-15 (supra), wherein at para no. 28 of the order, the Tribunal has held as under :

" 28. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. As per provisions of section 36(1)(viia) of the Act, provision for bad and doubtful debt is made for the amounts not exceeding 7½ % of the total income and 10% of the aggregate average advances made by the rural branches of a Bank in computing total income is deductible. Deduction u/s 36(1)(viia) is not governed by provisions made in the books of account of the assessee, but purely on the basis of statutory provision as contained u/s 36(1)(viia) of the Act. The assessee is making provision for bad and doubtful debts accounts as per prudential norms and guidelines issued by the RBI. However, while computing total income, deduction has been claimed as per section 36(1)(viia) of the Act. Therefore, in the process, there is unutilized provision for bad and doubtful accounts in the books of account of the assessee. However, if any advance/loan given by rural branches becomes bad debt, such advances are to be debited to such

provision account to the extent of balance available and excess, if any, should be debited to the P&L Account. In case of excess provision available as per books, section 36(1)(viia) did not have any time limit for utilization of such provision. If no bad debt arises on account of rural advances, provision created u/s 36(1)(viia) is to be carried forward from year to year and whenever bad debt on account of rural advances arises, such bad debts are to be set off against the balance in provision made for rural advances/loan, but cannot be claimed/allowed as deduction by debiting to P&L account. In the present case, provision made as per section 36(1)(viia) is higher, whereas write off of actual bad debt in respect of rural advance is less. Thus, there is excess provision u/s 36(1)(viia) and the same needs to be carried forward to the subsequent A.Ys. Therefore, in our considered view, the Assessing Officer and the Ld. CIT (A) erred in making addition towards the amount lying in provision for bad and doubtful account u/s 36(1)(viia) of the Act for Rs.1014,06,21,916 /-. Further, the assessee had also proved with evidences that provision for NPA is nothing but provisions for bad and doubtful debts created in terms of section 36(1)(via) of the Act. Therefore, in our considered view, the AO cannot disallow entire deduction claimed merely on the basis of nomenclature used by the assessee."

12.3 On perusal of above, we found that, this Tribunal has held that, although the assessee has created the provision under the head 'provision for NPA', the assessee is eligible for deduction u/s. 36(1)(viia) of the Act. Respectfully following the order of this Tribunal in assessee's own case for A.Ys. 2013-4 and 2014-15 (supra), we hold that, although the assessee has created the provision under the head 'provision for NPA', the assessee is eligible for deduction u/s. 36(1)(viia) of the Act. Accordingly, ground no.2 of the assessee is allowed.

13. Ground no.6 of the assessee relates to disallowance of Rs.10 lakhs on account of penalty paid by the assessee u/s.46(4) of Banking Regulation Act, 1949 for deviation in implementation of KYC-AML guidelines. We found that, the issue is covered by the decision of this Tribunal in assessee's own case for A.Ys.2013-14 and 2014-15 (supra), wherein this Tribunal at para nos.66 to 71 of its order has decided this issue in favour of the assessee as under :

" 66. The next issue that came up for consideration from Ground No.5 of assessee's appeal is disallowance of sum of Rs.2,50,00,000/- u/s 37(1) of the Act towards penalty paid u/s 46(4) of the Banking Regulation Act, 1949 for deviation in implementation of KYC-AML guidelines. The assessee bank has not added back penalty in the computation of income by following the decision of Hon'ble Supreme Court in the case of CIT Vs. Dhanalaxmi Bank Ltd. (373 ITR 526). The Assessing Officer, however, was not convinced with the explanation furnished by the assessee. According to the Assessing Officer, penalty paid to RBI u/s 46(4) of the Banking Regulation Act, 1949 for deviation in implementation of KYC-AML guidelines is penal in nature for violation of any law, which is an offence, or which is prohibited by law and therefore, cannot be allowed as deduction. The Assessing Officer had also distinguished the case law relied upon by the assessee in the case of CIT Vs.Dhanalaxmi Bank Ltd and held that the facts of the said case were entirely different, where the RBI has imposed penal interest on the bank for not maintaining cash reserve ratio, whereas, in the present case, penalty has been levied for contravention of section 46(4) of the Banking Regulation Act, 1949.

67. Being aggrieved by the assessment order, the assessee preferred appeal before the CIT(A). Before the Ld.CIT(A), the assessee contended that penalties paid by banks to RBI for not adhering to its regulations in the course of its business cannot be treated as penalties levied for offence or prohibition of an act, therefore, submitted that the additions made by the Assessing Officer should be deleted. The Ld.CIT(A) after considering the relevant submissions of the assessee held that expenditure incurred towards penalty paid to RBI for violation of provisions of section 46(4) of the Banking Regulation Act, 1949 is not a business expenditure incurred wholly and exclusively for the purpose of business of the assessee and therefore, cannot be allowed as deduction.

68. Aggrieved by the Ld.CIT(A) order, the assessee is now in appeal before the Tribunal.

69. The Ld. Counsel for the assessee submitted that the Ld.CIT(A) is erred in sustaining the additions made by the Assessing Officer towards disallowance of penalty paid to RBI for violation of section 46(4) of the Banking Regulation Act, 1949 for deviation in implementation of KYC-AML guidelines without appreciating the fact that the said payment is not penalty for committing an offence or prohibition of any law. The Ld. counsel for the assessee further submitted that this view is squarely

covered in favour of the assessee by the decision of ITAT Ahmedabad benches in the case of Bapunagar Mahila Co-op Bank Ltd. 2015(7) TMI 472-ITAT Ahmedabad.

70. The Ld. DR, on other hand supporting the order of the Ld.CIT(A) submitted that any penalty paid for violation of any law or for prohibition of any act cannot be allowed as deduction u/s 37(1) of the Act. The Assessing Officer and the Ld.CIT(A) after considering the relevant facts have rightly disallowed penalty paid to RBI for violation of section 46(4) of Banking Regulation Act, 1949. Therefore, their order should be upheld.

71. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the RBI has imposed penalty of Rs.2,50,00,000/- u/s 46(4) of Banking Regulation Act, 1949 for deviation in implementation of KYC-AML guidelines. The only dispute is with regard to whether the penalty imposed by RBI u/s 46(4) of Banking Regulation Act, 1949 is penal in nature or compensatory in nature. As per section 37(1) of the Act, any expenditure incurred by an assessee for any purpose, which is offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance should be made in respect of such expenditure. Section 46(4) of the Banking Regulation Act, 1949 deals with penalties for complying with certain directives of the RBI and as per said provisions, if any other provision of this Act is contravened or if any such default is made in complying with any requirements of this Act, by any person, such person shall be punishable with fine which may extend to one crore rupees or twice the amount involved in such contravention or default where such amount is quantifiable, whichever is more, and where a contravention or default is a continuing one, with a further fine which may extend to one lakh rupees for every day, during which the contravention or default continues. On plain reading of section 46(4) of Banking Regulation Act, it is very clear that the RBI imposed penalty for not adhering to guidelines or not following the Act, which is compensatory in nature, but is not penal in nature, because the provisions only recommend payment of fine, but there are no provisions for conviction etc. From the above provisions, it is very clear that such penalty is compensatory in nature for not adhering to guidelines, but not penal in nature. If any penalty paid by any person is only compensatory in nature, then the same cannot be treated as any expenditure incurred

for the purpose which is an offence or which is prohibited by law. This legal principle is supported by the decision of ITAT Ahmedabad benches in the case of Bapunagar Mahila Co-operative Bank Ltd.(supra), where the Tribunal deleted identical additions made by the Assessing Officer towards levy of penalty by RBI for violation of its directions. In the present case, RBI imposed penalty for deviation in implementation of KYC-AML guidelines and therefore, in our considered view, the said violations cannot be considered as criminal act for which the assessee has paid penalty. Therefore, we are of the considered view that the Assessing Officer and the Ld.CIT(A) erred in disallowing penalty paid to RBI u/s 46(4) of the Banking Regulation Act, 1949 u/s 37(1) of the Act. Thus, we set aside the order of the Ld.CIT(A) on this issue and direct the Assessing Officer to delete the additions made towards disallowance of expenditure incurred towards payment of penalty to RBI u/s 37(1) of the Act."

