IN THE INCOME TAX APPELLATE TRIBUNAL "C' BENCH MUMBAI

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA Nos.5900, 5958 & 5959/MUM/2024**
(**निर्धारण वर्ष /** Assessment Years : 2021-22, 2018-19 and 2013-14)

Assistant Commissioner of Income Tax -3(4), Mumbai	Vs.	**IDBI Bank Ltd**., Apulki Cornermenon, Piston Compound, TOAP 416122, Kolhapur Maharashtra
स्थायी लेखा सं./PAN No. : AABCI8842G		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

प्रत्याक्षेप सं../C.O. No.280/MUM/2024
(Arising out of ITA No. 5959/MUM/2024)
Assessment Year: 2013-14

IDBI Bank Ltd., Apulki Cornermenon, Piston Compound, TOAP 416122, Kolhapur Maharashtra	Vs.	**Assistant Commissioner of Income Tax -3(4),** Mumbai
स्थायी लेखा सं./PAN No. : AABCI8842G		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

निर्धारिती **की ओर से** /Assessee by	:	Shri C. Naresh, AR
राजस्व **की ओर से** /Revenue by	:	Shri R.A. Dhyani, CIT,DR

सुनवाई की तारीख / **Date of Hearing**	:	17.02.2025
घोषणा की तारीख/**Date of Pronouncement**	:	24.02.2025

आदेश / O R D E R

Per Prabhash Shankar, AM:

The above three appeals preferred by the Revenue and a Cross Objection preferred by the assessee emanate from the orders of the National Faceless Appeal Centre, Delhi(henceforth 'ld.CIT(A)'),

dated 13.09.2024 for A.Y.2021-22, dated 18.09.2024 for AY 2018-19 and dated 19.09.2024 for AY 2013-14, passed u/s 250 of the Income Tax Act,1961 (henceforth 'the Act'). The assessee is engaged in banking business. It has earned income from banking operations, treasury operations and other related services. Since most of the grounds of appeal are common for the above years with difference in figures only and also the fact that the appeals were heard together, they are being adjudicated issue wise vide this composite order for the sake of brevity.

BROKEN PERIOD INTEREST

(Common ground in AYs 2013-14/2018-19 and 2021-22)

> *i) "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of claim of* ***deduction of Broken Interest Period*** *without appreciating the fact that the Broken Period Interest forms a part of capital layout and cannot be claimed as Revenue expenditure?"*

2. This is a recurring issue in the case of the assessee which is a bank. The ld.AO has relied on the case of Vijaya Bank vs ACIT 187 ITR 541(SC) for the proposition that such interest is capital outlay and hence cannot be allowed as deduction.The ld.AR vide a written submission dated 18.02.2025 has pleaded that such kind of interest arises on account of purchase of securities held as stock in trade where such security is purchased in between the due dates of interest. Buying and selling of securities is a part of banking business as per Banking Regulations Act.It is submitted that the hon'ble Supreme Court in **Civil appeal no.1549 of 20026 in the**

case of Citi Bank and Bank of Rajasthan 469 ITR 280(SC), after considering its own decision in the case of Vijaya Bank(supra) clearly held that this interest paid by banks is allowable as deduction in computing the total income. He has also relied on the decision of the jurisdictional High Court in the case of **American Express Bank 258 ITR 601** which also distinguished the decision of Vijaya Bank.The ld.AR has also drawn attention to the consistent view taken by the jurisdiction ITAT, Mumbai bench in assessee's own case allowing the claim as revenue expenditure. He has referred to the last decision in its **appeal for AY 2020-21** in the co-ordinate Bench in its decision in **ITA 5250/Mum/2024** dismissed departmental appeal accordingly.The ld.CIT,DR has relied on the assessment order.

3. We have carefully perused the facts on record and have also gone into the cited decisions above and find that the issue n hand is squarely covered by the above decisions in favour of the assessee. Relevant para of the decision of hon'ble Supreme Court in the case of Bank of Rajasthan is extracted below for ready reference:

> *"25. Now, we come to other appeals which are part of this group. In Civil Appeal @Special Leave Petition (C) Nos.1445 1446 of 2021, the assessing officer held that the respondent Bank was liable to pay the broken period of interest as part of the price paid for the securities. Hence, a deduction on the said amount was disallowed. The assessee could not succeed before the CIT (Appeals). Before the Appellate Tribunal, reliance was placed on the decision of this Court in the case of Vijaya Bank Ltd.. The Tribunal observed that the assessing officer had treated the interest income earned by the respondent Bank on securities as income from other sources. The Tribunal observed that the investments in securities are in stock in trade, and this fact has been*

accepted in the past by the Income Tax department. It was held that the securities in the category of HTM were also held as stock in trade, and income/loss arising out of such securities, including HTM securities, has been treated as business income/loss. The Appellate Tribunal held that the interest for the broken period would be admissible as a deduction, and the High Court confirmed the same. We may note here that the Tribunal followed the decision of the Bombay High Court in the case of HDFC Bank Ltd. v. CIT11. We find no error in the view taken in this case."

