

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI
श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री एस.आर.रघुनाथा, लेखा सदस्यके समक्ष
BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER
AND SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.Nos.299 & 300/Chny/2024
(निर्धारण वर्ष / Assessment Years: 2020-21 & 2021-22)

Indian Overseas Bank, 763, Anna Salai, Chennai-600 002.	Vs	Deputy Commissioner of Income Tax, Non-Corporate Circle - 8, Chennai.
PAN : AAACI-1223-J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपीलसं./I.T.A.Nos.354 & 377/Chny/2024
(निर्धारणवर्ष / Assessment Years: 2020-21 & 2021-22)

Deputy Commissioner of Income Tax, Non-Corporate Circle - 8, Chennai.	Vs	Indian Overseas Bank, 763, Anna Salai, Chennai-600 002.
		PAN : AAACI-1223-J
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Assessee by	:	Mr. C.Naresh, C.A
प्रत्यर्थीकीओरसे/ Revenue by	:	Mr. A.Sasikumar, CIT

सुनवाईकीतारीख/Date of hearing	:	12.03.2025
घोषणाकीतारीख /Date of Pronouncement	:	30.05.2025

आदेश / ORDER

PER MANU KUMAR GIRI, JM:

The captioned appeals filed by the assessee as well as Revenue are directed against the separate orders of the Ld. Commissioner of Income Tax (Appeals) (NFAC) Delhi [CIT(A)] all dated 12.12.2023 for Assessment Years 2020-21 and 2021-22. Since the facts and issues involved are common, they were heard together and disposed of by this common order for the sake of convenience.

ITA No.299/Chny/2024 (AY 2020-21) (Assessee's appeal):

2. The grounds raised by the assessee in ITA No.299/Chny/2024 for AY 2020-21 read as under:-

Deduction u/s 36(1) (viiia)

1.1 The Id. CIT(A) erred in not deciding on the issue of population of rural branches even when appellant had filed details of rural branches along with population of the said branches before Ld. CIT(A).

Deduction u/s 36(1)(vii)

2.1 The Id. CIT(A) erred in directing the AO to verify the opening credit balance in provision for bad and doubtful debts and recompute deduction u/s 36(1)(vii) ever when the issue was only on furnishing the details in respect of bad debts written off and the said details were furnished before AO and the CIT(A).

2.2 The CIT(A) erred in directing the AO to verify the opening credit balance in the provision for bad and doubtful debts account u/s 36(1)(viiia) instead of deciding the said issue.

Disallowance u/s 43B in respect of pre-existing liability aid during the year

3.1 The Id. CIT(A) erred in considering the disallowance made by AO in respect of amount of leave salary and severance pay which was pre-existing as on the first day of April of the assessment year and was paid during the year by misconstruing the same as provision for leave salary and confirming the disallowance of the said amounts.

Depreciation on goodwill

4.1 The Ld CIT(A) erred in denying depreciation on goodwill on the contention that the same was internally generated, overlooking the fact that the same was acquired in a scheme of take over and following the decision of Apex Court in the case of Smifs Securities Ltd (348 ITR 302) same is allowable.

Disallowance u s 43B in respect of provision for leave encashment

5.1 The Id. CIT(A) erred in confirming the disallowance of provision for leave encashment without appreciating that the said sum not being a "sum payable" during the previous year, the provisions of section 43B(f) cannot be invoked.

Disallowance of irrecoverable advances written off

6.1 The Id. CIT(A) erred in confirming the disallowance of irrecoverable advances written off on the ground that no deduction other than that provided u/s 36(1)(vii) and 36(1)(viiia) can be allowed without appreciating that appellant claimed the deduction u/s 36(1)(vii) only.

6.2 The Id. CIT(A) failed to note that since the write off pertained to advances with dues of less than 90 days and the deduction u/s 36(1)(viiia) was never allowed in respect of the same, on write off, the same should have been allowed.

Tax relief u/s 90

7.1 The Id CIT (A) erred in restricting the relief u/s 90 only to the extent of tax paid in the foreign country whereas as the correct relief to be allowed is tax charged on the foreign income which is included in Total Income."

2. The assessee M/s Indian Overseas Bank is a nationalized bank filed its return of income for AY 2020-21 on 13.02.2021 declaring of loss of Rs.15344,11,07,507/- . This case was selected for scrutiny under CASS and notice u/s 143(2) of the Act dated 29.06.2021 was issued. The Id. AO made various additions while passing assessment order. The assessee challenged the order of assessment before the CIT(A), who partly allowed appeal of the assessee, against which both assessee and revenue are in appeal before us.

3. At the outset, the Id. counsel for the assessee submitted that ground nos.1.1, 2.1 and 2.2 are not pressed and made an endorsement to that effect and prayed the same may be dismissed as withdrawn. The learned DR has no objection for the same. Thus, the ground nos 1.1, 2.1 and 2.2 in regard to deduction u/s.36(1)(vii) and deduction u/s.36(1)(viii) are dismissed as withdrawn.

4. The next ground of appeal raised by the assessee is in regard to disallowance of deduction claimed amounting to Rs.91,32,12,868/- u/s.43B of the Act in respect of pre-existing liability paid during the year and the same was mentioned in the tax

audit report. However, AO disallowed the same on the ground that though it was reflected in the tax audit report, no evidence was placed on record by the assessee. On appeal, before the CIT(A), assessee produced ledger extracts evidencing the payments made. However, the CIT(A) mistook the claim as relating to provision for leave encashment confirmed the disallowance under the provisions of section 43B(f) of the Act.