13.1 On perusal of the above, we found that the ITAT has given the findings that the penalty paid by the assessee to RBI u/s.46(4) of the Banking Regulation Act, 1949 are allowable u/s.37(1) of the Act, contending that such penalty is compensatory in nature for not adhering to guidelines, but not penal in nature. Respectfully following the same, we also held that the penalty of Rs.10 lakhs paid by the assessee to RBI for deviation in implementation of KYC-AML guidelines is compensatory in nature for not adhering to guidelines, but not penal in nature and therefore, it is allowable u/s.37(1) of the Act. Accordingly, ground no.6 of the assessee is allowed.

14. The additional ground raised by the assessee relates to claim of Rs.984,00,99,673/- u/s.36(1)(vii) of the Act on account of write off of non-rural advances during the year under consideration. The Ld. AR have made the said claim first time before us. The Ld. AR invited our attention to para nos.46 to 52 of the decision of this Tribunal in assessee's own case for A.Ys. 2013-14 and 2014-15 (supra) and submitted that the ITAT has decided the issue in favour of

the assessee. Accordingly, the Ld. AR prayed before the bench to allow the appeal of the assessee.

14.1 Per contra, the Ld. DR submitted that, the ITAT in assessee's own case for A.Ys. 2013-14 and 2014-15 (supra) has decided the issue in favour of the assessee relying on the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. Vs. CIT (2012) 343 ITR 270 (SC). The Ld. DR further submitted that, after the order of Catholic Syrian Bank Ltd. Vs. CIT (supra), an amendment has been brought into the Act by insertion of Explanation 2 in section 36(1)(vii) of the Act w.e.f. 01.04.2014. Earlier, the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. Vs. CIT (supra) had held that, the provision created u/s.36(1)(viia) of the Act are related to rural advances only and if any rural advance is write off u/s.36(1)(vii) of the Act, then, the same has to be first adjusted from the balance available under the provision account credited u/s.36(1)(viia) of the Act and balance, if any can be claimed as deduction u/s 36(1)(vii) of the Act. The Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. Vs. CIT (supra) also held that, if write off is on account of non-rural advances, then, the same is not required to be deducted from the provision so created u/s.36(1)(viia) of the Act. The Ld. DR further submitted that, by insertion of Explanation 2 to section 36(1)(vii) of the Act, it has been made clear by the statute that the provision created u/s.36(1)(viia) of the Act are related to all type of advances, including rural advances. Accordingly, the total write off related to rural advances as well as non-rural advances u/s.36(1)(vii) of the Act are to be first reduce from the available balance of the provision for doubtful debts created u/s.36(1)(viia) of the Act. However, under the present case of the assessee, the assessee has not reduced the amount of write off from the balance lying under provision for doubtful debts created u/s.36(1)(viia) of the Act. Therefore, the assessee has availed double

deduction, first by claiming provision u/s.36(1)(viia) of the Act and again by writing off of the advances u/s.36(1)(vii) of the Act. The Ld. DR submitted that, the allowance of double deduction is not the intention of the legislature. Hence, the claim made by the assessee u/s.36(1)(vii) of the Act without reducing the amount available under the provision of bad and doubtful debts created u/s.36(1)(viia) of the Act is liable to be dismissed.

15. We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. There is no dispute about the facts that the assessee has claimed the deduction u/s.36(1)(viia) of the Act by creating provision on account of non-rural advances. It is also undisputed that the assessee has now raised the claim for the deduction u/s.36(1)(vii) of the Act on account of write off of non-rural advance without reducing the same from the balance standing under the head 'provision for bad and doubtful debts' which has been created u/s.36(1)(viia) of the Act. We found that, the identical issue has been decided by this Tribunal in assessee's own case for A.Ys. 2013-14 and 2014-15 (supra) in para nos.46 to 52, which are to the following effect :

> *" 46. The next issue that came up for our consideration from Ground No.6 of assessee's appeal is deduction towards bad debts written off in respect of non-rural branches u/s 36(1)(vii) of the Act for Rs.329,62,82,921/-. The Assessing Officer noticed from the computation of income that the assessee has claimed bad debts written off in respect of non-rural debts written off at Rs.329,62,82,921/-. It was submitted that amount was claimed in view of the Hon'ble Supreme Court decision in the case of Catholic Syrian Bank Ltd vs CIT (2012) 343 ITR 270 (SC). The Assessing Officer did not accept the explanation of the assessee and according to the Assessing Officer, in the same judgment it was held that the claim of bad debts made u/s 36(1)(vii) should be limited to claim made u/s 36(1)(viia) and the overall claim of the assessee shall be subject to provisions of section 36(2)(v) of the Act. Since the assessee has already*

availed benefit u/s 36(1)(viia) for both creation of provision and actual written off of debts, further deduction for a write off non-rural bad debts cannot be accepted and thus, disallowed Rs.329,62,82,921/- towards deduction claimed in respect of bad debts written off for non-rural debts.

47. On appeal, the Ld. CIT (A) sustained the addition made by the Assessing Officer.

48. The Ld. Counsel for the assessee submitted that the Ld. CIT (A) is erred in sustaining addition made by the Assessing Officer towards bad debts written off pertains to non-rural branches u/s 36(1)(vii) without appreciating fact that the Hon'ble Supreme Court in Para 45 in the case of Catholic Syrian Bank Ltd vs. CIT (Supra) very clearly explained the position of deduction towards provision for bad debts u/s 36(1)(viia) and deduction towards bad debt written off u/s 36(1)(vii). Further, this issue is also covered in favour of the assessee by the decision of ITAT Hyderabad in assessee's own case for the A.Y.2012-13 in ITA No.1018/Hyd/2017, where the Tribunal by following the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd vs CIT (2012) 343 ITR 270 (SC) deleted the additions made by the AO. Therefore, he submitted that the Ld. CIT (A) has clearly erred in sustaining additions made by the Assessing Officer.

49. The Ld. DR, on the other hand, supporting the orders of the Ld. CIT (A) submitted that the law is clear in as much as after insertion of Explanation (2) by the Finance Act 2013 w.e.f. A.Y 2013-14 for the purpose of proviso to clause (vii) of section 36(1) and 36(2)(v) of the Act, the account referred to therein shall be only one account in respect of provision for bad and doubtful debts created u/s 36(1)(viia) and such account which related to all types of advance including advance made by rural branches, therefore, the appellant is erred in once again relying upon the decision of the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd vs. CIT (Supra) which was rendered before the amendment. The Ld. CIT (A) after considering the relevant facts has rightly sustained the addition made by the Assessing Officer and their order should be upheld.