3.1 Respectfully following the above decision on identical facts and consistent with the precedent, we do not find any reason to take a contrary view of the matter and accordingly, the decision on the ld.CIT(A) in favour of the assessee is upheld dismissing the ground in all the above AYs 2013-14/2018-19 and 2021-22.

4. Amortization of premium

(Common ground in AYs 2013-14,2018-19 and 2021-22)

ii) "Whether, on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is justified in deleting the Disallowances of ***amortization of premium*** *in respect of securities in HTM category?"*

5. According to the assessee, as per the directions of RBI had amortised the premium paid on purchase of securities over the remaining period to maturity. The AO had disallowed the sum of Rs. 181.80 crore on the ground that Income Tax Income cannot be computed based on RBI guidelines by placing reliance on the decision of Hon'ble Supreme Court in case of M/s. Southern Technologies Ltd. According to him as per the provisions of section 145, the said loss cannot be claimed. The ld.CITA) has allowed appeal of the assessee by placing reliance on his own predecessors orders as also the decisions of Hon'ble Income-tax Appellate Tribunal (ITAT) for earlier years wherein ITAT has upheld the order of the

CIT(A) wherein disallowance of amortization of premium in respect of securities in HTM category made by the AO was deleted.

6. In this regard, the assessee submitted that the above claim was made in accordance with the mandatory Income Computation and Disclosure Standards (ICDS) - VIII, Part B, dealing with securities held by scheduled banks, the Classification, Recognition and Measurement of Securities in accordance with the guidelines of RBI. Relevant extract of the same is as under:

"3. Securities shall be classified, recognised and measured in accordance with the extant guidelines issued by the Reserve Bank of India in this regard and any claim for deduction in excess of the said guidelines shall not be taken into account. To this extent, the provisions of Income Computation and Disclosure Standard VI on the effect of changes in foreign exchange rates relating to forward exchange contracts shall not apply."

6.1 The assessee submitted that it had strictly followed the guidelines issued by RBI in this regard. Further, when the securities are sold the cost is computed after reducing the amount of amortisation and hence the profit offered to tax at the time of sale is higher to that extent. Accordingly, the said amortisation has to be allowed as deduction. Further the treatment is also in accordance with **CBDT instruction no. 17 dated 26.11.2008** which is binding on the department.This issue has been decided in favour of the assessee by Jurisdictional High Court of Bombay in the case of **HDFC Bank (366 ITR 505).** Further,this issue was specifically decided in favour of the assessee by the co-ordinate bench in **ITA Nos. 2937 and 2919/Mum/20222 and 5250/Mumb/2024** and also for AY 2017-18 in **ITA 2937/MUM/2022 &**

2919/MUM/2022 dated May 11, 2023. The ld.CIT,DR vide has relied on the assessment order.

7. Respectfully following the above decision on identical facts and consistent with the precedent, we do not find any reason to take a contrary view of the matter and accordingly, the decision on the ld.CIT(A) in favour of the assessee is upheld dismissing the ground in all the above AYs 2013-14/2018-19 and 2021-22.

Innovative Perpetual Debt Instrument

8. **Common ground in AYs 2013-14,2018-19 and 2021-22)**

iii)"Whether, on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is justified in deleting the Disallowance of interest expenses incurred in respect of ***Innovative Perpetual Debt Instrument*** *without appreciating the fact that interest paid on them does not fall under the purview of section 36(1)(iii) as the issuing of Innovative Perpetual Debt Instrument lacks the concept of borrowing?"*