50. We have heard both parties, perused the material available on record and gone through the orders of the authorities below. The appellant has claimed deduction towards bad debts written of in respect of non-rural branches for Rs.329,62,82,921/- without reducing said written off from credit balance available in provision for bad and doubtful debts created

u/s 36(1)(viia) in respect of rural branches. The Assessing Officer did not accept the contention of the assessee on the ground that after insertion of Explanation (2) to provisions of sub-section (vii) of section 36(1), the account referred to therein shall be one account for all the advances including advances made by the rural branches of an assessee bank. It is the contention of the assessee that even after insertion of Explanation 2 to proviso to sub clause (vii) of section 36(1), the ratio laid down by the Hon'ble Supreme Court holds good, because the Hon'ble Apex Court has clearly explained the law in respect of deduction towards provision for bad & doubtful debts u/s 36(1)(viia) of the Act and deduction towards bad debts written off u/s 36(1)(viia) and as per the ratio laid down by the Hon'ble Supreme Court, the scheduled commercial banks would continue to get full benefit of write off of irrecoverable debts u/s 36(1)(vii) in addition to the benefit of deduction for provision for bad & doubtful debts u/s 36(1)(viia).

51. We find that an identical issue has been considered by the Tribunal in assessee's own case for the A.Y.2012-13 in ITA No.1018/Hyd/2017, where the Tribunal by following the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd vs CIT (supra) held as under:

> *"48. We have heard both parties, perused the material available on record and gone through the orders of the authorities below. The appellant has claimed deduction towards bad debts written of in respect of non-rural branches for Rs.166,35,33,701/- without reducing from said written off from credit balance available in provision for bad and doubtful debts created u/s 36(1)(viia) in respect of rural branches. The Assessing Officer did not accept the contention of the assessee on the ground that after insertion of Explanation (2) to provisions of sub-section (vii) of section 36(1), the account referred to therein shall be one account for all the advances including advances made by the rural branches of an assessee bank. It is the contention of the assessee that even after insertion of Explanation 2 to proviso to sub clause (vii) of section 36(1), the ratio laid down by the Hon'ble Supreme Court holds good, because the Hon'ble Apex Court has clearly explained the law in respect of deduction towards provision for bad & doubtful debts u/s 36(1)(viia) of the Act and deduction towards bad debts written off u/s 36(1)(viia) and as per the ratio laid down by the Hon'ble Supreme Court, the scheduled commercial banks would continue to get full benefit of write off of irrecoverable debts u/s*

36(1)(vii) in addition to the benefit of deduction for provision for bad & doubtful debts u/s 36(1)(viia). We find that the Hon'ble Supreme Court in Para 45 of their order has explained the position of law in respect of deduction towards provision for bad & doubtful debts and actual write off of bad debts u/s 36(1)(viia) and 36(1)(vii). The Hon'ble Supreme Court very categorially held that the scheduled commercial bank would continue to get the full benefit of write off of bad debts u/s 36(1)(vii) in addition to the benefit of deduction for the provision for bad & doubtful debts u/s 36(1)(viia). The Hon'ble Supreme Court has also taken support from circular issued by the CBDT while rendering its judgment and observed that the apprehension of the Revenue with regard to the double deduction i.e. one at stage of provision and another at the stage of actual write off and further, the excess, if any, of the write off over the amount outstanding to the credit of the account created under clause (viia) is taken care by insertion of proviso. The relevant finding of the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd vs. CIT (Supra) is as under:

> *"45. Under Section 36(1)(vii) of the ITA 1961, the tax payer carrying on business is entitled to a deduction, in the computation of 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 sub-section (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 debt(s) 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(1)(vii) relating to allowance of*

the bad debt(s). In other words, the scheduled commercial banks would 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 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).

46. Accordingly, the above question is answered in the affirmative, i.e., in favour of the assessee(s). For the above reasons, I agree that the appeals filed by the assessees stand allowed and the appeals filed by the Revenue stand dismissed with no order as to costs."

49. In this view of the matter and by respectfully following the decision of the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd vs. CIT (Supra), we direct the Assessing Officer to delete the addition made towards bad debts written off in respect of non-rural branches u/s 36(1)(vii) of the I.T. Act, 1961 for Rs.166,35,33,701/-."

52. In this view of the matter and by respectfully following the decision of the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd vs. CIT (Supra), we direct the Assessing Officer to delete the addition made towards bad debts written off in respect of non-rural branches u/s 36(1)(vii) of the I.T. Act, 1961 for Rs.329,62,82,921/-."

15.1 On perusal of above, we found that, the Tribunal relying on the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. Vs. CIT (supra) has held the issue in favour of the assessee. We also found that, an amendment has been brought into the Act in the form of insertion of Explanation-2 to section 36(1)(vii) of the Act after the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. Vs. CIT (supra). We also found that, it was not specifically brought by the revenue to the notice of the Tribunal that, allowing the deduction u/s.36(1)(vii) of the Act without reducing the same from the balance of provision for bad and doubtful debts created u/s.

36(1)(viia) of the Act, will amount to double deduction in the hands of the assessee and to avoid such double deduction Explanation-2 to section 36(1)(vii) has been inserted into the Statute. Therefore, in our opinion, in earlier decision, this Tribunal has given their findings without considering the issue on double deduction. We have also gone through the Explanation 2 inserted in section 36(1)(vii) w.e.f. 01.04.2014 which is to the following effect :

> *" **36.** (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—*
>
> ***(i)*** *……*
>
> ***(ii)*** *…….*
>
> *…….*
>
> ***(vii)*** *subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year:*
>
> *Provided that in the case of an assessee to which clause (viia) applies, the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under that clause:*
>
> *Provided further that where the amount of such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof becomes irrecoverable or of an earlier previous year on the basis of income computation and disclosure standards notified under sub-section (2) of section 145 without recording the same in the accounts, then, such debt or part thereof shall be allowed in the previous year in which such debt or part thereof becomes irrecoverable and it shall be deemed that such debt or part thereof has been written off as irrecoverable in the accounts for the purposes of this clause.*
>
> *Explanation 1.—For the purposes of this clause, any bad debt or part thereof written off as irrecoverable in the accounts of the assessee shall*

not include any provision for bad and doubtful debts made in the accounts of the assessee.

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

15.2 On perusal of the above, we found that, it has been specifically mentioned under Explanation-2 to section 36(1)(vii) of the Act, that the provision of bad and doubtful debts created u/s.36(1)(viia) of the Act is related to all type of advances including rural advances. We also found that Explanation 2 has been inserted in section 36(1)(vii) after the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. Vs. CIT (supra). Therefore, we are of the considered opinion that, the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. Vs. CIT (supra), which is prior to the insertion of the Explanation 2 to section 36(1)(vii) of the Act is not applicable to the case of the assessee after insertion of Explanation 2 to section 36(1)(vii) of the Act. If we accept the contention of the Ld. AR, then it would amount to allowing of double deduction in the hands of the assessee. However, on perusal of above, we do not find that the allowance of double deduction is the intention of the statute. Accordingly, the assessee's claim under section 36(1)(vii), without setting off the inadmissible provision created for non-rural advances, cannot be sustained.

15.3 Otherwise also, we have gone through the decision of Hon'ble Supreme Court in Catholic Syrian Bank Ltd. v. CIT (2012) 343 ITR 270 (SC), wherein at para no. 41 to para no. 46 of the order, the Hon'ble Supreme Court has as under :

"41. To conclude, we hold that the provisions of sections 36(1)(vii) and 36(1)(viia) of the Act are distinct and independent items of deduction and operate in their respective fields. The bad debts covered it in debts, other than those for which the provision is made under clause (viia), winder covered under the main part of section 36(1)(vi),

while the proviso will operate in cases witten clause (viia) to limit deduction to the extent of difference between the debt or part thereof written off in the previous year and credit balance in the provision for bad and doubtful debts account made under clause (viia). The proviso to section 36(1)(vi) will relate to cases covered under section 36(1)(viia) and has to be read with section 36(2)(v) of the Act. Thus, the proviso would not permit the benefit of double deduction, operating with reference to rural loans while, under section 36(1)(vii, the assessee would be entitled to general deduction upon an account having become bad debt and being written off as irrecoverable in the accounts of the assessee for the previous year. This, obviously, would be subject to satisfaction of the requirements contemplated under section 36(2).

42. Consequently, while answering the question in favour of the assessee, we allow the appeals of the assessees and dismiss the appeals preferred by the Revenue. Further, we direct that all matters be remanded to the Assessing Officer for computation in accordance with law, in the light of the law enunciated in this judgment.

43. S. H. Kapadia C. J. I.— have gone through the judgment of my esteemed brother, Swatanter Kumar J. and I agree with the conclusions contained therein. However, I would like to give my own reasons.

The question for our consideration is - whether, on the facts and circumstances of the case, the assessee(s) is eligible for deduction of the bad and doubtful debts actually written off in view of section 36(1)(vii) which limits the deduction allowable under the proviso to the excess over the credit balance made under clause (viia) of section 36(1) of the Income- tax Act, 1961 (ITA" for short)?

45. Under section 36(1)(vii) of the Income-tax Act, 1961, the taxpayer carrying on business is entitled to a deduction, in the computation of 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 debts) 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 sub-section (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 Income-tax 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 debts) is distinct and independent of the provisions of section 36(1)(vii) relating to allowance of the bad debts). In other words, the scheduled commercial banks would continue to get the full benefit of the write off of the irrecoverable debts) under section 36(1)(vii) in addition to the benefit of deduction for the provision made for bad and doubtful debts) under section 36(1)(viia). A reading of the Circulars issued by Central Board of Direct Taxes indicates that normally a deduction for bad debts) can be allowed only if the debt is written off in the books as bad debts). ***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 the 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, the Central Board of Direct Taxes itself has recognized the position that a bank would be entitled to both the deductions, 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 debts) 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 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 (via) applies.* ***Clause (Viia) applies only to rural advances.*** *This has been explained by the Circulars issued by the Central Board of Direct Taxes. Thus, the proviso indicates that it is limited in its application to bad debts) arising out of rural advances of a bank. It follows that if the amount of bad debts) actually written off in the accounts of the bank represents only debts) 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).*

46. Accordingly, the above question is answered in the affirmative, i.e., in favour of the assessee(s). For the above reasons, I agree that the appeals filed by the assessees stand allowed and the appeals filed by the Revenue stand dismissed with no order as to costs."

15.4 On perusal of above we found that, the reliance by the assessee on Catholic Syrian Bank Ltd. is misplaced. That decision was rendered in a situation where provision u/s 36(1)(viia) of the Act was created in respect of rural advances only, and deduction u/s 36(1)(vii) of the Act was claimed in respect of write off of advances related to non-rural advances. In that case no deduction was claimed by the assessee u/s 36(1)(viia) of the Act on account of non-rural advances. The Hon'ble Supreme Court did not permit any deduction under section 36(1)(viia) in respect of non-rural advances, nor was such a situation before the Court. In the present case, the assessee has already claimed deduction 36(1)(viia) of the Act by creating provision for non-rural advances and has simultaneously wants to claim write-off of non-rural debts as deduction again u/s 36(1)(vii) of the Act. This results in an impermissible double benefit, and such a provision is not allowable under the law. Accordingly, the assessee's claim u/s 36(1)(vii) of the Act, without setting off

the same against the provision created for non-rural advances, cannot be sustained.

15.5 Accordingly, the additional ground raised by the assessee is dismissed.

16. In the result, the appeal of the assessee in ITA No. 193/Hyd/2019 is partly allowed.

ITA No.316/Hyd/2019 (Revenue's appeal)

17. The revenue has raised the following grounds :

> *" 1. Commissioner (Appeals) erred in law in directing the A.O to restrict the disallowance to 2% of exempt income earned which is not supported by sec. 14A r.w.Rule 8D and CBDT's Circular No.5/2014 dated 11-02-2014.*
>
> *2. Commissioner (Appeals) erred in deleting the addition of Rs.140.54 Cr. made on a/c of provisions towards wage arrears of employees treating it as ascertained liability based the incorrect observation that assessee bank started making wage payments during the asst. year 2015-16, where as the same were started in the Asst. Year 2016-17.*
>
> *3. Commissioner (Appeals) erred in concluding that the provisions towards wages is an ascertained liability even though the same was unquantifiable till the end of the Asst. Year under consideration.*
>
> *4. Commissioner (Appeals) erred in not providing an opportunity to A.O to offer his comments on wage agreement copy which was never produced before him especially when it formed basis for coming to conclusion regarding crystallization of liability.*
>
> *5. Commissioner (Appeals) erred in directing the A.O to re-workout the disallowance of depreciation on investments Rs.1,20,23,01,307/- wrt 'HTM' category of securities holding them to be stock in trade.*
>
> *6. Commissioner (Appeals) erred in directing the A.O to re-workout the disallowance of depreciation on investments Rs. 1,20,23,01,307/- wrt 'HTM' category securities without verifying from the records of bank the purpose for which they were purchased by bank initially to determine nature of securities whether they are in nature of stock in trade or investments.*

7. Commissioner (Appeals) erred in directing the A.O to re-workout the disallowance of depreciation on investments Rs.1,20,23,01,307/- wrt 'HTM' category of securities without calling for details of re- categorisation of securities made by bank during the year under consideration i.e. from AFS to HTM, HFT to HTM etc.

8. Commissioner (Appeals) erred in directing the A.O to re-workout the disallowance of depreciation on investments Rs.1,20,23,01,307/- wrt 'HTM' category of securities without verifying whether entire 'HTM'category of securities are held to meet SLR purposes or not.

9. CIT(A) erred in ignoring the fact that Revenue's appeal on identical issue in assessee's own case for A.Y. 2006-07 is pending adjudication Hon'ble High Court.

10 Any other ground that may be urged at the time of hearing."

18. The ground no.1 of revenue relates to addition of Rs.8,94,56,085/- u/s. 14A of the Act made by the Ld. AO on account of disallowance of expenditure relatable to exempted income.

19. In this regard, the Ld. DR submitted that the assessee had suo moto disallowed an amount of Rs.120,23,01,307/- u/s.14A of the Act representing 2% of the exempted income earned during the year under consideration. During the assessment proceedings, the Ld. AO found that the assessee had invested an amount of Rs.315,77,04,000/- in shares and other instruments. Therefore, the Ld. AO calculated the amount of disallowance u/s.14A r.w. Rule 8D at Rs.8,94,56,085/- and added the same in the hands of the assessee. However, the Ld. CIT(A) relying on the decision of this Tribunal in assessee's own case for A.Ys. 2008-09 to 2011-12 restricted the disallowance to 2% of exempt income. The Ld. DR submitted that, the decision of Tribunal in assessee's own case for A.Ys. 2008-09 to 2011-12 was based on the facts that all the investments of the assessee were stock in trade. However, in fact, the entire investment made by the assessee are not in the nature of stock in trade.