9. The assessee claimed that above named bonds are in the nature of borrowing which is evident from the fact that it has only been shown as borrowing in Schedule 4 of the Annual Report. Further, the interest paid on the said bonds is debited to P&L A/c under the head interest expended. The IPDI issued by banks are in the nature of borrowing only. They are reckoned as Tier 1 capital only for the limited purpose of ascertaining the capital adequacy norms as per RBI guidelines. Though they are stated to be perpetual, banks still have an option of issuing a call option after a period of 10 years. The banks pay only interest on these bonds and at prefixed rates which may either be fixed or floating. Even when there is a

loss, interest on these bonds can be paid provided the CRAR is above the minimum requirement. The interest paid on these bonds are included under Schedule-15- Interest expended- others. The amount of outstanding IPDI is also shown under Borrowings in the Balance Sheet. The interest paid on these bonds are also subject to deduction of tax at source for which the recipient gets the credit. As per offer document the bonds carry a specific coupon rate with a step-up coupon rate. These are unsecured and rated bonds. In the case of capital, there will not be any call option that will be provided. Further, there is no prefixed rate in respect of dividend that is paid. The dividend is purely at the discretion of the banks management. Dividend can be paid only if there are profits and cannot be paid in case of losses. The amount of capital issued will be under Share Capital and not under Borrowings, The dividend that is paid will only be an appropriation of profits and not a charge on profits. Accordingly, it is submitted that these cannot be treated as capital of the bank entitling payment of dividend to shareholders. The IPDI bonds are entirely different from that of capital The bonds are not in the nature of equity since a share creates a proprietary right in the company and interest of a shareholder is composed on rights and obligations defined by both the Statute and the company's constitution. However, IPDI bonds creates only a contractual right for the bond holders. The accounting of these bonds and interest thereon is strictly in accordance with the guidelines issued by RBI and Accounting Standard 16 on "Borrowing Cost" issued by Institute

of Chartered Accountants of India. As per section 36(1)(iii) "the amount of interest paid in respect of capital borrowed for the purpose of business or profession" is allowed as deduction. Since in appellants case IPDI is borrowed only for the purpose of business interest paid on the same is allowable u/s 36(1)(iii) of the Act. This issue was decided in favour of the appellant by Hon'ble ITAT Mumbai for AY 2017-18 a copy of the said order has been enclosed. Without prejudice to above, if the above sum is not allowable u/s 36(1)(iii) then the same may be allowed as deduction u/s 37(1) as the same is a revenue expenditure expended by appellant for the purpose of business.

10. The ld.CIT(A) having taken note of the grounds of appeal, facts of the case, assessment order passed by the AO, written submission uploaded as well the oral contentions of the appellant and also the contention that the issue has already been covered in favour of the appellant by the decisions of Hon’ble Income-tax Appellate Tribunal (ITAT) for earlier years wherein ITAT has upheld the order of the CIT(A) wherein disallowance of interest expense incurred in respect of Innovative Perpetual Debt Instruments (IPDI) made by the AO was deleted. We also find that the issue in hand is being consistently decided in favour of the assessee by the ITAT,Mumbai in AYs 2016-17 and 2017-18 allowed appeal of the assessee on identical facts and circumstances. The ld.CIT,DR vide has relied on the assessment order.

11. Respectfully following the above decision on identical facts and consistent with the precedent, we do not find any reason to take a contrary view of the matter and accordingly, the decision on the ld.CIT(A) in favour of the assessee is upheld dismissing the ground in all the above AYs 2013-14/2018-19 and 2021-22.

Claim of Capital Loss

12. (**Ground in AY 2021-22)**

iv) Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in allowing the ***claim of capital loss*** *amounting to Rs. 1688,14,89,898/- without any evidence of claim provided by the assessee, rather than restoring the order back to AO for further verification ?"*

13. Perusal of the order reveals that the AO disallowed the claim on the observations that the assessee did not provide relevant details. The loss comprised of short term and long term loss on sale and purchase of certain listed equity and also preference shares. However, before us, vide written submission dated 20.01.2025(Annexure-A),it is submitted that the bank filed the relevant details on several occasions during assessment proceedings. Despite this fact, the AO disallowed the above capital loss and treated the same as gains under income from other sources without appreciating that there was in fact a capital loss. The ld.AR has taken us through page-1 to 5 of the paper book showing that details were submitted before the AO explaining the loss by submitting its computation,

contract notes, allotment letters, transaction statements etc. The ld.CIT(A) has taken note of the submissions and allowed the deduction. The ld.CIT,DR vide has relied on the assessment order.