The assessee has invested in the shares of subsidiary companies / joint ventures which cannot be treated as held as stock in trade. The same facts were not brought in the knowledge of Tribunal during the appellate proceedings for the A.Ys. 2008-09 to 2011-12 (supra). Therefore, the earlier decision of Tribunal was based on incomplete facts. The Ld. DR also contended that as the assessee had invested in shares of subsidiary company/joint venture, which are not in the nature of stock in trade, the amount of the disallowances should be calculated in accordance with section 14A r.w. Rule 8D. Finally, the Ld. DR prayed that the matter may be set aside to the file of Ld. AO with a direction to verify and determine the nature of investment and compute the disallowances accordingly.

20. Per contra, the Ld. AR, in their first argument submitted that, the assessee had already made a reasonable suo moto disallowance u/s.14A of the Act amounting to Rs.120,23,01,307/- and the Ld. AO failed to record proper satisfaction regarding the incorrectness of this claim. Therefore, in the absence of satisfaction of Ld. AO, the addition made by the Ld. AO cannot be sustained under the law. In their alternate argument, the Ld. AR contended that all the investments of the assessee are held as stock in trade. The Ld. AR also submitted that, this issue is covered by the decision of this Tribunal in assessee's own case for A.Ys. 2013-14 & 2014-15 (supra), wherein the ITAT under the identical issue has deleted the addition made by the Ld. AO. He further submitted that, as per the settled judicial precedence, disallowances u/s.14A of the Act does not apply to investment held as stock in trade. Therefore, the Ld. AR finally submitted that the disallowances made by the Ld. AO is not sustainable under the law and order of Ld. CIT(A) should be upheld.

21. We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. We have gone through para nos.4 to 4.6 of the order of Ld. AO which is to the following effect :

" III. Disallowance expenses relatable to exempted u/s 14A:

4. From the balance sheet of the assessee, it is found that the assessee invested an amount of Rs.315,77,04,000/-in shares and other instruments. The assessee booked interest expenditure amounting to Rs.11830,57,12,000/- on deposits. It is also found that the assessee earned earned interest of Rs.16368,60,44,000/-.

4.1 During the course of assessment proceedings the assessee was asked to explain why the disallowance u/s 14A shall not be made on the investments. The assessee stated that it has computed as per the provisions of the IT Act.

4.2 The submission made by the assessee has been carefully considered. This issues involving Section 14A have been made clear by the CBDT Circular 5 of 2014 dated 11.02.2014. The relevant extract is as under –

'The Board has clarified that the expenses which are relatable to earning of exempt income, have to be considered for disallowance, irrespective of the fact whether any such income has been earned during the financial year under consideration or not. Also it is not necessary that exempt income should necessarily be included in a particular year's income for disallowance to be triggered. Since, section 14A of the Act does not use the word "income of the year" but "income under the Act". Therefore, for invoking disallowance u/s 14A, it is not material that assessee should have earned such exempt income during the financial year under consideration. The Rule 8D r.w.s. 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income.'

4.3 It is pertinent to mention that section 14A of the Act was introduced by the Finance Act, 2001 with retrospective effect from 01.04.1962. The purpose for introduction of section 14A with retrospective effect since inception of the Act was clarified vide Circular No.14 of 2001 and it is reproduced as under:

"Certain incomes are not includible while computing the total income, as these are exempt under various provisions of the Act. There have been cases where deductions have been claimed in respect of exempt income. This in effect means that the tax incentive given by way of exemptions to certain categories of income is being used to reduce also the tax payable on the non-exempt income by debiting the expenses incurred to earn the exempt income against taxable income. This is against the basic principle of taxation whereby only the net income ie., gross income minus expenditure, is taxed. On the same analogy, the exemption is also in respect of the net income. Expenditure incurred can be allowed only to the extent they are relatable to the earning of taxable income"

4.4 Thus, Legislative intent is to allow only that expenditure which is relatable to earning o income and it therefore follows that the expenses which are relatable to earning of exempt income have to be considered for disallowance, irrespective of the fact whether any such income has been earned during the financial year or not.

4.5 The above position is further clarified by the usage of term' includible' in the heading to section 14A of the Act and also the heading to Rule 8D of IT Rules, 1962 which indicates that it is not necessary that exempt income should necessarily be included in a particular year's income, for disallowance to be triggered. Also, section 14A of the Act does not use the word "income of the year" but "income under the Act". This also indicates that for invoking disallowance under section 14A, it is not material that assessee should have earned such exempt income during the financial year under consideration.

4.6 In view of the above discussions and also having regard to the accounts of the assessee, the correctness of the claim of the assessee in respect of such expenditure in relation to exempt income in not proved beyond doubt. Accordingly, the disallowance u/s 14A is to be determined as per Rule 8D. As mentioned above, the interest earned by the assessee during the previous year assessee has booked interest expenditure amounting to Rs.11830,57,12,000/- on deposits. It is also found that the assessee earned interest of Rs.16368,60,44,000/-. Hence, the net interest expenditure incurred by the assessee is negative. Therefore, no amount is worked out under clause (ii) of Rule 8D. However, Clause (iii) is applicable in the case of the assessee. The amount of disallowance u/s 14A is calculated as under-

i) 0.5% of average value of exempt investment = 0.5% of Rs. 1789,12,17,000/-

= Rs.894,56,085/-

Investments	**Shares**	**Others**	**Total**
As on 31.03.2015	315,77,04,000	1395,64,17,000	1711,41,21,000
As on 31.03.2014	293,71,37,000	1573,11,76,000	1866,83,13,000
Total	609,48,41,000	2968,75,93,000	3578,24,34,000
Average	304,74,20,500	1484,37,96,500	1789,12,17,000

Accordingly, an amount of Rs. 894,56,085/- is added to the total income of the assessee u/s 14A of the Act for A.Y 2015-16.

Addition Rs. 8,94,56,085/-

21.1 On perusal of above, it is evident that at para no.4.1, the Ld. AO has specifically asked the assessee to explain why disallowances u/s.14A of the Act should not be made. Further, at para no.4.2, the Ld. AO has recorded that the submissions of the assessee are duly considered and in para no.4.6, the Ld. AO noted that upon verification of accounts, the correctness of the assessee could not be established beyond doubt. Based on such findings, the Ld. AO proceeded to compute the disallowances in accordance with Rule 8D. Therefore, in our considered opinion, the observations of Ld. AO in para nos.4.1, 4.2 and 4.6 sufficiently establish the dissatisfaction of Ld. AO qua the claim of the assessee, justifying the invocation of Rule 8D on the part of the Ld. AO. Accordingly, the argument of the Ld. AR that no satisfaction was recorded by Ld. AO is devoid of merit and stands rejected.