13.1 On careful consideration of the above facts,we do not find any reason for interference in the conclusion drawn by the ld.CIT(A) who deleted the addition based on the findings and observation in the appellate order after taking cognizance of the replies and submissions made before him.**The ground is therefore,dismissed.**

Estimated amounts included u/s 43B

14. **(Common ground in AYs 2013-14 and 2018-19)**

"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in deleting the disallowance made by AO in respect of the ***estimated amounts included u/s 43B in the provision made for wage arrears*** *without giving any independent reasons.?"*

15. The assessee had claimed a sum of Rs.46 crores being the amount of wage arrears arrived at based on the indicative increase in the wages payable by the bank. The same pertained to the period from 01/04/2017 to 31/03/2018. The existing wage agreement had expired in Oct 2012 and the negotiations on the revised wage agreement between the Indian Banks Association representing the management of various banks and the Employees union/association were in progress. Taking into consideration the trend of the negotiations and the settlements reached in the earlier wage negotiations and based on the average increase granted in

earlier agreements it had quantified the likely increase and accordingly, made a provision in its books since the basis of accounting followed was accrual system. The AO required the appellant to furnish the details of included any amount disallowable u/s 43B. The assessee before submitted before him that the provision was made on an estimated basis taking into consideration the ongoing negotiations between employees' union and Indian Banks' Association. Since the same was provided on estimated basis the amounts covered u/s 43B was also calculated on estimated basis. The amount on such estimated basis was given at Rs.7 crore. The AO disallowed the said sum based on provisions of section 43B.

15.1 It is submitted that the above sum which was computed on an estimated basis will not be the actual amount payable to the respective funds since the same will be actuarially determined when the wage agreement gets concluded. Hence, invoking the provisions of section 43B to disallow the above sum is not correct. The said issue is decided in favour of appellant by ITAT in appellant's own case for **AY 2017-18 ITA 2937/MUM /2022 & 2919/MUM/2022 dated May 11, 2023**.

16. According to the ld.CIT(A) before him the assessee submitted that the issue has already been covered in favour of the appellant by the decisions of Hon'ble Income-tax Appellate Tribunal (ITAT) order for earlier years wherein ITAT has deleted the disallowance of Wage Revision made by the AO and upheld by the Ld. CIT(A) on the issue. Appellant has also submitted a chart summarizing the favorable orders on the issue

passed by CIT(A) and Hon'ble ITAT, Mumbai "C" Bench. Hence, respectfully following the decision of Ld. CIT(A) and Hon'ble ITAT, Mumbai "C" Bench on the issue, addition made by the AO on account of Wage Revision was deleted. The ld.CIT,DR vide has relied on the assessment order.

17. On careful consideration of the above facts,we do not find any reason for interference in the conclusion drawn by the ld.CIT(A) ho deleted the addition based on the findings and observation in the appellate order after taking cognizance of the replies and submissions made before him. Respectfully following the cited decisions,we endorse the conclusion drawn by the ld.CIT(A).Thus,t**he ground is dismissed.**

Addition u/s 14A

18. **(Ground in AY 2021-22)**

"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in ***deleting the addition of disallowance of Rs. 39,23,19,944/-made u/s. 14A r.w. Rule 8D*** *while computing income under normal provisions and book profit u/s. 115JB of the Act without appreciating the fact that clause of explanation 1 to 115JB which provide that net profit shall be increased by the amount of expenditure incurred for earning exempt income?"*

19. This ground is raised against **disallowance of expenses amounting to Rs. 39,23,19,944/- u/s 14A r.w.r. 8D and under MAT also**. The AO disallowed a sum of Rs.39.23 crore in addition to a sum of Rs.2.56 crore already disallowed by the bank in return of income.It recorded his satisfaction for not being satisfied with the disallowance made by appellant in para 5.4 page 16 of the order by stating as under:

"..... *It is seen from the financials that the assessee is performing redemption and investment activities on a regular basis which in turn yields exempt income. In working of the suo-moto disallowances the assessee has only included expenses which according to it can be categorized as expenses directly relatable to earning exempt income. Further, the assessee has not maintained any separate books of accounts for income relating to exempt income and expenditure incurred therein ....."*

19.1 It is submitted that the AO failed to note that assessee made disallowance of the estimated amount by considering the expenses incurred by the department which was handling the business of investing in securities. The AO erred in concluding that it is the direct expenditure incurred without appreciating that no direct expenses were incurred by appellant in earning of tax-free income. Further, the other reason is that no separate books of accounts are maintained. The AO failed to appreciate that the Act nowhere requires separate books of accounts to be maintained and the same has been elaborately discussed and appellants claim allowed by **Hon'ble Supreme Court in case of South Indian Bank (438 ITR 1).** Therefore, it is respectfully submitted that the very basis of recording of satisfaction was not correct and hence as held by Hon'ble Supreme Court in case of **Godrej & Boyce Manufacturing Company Ltd (81 taxmann.com 111),** the entire disallowance made needs to be deleted.

19.2 Without prejudice to the above, the issue of disallowance u/s 14A will arise only if any expenditure is incurred to earn the tax-free income. There should be a live link between the earning of income and incurring of expenditure. The assessee had incurred expenditure only for buying and selling of securities, profit/loss on sale of which is offered to

tax. It had not incurred any expenditure to earn tax free income and accordingly no disallowance u/s 14A is warranted on the facts of our case.Reliance is placed on the decision of **Hon'ble Supreme Court in case of Godrej & Boyce Manufacturing Company Ltd (81 taxmann.com 111),** where it was held that incurring of actual expenditure is required to make disallowance u/s 14A. Since no actual expenditure is incurred by the appellant, provisions of section 14A cannot be invoked in appellant's case. The assessee submitted that right from inception, it has been treating its securities as Stock in Trade which has also been accepted by department and offers to tax the Profit or Loss on sale of all such securities and interest earned only as Business Income. Therefore, the provisions of section 14A are not applicable in its case.

19.3 It is further stated that the AO had made the disallowance u/s 14A for the reason that the Hon 'ble Supreme Court in the case of Godrej & Boyce Manufacturing Company Ltd.(supra)held that section 14A would apply to dividend income on which tax is payable under section 115-O of the Act. 5.6. Further, the Hon'ble Supreme Court in the case of **Maxopp Investment Ltd. v. Commissioner of Income Tax, New Delhi [2018] 91 taxmann.com 154 (SC)** held that the dominant purpose for which investment into shares is made by assessee may not be relevant as section 14A applies irrespective of whether shares are held to gain control or as stock-in-trade.Furthermore, as per the **CBDT Circular No. 5/2014, dated 11.02.2014,** legislative intent is to allow only that

expenditure which is relatable to earning of 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.In this regard,it is pleaded that it never contended that provisions of section 14A would not apply to dividend income on which tax is paid u/s 115O. The submission is that in the absence of any expenditure having been incurred to earn tax free income, the question of making any disallowance u/s 14A will not arise.The assessee submits that the NFAC had disallowed the above sum u/s 14A by misinterpreting the decision in case of Maxopp Investments Ltd and holding that in appellants case where securities are held as stock in trade, disallowance u/s 14A is still warranted. However, in the latest decision, the **Hon'ble Supreme Court in case of South Indian Bank (438 ITR 1), had also discussed the above decision in case of Maxopp Investments Ltd. and held that no disallowance u/s 14A is warranted in cases where the securities are held as stock in trade**. Reliance is placed on binding decision of **Hon'ble ITAT Mumbai in appellants own case for AY 2015-16 in ITA 3394 and 3849/Mum/2019** where it was held that no disallowance is warranted in respect of interest free income earned on stock in trade.

19.4 It is further contented that the interest free funds available amounts to Rs.56186.72 crore as against which the investment in

securitie's earning tax free income is only Rs.951.67 crore which accounted for only 1.69% of the interest free funds available and in such case no disallowance u/s 14A is warranted. Reliance is placed on the decision of Hon'ble Supreme Court in case of South Indian Bank Ltd V CIT (supra) where it was clearly held that **if non-interest-bearing funds is larger than the investments made in tax- free securities, disallowance under Section 14A cannot be made**. In the assessment order, the AO had mentioned the average value of investment Rs.3923.19 crore, however as per assessee, the average value of investment generated tax free income should be Rs.990.91 crore which was also given in its submissions made during the assessment.

19.5 Without prejudice to above, it is submitted that the assessee had computed the proportionate expenditure of treasury department which handles these securities and disallowed the same as a matter of abundant caution and without prejudice to its claim that no amount can be disallowed. The AO had considered the said amount as expenses directly relating to exempt income without appreciating the fact that the said amount was itself an estimate based on proportionate expenses. Accordingly, it is submitted that the said sum cannot be disallowed as direct expenses and no disallowance u/s 14A of any amount is warranted.**This issue was decided in favour of the appellant by Hon'ble ITAT Mumbai in appellant's own case for AY 2015-16 in**

ITA 3394 and 3849/Mum/2019 and for **AY 2017-18 in ITA - 2937/MUM/2022 & 2919/MUM/2022)**.