21.2 Now coming to the merits of the issue, the Ld. AR has contended that all the investments are held as stock in trade and the issue is squarely covered by the decision of this Tribunal in assessee's own case for A.Ys. 2013-14 & 2014-15 (supra), wherein at para no. 36 and para no. 37, the ITAT has held as under :

> *" 36. We, find that an identical issue has been considered by the Tribunal in assessee's own case in ITA No.1018/Hyd/2017 for the A.Y.2012-13, where the issue has been discussed in detail in light of the decision of Hon'ble Supreme Court in the case of Maxopp Investments Ltd vs. CIT reported in (2018) 402 ITR 640 (S.C). The relevant findings of the Tribunal are as under:*
>
> *"42. We have gone through the reasons given by the Assessing Officer and the learned CIT (A) to uphold the addition towards disallowance of expenditure u/s 14A of the Act, r.w.r 8D of IT Rules, 1962, in light of argument of the learned Counsel for the assessee along with certain judicial precedents, including the decision of the Hon'ble Supreme Court in the case of Maxopp Investments Ltd vs. CIT (Supra). The Hon'ble Supreme Court has discussed this issue at length in the case of Maxopp Investments Ltd vs. CIT (Supra) in Paras 36 to 41 and more particularly in Para No.39, where it is clearly discussed the issue of applicability of provisions of section 14A r.w.r*

8D in case of dividend income earned by any assessee on investment held as stock-in-trade. The Hon'ble Supreme Court after considering relevant facts held that in those cases where shares are held as stock-in-trade, the main purpose is to trade in those shares and earn profits therefrom. However, we are not concerned with those profits which would naturally be treated as income under the head profits and gain from business and profession. What happens is that in the process when the shares are held as stock-in-trade, certain dividend income is also earned, though incidentally which is also income. However, by virtue of section 10(34) of the I.T. Act, 1961, this dividend income is not to be included in the total income and is exempt from tax. This triggers the applicability of section 14A of the Act which is based on the theory of apportionment of expenditure between taxable and non-taxable income as held in Walfort Shares and Stock vs. CIT(Supra). Therefore, to that extent depending upon facts of each case, the expenditure incurred in acquiring those shares will have to be apportioned. The sum and substance of the findings of the Hon'ble Supreme Court is that, once there is a dividend income from shares held as stock-in-trade which is claimed as exempt by virtue of section 10(34) of the I.T. Act, 1961, then the expenditure incurred relatable to said income should be apportioned. For better understanding, the relevant finding of the Hon'ble Supreme Court is reproduced hereunder:

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

would also be applicable to all banks/commercial banks, to which Banking Regulation Act, 1949 applies.

38) From this, Punjab and Haryana High Court pointed out that this circular carves out a distinction between 'stock-in-trade' and 'investment' and provides that if the motive behind purchase and sale of shares is to earn profit, then the same would be treated as trading profit and if the object is to derive income by way of dividend then the profit would be said to have accrued from investment. To this extent, the High Court may be correct. At the same time, we do not agree with the test of dominant intention applied by the Punjab and Haryana High Court, which we have already discarded. In that event, the question is as to on what basis those cases are to be decided where the shares of other companies are purchased by the assessees as 'stock-in-trade' and not as 'investment'. We proceed to discuss this aspect hereinafter.

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

40) We note from the facts in the State Bank of Patiala cases that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8D of the Rules and holding that section 14A of the Act would be applicable. In spite of this exercise of apportionment of expenditure carried out by the AO, CIT(A) disallowed the entire deduction of expenditure. That view of the CIT(A) was clearly untenable and rightly set aside by the ITAT. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of the ITAT, though we are not subscribing to the theory of dominant intention applied by the High Court. It is to be kept in mind that in those cases where shares are held as 'stock-in-trade', it becomes a business activity of the assessee to deal in those shares

as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits. The situation here is, therefore, different from the case like Maxopp Investment Ltd. where the assessee would continue to hold those shares as it wants to retain control over the investee company. In that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee. In contrast, where the shares are held as stockin-trade, this may not be necessarily a situation. The main purpose is to liquidate those shares whenever the share price goes up in order to earn profits. In the result, the appeals filed by the Revenue challenging the judgment of the Punjab and Haryana High Court in State Bank of Patiala also fail, though law in this respect has been clarified hereinabove.

41) Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO."

43. In the present case, the assessee contended that although the Hon'ble Supreme Court upheld the theory of apportionment of expenditure towards taxable and non-taxable income, but said findings is in the context of facts of the case of Maxopp Investments Ltd vs. CIT (Supra), whereas in Para 40 of the said judgment, it has upheld the decision of the Hon'ble Punjab & Haryana High Court in the case of State Bank Patiala vs. CIT(supra), where the ratio was that provisions of section 14A r.w.r 8D is not applicable when shares are held as stock-in-trade by a Bank. Although, the Hon'ble Supreme Court has upheld the decision of the Hon'ble Punjab & Haryana High Court and applicability of section 14A r.w.r 8D and the Assessing Officer has applied the provisions of section 14A and restricted the disallowance to the amount which was claimed as exempt, however, the learned CIT (A) disallowed the entire deduction of expenditure. That view of the learned CIT (A) was clearly untenable as rightly set aside by the ITAT.

Therefore, on fact, Punjab & Haryana High Court has arrived at a correct conclusion by affirming the view of the ITAT. In other words, even in case before the Hon'ble Punjab & Haryana High Court, the issue was applicability of provisions of section 14A r.w.r 8D of the I.T. Act, 1961 and the same has been affirmed by the Hon'ble Supreme Court. The appellant claims that in view of the discussion of the Hon'ble Supreme Court in Para 41 of the judgment, provisions of section 14A r.w.r 8D is not applicable when shares are held as stock-in-trade by a Bank. Although we are unable to agree with the said argument of the learned Counsel for the assessee, but to give another opportunity to the assessee to explain its case before the Assessing Officer in light of the decision of the Hon'ble Supreme Court in the case of Maxopp Investments Ltd vs. CIT (Supra), State Bank Patiala vs. CIT (Supra), PCIT vs. Punjab Sindh Bank and other decisions relied upon by the assessee, we set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to reexamine the issue in light of our discussion given herein above and also the decisions cited by the assessee and considered by us.'

37. In view of this matter and considering the facts of the case and also by following the decision of ITAT, in assessee's own case for the A.Y.2012-13, we are of the considered view that the issue needs to go back to the file of the AO for reconsideration. Thus, we set aside the order of the Ld.CIT(A) on this issue and restore the issue back to the file of the AO and also direct the AO to reconsider the issue of disallowance u/s 14A of the Act in light of our discussion given herein above and also by considering the decision of ITAT, Hyderabad benches in assessee's own case for the A.Y.2012-13 and recompute the disallowance as per law."

21.3 On perusal of above, we found that the Tribunal had setaside the issue to the file of Ld. AO for reconsideration in the light

of the findings of the Tribunal. We also observed that the Tribunal has given the findings on the basis of the facts that the entire investments of the assessee are in the nature of stock in trade. However, the Ld. DR invited our attention to page no.209 of the paper book wherein the assessee has shown Rs.6,56,18,000/- as income by way of dividend from subsidiary company / joint ventures. On perusal of page no.209 of the paper book, it is abundantly clear that the assessee has invested in subsidiary company/joint ventures also. The investments in subsidiary company / joint ventures are generally made for

strategic business purposes and cannot be treated as held for trading. Therefore, we are in agreement with the submission made by the Ld. DR that some part of the investments of the assessee are not in the nature of stock in trade. Therefore, in the light of above observation, we set aside the issue to the file of Ld. AO with a direction to verify the nature of investment and determine which investment is in the nature of stock in trade and which is not. The Ld. AO shall reconsider the issue on disallowance u/s 14A of the Act on the investment which are in the nature of stock in trade in accordance with the directions given by this Tribunal in assessee's own case for A.Ys. 2013-14 & 2014-15 (supra). However, the Ld. AO shall recompute the disallowance u/s.14A r.w. Rule 8D in respect of investments that are not in the nature of stock in trade. Accordingly, ground no.1 of the revenue is partly allowed for statistical purposes.