20. The ld.CIT(A) held that the issue has already been covered in favour of the appellant by the decisions of Hon'ble Income-tax Appellate Tribunal (ITAT) order for earlier years wherein ITAT has deleted the disallowance of expenses u/s 14A r.w.r. 8D made by the AO and upheld the decision of CIT(A) on the issue. The assessee had also submitted a chart summarizing the favorable orders on the issue passed by CIT(A) and Hon'ble ITAT, Mumbai "C" Bench.Hence, respectfully following the decision of Ld. CIT(A) and Hon'ble ITAT, Mumbai "C" Bench on the issue, addition of Rs. 39,23,19,944/- made by the AO on account of disallowance of expenses u/s 14A r.w.r. 8D was deleted. The ld.CIT,DR vide has relied on the assessment order.

21. The other issue raised in this ground of appeal is regarding addition of disallowance made u/s 14A r.w.r. 8D in determining the book profit computed u/s 115JB. In this regard,the assessee submitted that the AO failed to note that the provisions of Rule 8D cannot be invoked while computing the disallowance u/s 14A since there is no specific provision in section 115JB for invoking the same. Hence, the disallowance made by NFAC is not correct. Reliance for the same is placed on the decision of **Hon'ble Jurisdictional Bombay High Court in case of Bengal Finance and Investments Pvt. Ltd (TTA 337 of 2013).** This issue was decided in favour of the appellant by **Hon'ble ITAT in appellant's**

own case in ITA 3394 and 3849/Mum/2019 and for AY 2017-18 ITA 2937/MUM/2022 & 2919/MUM/2022 dated May 11, 2023.

21.1 The ld.CIT(A) observed that Hon'ble ITAT, Mumbai "C" Bench in the order cited (supra) for A.Y. 2016-17 has given the finding in favour of the appellant that different treatment for same head of expenses cannot be given while computing total income under normal provision and book profit u/s 115JB. Alternatively, also as per the decision of Hon'ble Jurisdictional Bombay High Court in the case of The Commissioner of Income Tax-8 v/s. M/s. Bengal Finance & Investments Pvt. Ltd., disallowance made u/s 14A cannot be added to arrive at book profit for the purpose of Section 115JB of the Act. The finding of the Hon'ble Jurisdictional Mumbai High Court on the issue has reproduced as under:-

"4. So far as question (b) is concerned, the impugned order of the Tribunal followed its decision in M/s. Essar Teleholdings Ltd. v/s DCIT in ITA No. 3850/Mum/2010 to held that an amount disallowed under section 14A of the Act cannot be added to arrive at book profit for purposes of section 115JB of the Act. The Revenue's Appeal against the order of the Tribunal in M/s. Essar Teleholdings (supra) was dismissed by this court in Income Tax Appeal No. 438 of 2012 rendered on 7 th August, 2014. In view of the above, question (b) does not arise any substantial question of law."

21.2 Following the judicial pronouncements on the issue, it was held that the disallowance made u/s 14A r.w.r. 8D cannot be added while determining the book profit u/s 115JB of the Act. Thus, Ground no. 4 of the appeal raised was allowed. The ld.CIT,DR vide has relied on the assessment order.

22. On careful consideration of the above facts,we do not find any reason for interference in the conclusion drawn by the

ld.CIT(A) who deleted both the additions made u/s 14A based on the findings and observation in the appellate order after taking cognizance of the replies and submissions made before him. Respectfully following the cited decisions,we endorse the conclusion drawn by the ld.CIT(A).Thus,t**he ground is dismissed.**

Rule 6EA IN RESPECT OF NPA

23. **(Common ground in AYs 2013-14 and 2018-19)**

u. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in ***not relying on rule 6EA for computing the accrued interest on account of NPA?"***

24. It is submitted that the AO disallowed a sum of Rs. 98.99 crore by invoking the provision of Rule 6EA and has stated that as per Rule 6EA interest on non-viable or sticky advances where irregularities are noticed for a period of 6 months need not be offered to tax. According to him, since the assessee follows the guidelines of RBI which provide for 90 days long for classification of NPA, the above amount is chargeable to tax. 5.2 In this connection, it is pleaded that it has strictly followed the guidelines of RBI and had not recognised income in respect of accounts classified as non-performing assets. In all these cases, there was uncertainty of recovery of interest and accordingly the assessee had not recognised interest in respect of these accounts. It has been held in various decisions that even in the absence of specific provision like 43D and Rule 6EA interest not recognised based on RBI guidelines cannot be taxed. Reference may be had to the decision of SC in the case of **CIT v Vashist**

Chay Vyapar Limited 301 CTR 263 and the Bombay High Court in the case of Deogiri Nagari Sahakari Bank Limited 379 ITR 24. This issue is covered in its favour by the Jurisdictional ITAT Mumbai in case of **State Bank of India (ITA 3644 and 4563/Mum/2016), Mumbai ITAT in the case of ICICI Bank Ltd (ITA 3215/Mum/2019),State Bank of Bikaner and Jaipur (ITA 3033/Mum/2019) and ITAT Kolkata in case of Royal Bank of Scotland (ITA Nos. 36 & 1885/Kol/2017).** The ld.CIT,DR vide has relied on the assessment order.