22. Ground nos.2 to 4 of revenue is on account of disallowance made by Ld. AO towards wage arrears of Rs.140.54 Crores. The issue is covered by the decision of this Tribunal in assessee's own case for A.Ys.2013-14 and 2014-15 (supra) wherein, this Tribunal at para nos.42 to 45 of its order has decided this issue in favour of the assessee as under :

> *" 42. The next issue that came up for our consideration from Ground No.5 of assessee's appeal is with regard to disallowance of Rs.50,00,00,000/- towards provision for liability arising on account of revision of wages payable to employees. The AO has disallowed a sum of Rs.50,00,00,000/- towards provision created for wage arrears on the ground that the assessee has made adhoc provision for wage arrears even though the arrears are not due to the employees. It was the argument of the Ld. counsel for the assessee that in banking sectors the wages of the employees are revised periodically and in anticipation of wage arrears, the assessee has made adhoc provision for wage arrears. The assessee further submitted that this issue is squarely covered in favour of the assessee by the decision of Hon'ble Delhi High Court in the case of CIT Vs. Bharat Heavy Electricals (2013) 352 ITR 88, where the Hon'ble Delhi High Court held that once there is no dispute with regard to terms*

of employment between the workers and officers with the bank and dispute is only with regard to quantification of the compensation of wages, then provision created by the assessee for wage arrears in anticipation for revision in pay cannot be treated as unascertained liability. Therefore, he submitted that the additions made by the AO should be deleted.

43. The Ld.DR on the other hand supporting the order of the Ld.CIT(A) submitted that the assessee has made adhoc provision for wage arrears even though the negotiations with the employees and officers are not in progress. Further, the assessee has not quantified the exact amount of arrears payable to employees. In the absence of any scientific method for arrears payable to employees, mere adhoc provision in the books of accounts cannot be held to be allowable deduction. The Ld.CIT(A) after considering the relevant facts has rightly sustained the additions made by the AO and their order should be upheld.

44. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the assessee is a banking company and is bound by bi-partite agreement with the employees and the officers for payment of wages in terms of agreement between workmen and All India Banking Officers Association from time to time. It is also not in dispute that wages of employees are revised from time to time as per bi-partite agreement with the participating banks and employee's associations and the last of such wage settlement was entered into on 31.10.2012. According to the assessee, from 01.11.2012 a new wage settlement was entered into between the parties for which negotiations have commenced during the A.Y. 2013-14 and were in progress. The Ld. counsel for the assessee further contended that the employees were demanding increase of 19.5% and the Indian Bank Association has accepted for increase of 13% which was under further negotiations. Since the five-month period in the financial year 2012-13 relevant to A.Y.2013-14 was covered by such settlement, the assessee has made provision of Rs.50,00,00,000/- in the account for the F.Y.2012-13 towards wage revision which was under negotiation. In our considered view, it is an admitted fact that in the banking industry, the wages of the employees and officers are revised periodically and on the basis of bi-partite agreements between the parties. The assessee has made provision in the books of accounts based on negotiations between the employees and the Association and also based on earlier settlements. Therefore, we are of the considered view that the provision created by the assessee in the books of accounts towards wage arrears is on the basis of scientific methods and on historical trends and thus, the provision cannot be treated as unascertained liability. Further, this issue is also covered in favour of the assessee by the decision of Hon'ble Delhi High Court in the case of CIT Vs. Bharat Heavy Electricals Ltd [2013] 352 ITR 88 (Del), where the Hon'ble High Court has considered an identical issue of provision made for wage arrears and after considering the

relevant facts, held that once provision is on the basis of scientific method and historical trends, then the same cannot be treated as unascertained liability. Similar view has been taken by the Hon'ble High Court of Rajasthan in the case of Principal Commissioner of IT Ajmer Vs. Erstwhile Raj Gramin Bank, Alwar 2017(11) TMI 129, where the Hon'ble High Court by following the decision of Hon'ble Delhi High Court in the case of CIT Vs. Bharat Heavy Electricals Ltd. (supra) allowed the provision created for wage settlements.

45. In view of this matter and by respectfully following the decision of Hon'ble Delhi High Court and Rajasthan High Court in the cases cited above, we are of the considered view that the AO and the Ld.CIT(A) erred in disallowing the provision created for wage arrears. Thus, we set aside the order of the Ld.CIT(A) on this issue and direct the AO to delete the additions made towards disallowance of provisions for wage arrears."

23.1 On perusal of above, we found that, this Tribunal has held that the provision created by the assessee in the books of account towards wage arrears is on the basis of scientific method and on historical trend. Hence, the provision cannot be treated as uncertain liability. Accordingly, the Tribunal has directed the Ld. AO to delete the addition made on account of provision for wage arrears. Respectfully following the decision of this Tribunal in assessee's own case for A.Ys. 2013-14 & 2014-15 (supra), we hold that the provision created by the assessee in the books of account for wage arrears is on the basis of scientific method and on historical trend and thus the provisions cannot be treated as uncertain liability. Accordingly, we direct the Ld. AO to delete the addition made on account of provision for wage arrears. Accordingly, ground no.2 to 4 of the revenue is dismissed.

24. Ground nos.5 to 9 of the revenue are related to disallowances made by the Ld. AO on account of claim of depreciation on investment amounting to Rs.120,23,01,307/-.

25. In this regard, the Ld. DR submitted that, the assessee has grouped its investments under three categories i.e. Held Till Maturity ("HTM"), Available

For Sale ("AFS") and Held For Trading ("HFT"). The Ld. DR further submitted that, the assessee has valued the investments under all the three categories at lower of cost or market value. The Ld. DR also submitted that, during the assessment proceedings, the Ld. AO observed that while the assessee had valued all its investments at lower of cost or market rate, however, the investment under HTM category should have been valued at cost. The Ld. AO also observed that while valuation of the investment under the category of AFS and HFT, the assessee only considered the decline in the value of investment and did not consider the appreciation in the value of investment. Therefore, the Ld. AO did not find the valuation made by the assessee as per law and accordingly, disallowed the depreciation claimed by the assessee. The Ld. DR also submitted that, the Ld. CIT(A) relying on the decision of this Tribunal in assessee's own case for A.Y. 2006-07 and decided the issue in favour of the assessee.

25.1 The main argument of the Ld. DR before us are in two folds. (i) In the first argument, the Ld. DR submitted that, the assessee has claimed the depreciation in case there is decline in the value of the investment, but where there is appreciation in the value of any investment, the assessee has not considered the same. Accordingly, the method of valuation adopted by the assessee ignoring the appreciation in the value of investment is not in accordance with law. (ii) In the alternate argument, the Ld. DR submitted that, as per their argument submitted in support of ground no.1, all the investments are not in the nature of stock in trade. Accordingly, the method of valuation adopted by the assessee for stock in trade cannot be equally applied to the investments which are not in the nature of stock in trade. The investments which are not in the nature of stock in trade are liable to be valued at cost. The Ld. DR also submitted that, this Tribunal in assessee's own

case for A.Y. 2006-07 has decided the issue in favour of the assessee on the assumption that all the investments of the assessee are in the nature of stock in trade, however, which is not true. Therefore, the decision of this Tribunal in assessee's own case for A.Y. 2006-07, cannot be applicable to the present case. Accordingly, the Ld. DR submitted that, the valuation of the investments are required to be recalculated and the issue is liable to be set aside to the file of Ld. AO for verification.