25. The ld.CIT(A) deleted the addition made by relying on the decisions supra. We have carefully gone through the grounds of appeal, facts of the case, assessment order passed by the AO, written submission uploaded as well the oral contentions of the assessee. On careful consideration of the above facts,we do not find any reason for interference in the conclusion drawn by the ld.CIT(A) who deleted the additions based on the findings and observations in the appellate order after taking cognizance of the replies and submissions made before him. Respectfully following the cited decisions,we endorse the conclusion drawn by the ld.CIT(A).Thus,t**he ground is dismissed.**

TDS u/s 40a(ia)

26. **(Ground in AY 2018-19)**

vii. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the ***disallowance of Rs.***

***95,74,99,623/- towards year end provision for expenses on which TDS was not deducted, when Section 40(a)(ia) of the Act** clearly warrants the disallowance of such sum on which TDS is not deducted."*

viii. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not taking into account the decision of Hon'ble ITAT, Bangalore in case of IBM Ltd. (ITA No.305/Bang/2015), wherein the Tribunal held that it is clear from the statutory provision that the liability to deduct tax at source exist when the amount is credited to a 'suspense account' or 'any other account' by whatever name called which will also include a 'provision' created in the book of accounts."

27. Both the above grounds are interlinked. Therefore, they are being considered together. According to the ld.AR, the AO disallowed a sum of Rs. 95.75 crore, being year-end provision made for expenses on the ground that it is an ad hoc, estimated provision, liability for which liability had either not accrued or not ascertainable and is contingent in nature. In this regard,it is contented that these provisions were made not on estimate basis but were made on the basis of actual estimation of the liability. The expenditure had already been incurred but the exact quantification was not known before the end of the financial year. Accordingly, a provision for the same was debited to profit and loss account on accrual basis. Therefore, it cannot be said that the provisions were made for expenditure for which liability has either not accrued or not ascertainable and is contingent in nature. On the contention of the AO that even if liability is ascertained it was disallowable u/s 40(a)(ia) since tax should have been deducted at source but was not deducted, it is argued that the assessee had only made the provisions in the accounts but had not credited the same in the accounts of concerned parties and, therefore, the provisions of Section 40(a)(ia) of the Act would not be

applicable. Once bills for the expenses were received tax was deducted on the same. Therefore, no disallowance of the sum of Rs. 95.75 crore being provision made for expenses is warranted. Without prejudice to the above contention, even if any disallowance needs to be made u/s 40(a)(ia) for non-deduction of TDS, only a sum of Rs. 28.72 crore (i.e., 30% of Rs. 95.75 crore) can be disallowed and not the entire expense of Rs. 95.75 crore.

27.1 It is further submitted that his issue was decided in favour of the assessee in its own case by **Hon'ble IT AT for AY 2015-16 in ITA 3394 and 3849/Mum/2019 and for AY 2017-18 (ITA 2937/MUM/2022 & 2919/MUM/2022)** dated May 11,2023. The ld.CIT,DR vide has relied on the assessment order.

28. The ld.CIT(A) deleted the addition made by relying on the decisions supra. We have carefully gone through the grounds of appeal, facts of the case, assessment order passed by the AO, written submission uploaded as well the oral contentions of the assessee. On careful consideration of the above facts,we do not find any reason for interference in the conclusion drawn by the ld.CIT(A) who deleted the additions based on the findings and observations in the appellate order after taking cognizance of the replies and submissions made before him.With regard to the ground no.viii above, it is noticed that the issue of Suspense account has been decided against the asessee in earlier years appeal and the

decision in the case of IBM(supra) has been distimguhed and find not applicable to the facts of the case relating to the assessee. Respectfully following the cited decisions of this Bench(supra), we endorse the conclusion drawn by the ld.CIT(A).Thus,t**he ground is dismissed.**

CLUB FEES

29. **(Ground in AY 2018-19)**

ix. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the ***disallowance u/s 37(1) amounting to Rs. 12,74,672/-towards amount of entrance fees and subscription*** *paid to clubs by the directors of the bank and not considering these expenses as personal expenses?"*

30. According to the assessee ,the AO disallowed the amount of entrance fee and subscription paid to clubs of Rs. 12.74 lacs by treating the same as personal expenditure even when in tax audit report no amount was shown under the head personnel expenditure. It disallowed the above amount only for the reason that the details and justification for making the payment were not furnished. It is submitted that the AO never required any details to be furnished by appellant and hence, disallowing the same only in the ground that the details and justification were not furnished is not warranted. The details of the amounts paid and the justification for the same have been furnished. It may be seen from the said annexure that the expenses are incurred only for business purpose and there is no personal element involved in respect of the expenditure incurred. The club fees paid were not paid with the intention to benefit the employees and, therefore, the payment of such club fees should be

considered to have been made for promoting the business of the assessee as it could not be disassociated from the assessee's business. The amounts were paid in the normal course of carrying on banking business and accordingly should be allowed. Reliance is placed on the binding decision of **Bombay High Court in case of Otis Elevator (195 ITR 682),Hindalco Industries Ltd 165 Taxmann.com 606(Mumbai-ITAT).**The ld.CIT,DR vide has relied on the assessment order and also on Balrajsingh Jagjit Singh 153 Taxmann.com 642(Mumbai-ITAT) which is distinguishable as related to individual club membership and not of corporate membership.

31. The ld.CIT(A) considered the contentions of the assessee that the expenses incurred at clubs being cost for club services and facilities are for the Directors of the Bank and related to the advancement of business of the bank.The AO's finding in the assessment order is general in nature and not brought any facts or evidence on record as to how it is personal in nature. Therefore, an amount of Rs. 12,74,672/- disallowed by the AO on account of club expenses was deleted .

32. We do not find any infirmity in the conclusion drawn by the ld.CIT(A).In facts, we take note of a recent decision of hon'ble Jurisdictional High Court on the same issue in the case of High Court in the case of Swiss Re Services India Pvt. Ltd Vs DCIT (Bombay High Court) Appeal Number : Writ Petition No. 1323 of 2012 Date of Judgement/Order : 13/10/2023 wherein the hon'ble Court considered

several decisions of various courts as also the case of Otis(supra) and held that "the admission fees paid to a club towards corporate membership would be a revenue expenditure because it had been incurred wholly and exclusively for the purposes of business and not towards capital account. Such expenditure only facilitated the smooth and efficient running of the business enterprise and did not add to the profit earning apparatus of the business enterprise. In our view also the expenditure incurred towards entrance fees and annual membership would be a revenue expenditure because it has been incurred wholly and exclusively for the purposes of business and not towards capital account. Such expenditure only facilitates the smooth and efficient running of the business enterprise and does not add to the profit earning apparatus of the business enterprise." In view of the facts of the case stated above and cited decisions, we uphold the decision of the ld.CIT(A) and dismiss the ground in this regard.

33. C.O. No.280/MUM/2024

1. On the facts and in the circumstances of the case and in law the Id. CIT(A) erred in dismissing the ground raised by appellant on the validity of reopening of assessment by holding that since all substantive grounds have been decided in favour of bank, the ground is academic.

2. On the facts and in the circumstances of the case and in law the ld. CIT(A) ought to have decided the jurisdictional ground on reopening made after 4 years from the end of the assessment year even when there was no failure on part of appellant to fully and truly disclose all particulars required for assessment.

3. On the facts and in the circumstances of the case and in law the ld. CIT (A) ought to have noted that the approval given by PCIT within 1 day was mechanical and accordingly the reopening should have been held to be bad in law.

34. Before us, the ld.AR has neither made any written or oral submission in the aforesaid grounds. Evidently, the same have not been pressed. In any case, since all the grounds of the Revenue stand dismissed, the assessee may not be inclined to pursue its cross objection. Accordingly, the CO is **dismissed.**

35. **In the result, all the aforesaid appeals of the Revenue and CO of the assessee are dismissed.**

Order pronounced in the open court on 24.02.2025.

Sd/-	**Sd/-**
(SANDEEP GOSAIN)	**(PRABHASH SHANKAR)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखाकार सदस्य/ACCOUNTANT MEMBER**

मुंबई/Mumbai;
दिनांक Dated 24/02/2025

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

1. अपीलार्थी / The Appellant- .
   Assistant Commissioner of Income Tax -3(4), Mumbai
2. प्रत्यर्थी / The Respondent-
   IDBI Bank Ltd.,
   Apulki Cornermenon, PistonCompound, TOAP 416122,
   Kolhapur Maharashtra
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **मुंबई** / DR, ITAT, **Mumbai**
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(**Assistant Registrar**)
आयकर अपीलीय अधिकरण, मुंबई/ ITAT, Mumbai