26. Per contra, the Ld. AR submitted that they have treated all the investments as stock in trade and as per the accepted accounting principle, the stock in trade are to be valued at lower of cost or marked value. Accordingly, the appreciation if any, are not considered for the purpose of valuation as per the accepted accounting principle. The Ld. AR further submitted that, the same issue has been decided by this Tribunal in assessee's own case for A.Ys. 2013-14 & 2014-15 (supra), wherein the Tribunal has decided the issue in favour of the assessee. Accordingly, the Ld. AR prayed before the bench to upheld the order of Ld. CIT(A).

27. We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. We have gone through the decision of this Tribunal in assessee's own case for A.Ys. 2013-14 and 2014-15 (supra), wherein this Tribunal has decided the issue in para nos.55 to 61 of its order, which is to the following effect :

> *" 55. The next issue that came up for consideration from Ground No.(iii) and (iv) of Revenue's appeal is deletion of addition of Rs.1445,83,26,590/- made by the Assessing Officer on account of disallowance of differential amount of depreciation on investments claimed by the assessee bank.*

56. The appellant bank has claimed depreciation in respect of investments held in Available For Sale (AFS) category for Rs.1,79,73,20,381/- crores and investments held in Held to Maturity (HTM) category for Rs.1266,10,06,209/- crores, total amounting to Rs.1445,83,26,590/-. The assessee claimed depreciation on investment based on scrip wise valuation of securities on the ground that the investment of appellant bank is stock-in-trade and further, any diminution in value of the said stock in trade should be treated as loss or depreciation. The Assessing Officer disallowed the loss claimed for Rs.179,73,20,381 in respect of AFS securities by holding that the assessee has claimed only diminution in value of securities, whereas, the net appreciation, if any has been ignored. Further, the Assessing Officer has also disallowed depreciation claimed on securities held under HTM securities by holding that the HTM securities do not constitute stock-in-trade and these securities are to be valued at cost and not at cost or market price, whichever is lower.

57. On appeal, the Ld. CIT (A) by following the decision of the ITAT Hyderabad Benches in appellant's own case for A.Y 2006- 07 deleted the addition made by the Assessing Officer.

58. The Ld. DR submitted that the Ld. CIT (A) is erred in deleting the addition made by the Assessing Officer towards diminution in value of investment without appreciating the fact that the said diminution in the value of investment was not provided for in the books of account of the assessee bank.

59. The Ld. Counsel for the assessee, on the other hand, supporting the order of the Ld. CIT (A) submitted that this issue is squarely covered in favour of the assessee by the decision of the ITAT Hyderabad Benches in the appellant's own case for the A.Y 2006-07, where under identical set of facts, the Tribunal held that the deduction towards diminution in value of investment is allowable deduction.

60. We have heard both parties, perused the material available on record and gone through the orders of the authorities below. We find that, this issue is squarely covered in favour of the assessee by the decision of the ITAT Hyderabad Benches, in appellant's own case for the A.Y 2012-13 in ITA No 1230/Hyd/2017, where the

Tribunal by following its earlier order for A.Y 2006-07 has deleted the addition made by the Assessing Officer. The relevant findings of the Tribunal are as under:

> *"5. After hearing the parties and perusing the record, we find that the issue under consideration is squarely covered by the decision of the coordinate bench of ITAT, Hyderabad in assessee's own case for AY 2006- 07wherein the coordinate bench held as follows:*
>
> > *"50. We are of the opinion that the assessee Bank is holding various Government Securities in order to comply with the statutory liquidated ratio. The bank would have to hold requisite percentage of deposits in the form of cash, gold, government or approved securities. The government securities held for the purpose of comply with the SLR has been held to be stock in trade and therefore value of the same as on 31st March has to be made and there is any depreciation the same should be allowed as a revenue deduction. However, the RBI has issued Circular wherein they have classified the investment made to comply with SLR requirement as `Held to maturity' (HTM), `Available for sale' (AFS) and `Held for Trade' (HFT). Based on the RBI Circular lower authorities came to the conclusion that investment in Government Securities which are classified under the head HTM cannot be considered as stock in trade and therefore depreciation in value of such securities cannot be allowed as a deduction. The Apex Court in the case of UCO Bank Ltd Vs CIT reported in 240 ITR 355 has held that value of the securities at cost or market value whichever is less should be accepted for income tax even if the banks in their books do not value on that basis. Therefore, it is an accepted proportion that investment made by the bank to comply with the SLR requirement would constitute their stock in trade and depreciation in value of the same is an allowable deduction.*
> >
> > *51. Respectfully following the decisions cited by the Ld. counsel for the assessee, we uphold the claim of the assessee and direct the AO to*

allow depreciation/fall in value of investment in Government Securities including those classified under HTM category. No doubt the value in opening stock in the next year would correspondingly be adjusted. This issue is decided in favour of the assessee."

6. Since the issue under consideration is identical to that of AY 2006-07 in assessee's own case, respectfully following the same we uphold the directions of Ld.CIT(A) with a direction to AO to follow the same in this year also as per the order of ITAT supra.. Accordingly, ground No. 2 raised by the revenue is dismissed."

61. In this view of the matter and by respectfully following the decision of the ITAT Hyderabad Benches in appellant's own case for the A.Y 2012-13, we are inclined to uphold the findings of the Ld. CIT (A) and reject the grounds taken by the Revenue."

27.1 On perusal of above, we found that, this Tribunal has given its findings relying on the facts that all the investments of the assessee are in the nature of stock in trade. However, as held by us at para no. 21.3 above, some investments of the assessee are not in the nature of stock in trade. Therefore, as far as the investments which are in the nature of stock in trade is concerned, relying on the above findings of this Tribunal, we hold that there is no infirmity in the method of valuation of stock in trade adopted by the assessee. Accordingly, the Ld. AO is directed to accept the same. So far as the investments which are not in the nature of stock in trade, the same is required to be valued at cost and no depreciation will be available on the same. Accordingly, the ground nos.5 to 9 of the revenue are partly allowed for statistical purposes.

28. Ground no.10 of the revenue is general in nature and is dismissed being not pressed by the revenue.

29. In the result, the appeal of revenue is partly allowed for statistical purposes.

30. To sum up, the appeal of the assessee and revenue are partly allowed for statistical purposes.

Order pronounced in the open Court on 21st April, 2025.

Sd/-	**Sd/-**
(VIJAY PAL RAO)	**(MADHUSUDAN SAWDIA)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Hyderabad.
Dated: 21.04.2025.

** Reddy gp*

Copy of the Order forwarded to :

1. Union Bank of India, Erstwhile Andhra Bank, 239, Vidhan Bhavan Marg, Nariman Point, Mumbai-400 021
2. ACIT, Circle 3(4), Mumbai./DCIT, Circle 1(1), Hyderabad.
3. Pr. CIT, Mumbai / Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard File.

BY ORDER,