5. After hearing both the sides, we are of the view that amount was paid by the assessee which was paid out of pre-existing liability and the deduction was not allowed in any of the previous years. Further, the same was reflected in the tax audit report also. The assessee also produced ledger extracts before the CIT(A) in support of its claim. Therefore, we direct the AO to verify the claim of the assessee in regard to deduction claimed on account of pre-existing liability in light of the evidences furnished by the assessee. Thus the ground raised by the assessee is allowed for statistical purposes.

6. The next ground of appeal raised by the assessee is in regard to depreciation on goodwill amounting to Rs.2,60,29,537/-. The learned counsel for the assessee submitted that during the year under consideration, the assessee claimed depreciation on goodwill which arose on account of acquisition of erstwhile Shree Suvarna Sahakari Bank Ltd during financial year 2009-10 on the direction of RBI. The

learned AR fairly admitted that an identical issue was considered by this Tribunal in assessee's own case for the AY 2018-19 in ITA No.419/Chny/2023 dated 31.01.2025 and decided the issue against the assessee. On the other hand, Ld.DR supported the orders the lower authorities and pleaded to reject the ground raised by the assessee.

7. We find that the Tribunal has already decided a similar issue against the assessee vide its order in ITA No.419/Chny/2023 dated 31.01.2025 holding as under:-

“ 7 (v) Depreciation on goodwill:

“The AO disallowed depreciation on goodwill amounting to Rs.6,16,99,643/- by not taking into the decision of the Hon'ble Apex Court in Smifs Securities (348 ITR 302 SC). The Id. Counsel for the assessee from chart submitted that this ground has been decided against the assessee by the co-ordinate bench of the Tribunal in assessee's own case in ITA Nos.948 & 777/Chny/2018 for AY 2014-15 which held as under:

7. On the issue of Depreciation on Goodwill, the AR relied on the order of this tribunal in the assessee's own case in ITA No. 776/Chny/2018 dated 28.02.2019 for the assessment year 2013-14 , the relevant portion is extracted as under:

7. The next issue raised by the assessee is with regard to denial of depreciation on goodwill and the Ld. AR submitted that the Bank had during the year ended 31.01.2010 taken over assets & liabilities of Shree Suvama Sahakari Bank Ltd. The excess of Liabilities over Assets amounting to Rs.246,52,02,148/- has been treated as Goodwill, Depreciation on the said amount of Goodwill based on the WDV as on 01.04.2012 of Rs. 26,00,01,789/- has been claimed as deduction based on the decision of Supreme Court in the case of CIT vs Smift Securities Ltd (Civil Appeal No.5961 of 2012 (Arising out of SLP (c) No.35600 of 2009) dated 22.08.2012. The AO rejected this claim on the following reasons:

"As held by the assessee, assessee has taken over the specific asset and liabilities of M/s.Shree Swatna Sahakari Bank Ltd as existing as on 19.05.2009 as per the approval of RBI. Accordingly it resulted in excess of liabilities over assets absorbed on account of absorption scheme of RB1. The liabilities are balance sheet entries and same

will be considered as and when incurred or paid as per the provisions of IT Act. Considering such liabilities as good will is neither justifiable nor based on any prudent accounting norms/methods of due diligence. Assessee's contention is devoid of merits and support of law.

As per the definition of the goodwill as made in the provisions of IT Act the same is read as under:-

From the above it is clear that the assessee merely equated excess liabilities as attributable to goodwill on account of absorption scheme. In fact it is opposite to the goodwill as defined in the IT Act as above and same do not qualify asset leave alone intangible asset as it is a liability. Hence assessee's contention to that liability. Hence assessee's contention to treat liability as an intangible asset is far stretched and contrary to the provisions of IT Act in letter and spirit.

Assessee was requested to reconcile the good will as reflected in the books of the absorbed concern i.e. M/s Shree Swarna Sahakari Bank Ltd as appearing in their block of assets prior to its absorption. Hence assessee's notional working of goodwill based on excess liabilities is not allowable as intangible asset qualified under good will.

Any absorption scheme surplus of asset over liabilities has to be taken to reserves account of balance sheet. Subsequent to absorption as held by Hon'ble ITAT in the case of Spencer and Company Ltd of ITAT vide ITR No.440 of 2011. On similar analogy the surplus of liabilities over assets has to be taken to the balance sheet and same has no bearing on Profit and Loss account of assessee as it tantamount to skewed representation of profits on the year of absorption so as to avoid genuine taxes due to exchequer."

7.1 The Ld. AR invited our attention to the copy of Memorandum of Understanding for the proposed transferor dated 17.02.2009 and to the Schedule to the MoU and submitted that as per the MoU, liabilities to be taken over as on 31.12.2008 was valued at 11,078.13 crores and the assets to be taken over as on 31.12.2008 was valued at 1870.58 crores and the resultant deficit of 1207.55 crores was notionally treated as purchase consideration and argued that on this amount the assessee claimed depreciation. In support of his contention, he relied on the judgement of the Hon'ble Supreme

Court in the case of Smifs Securities Ltd.(348 ITR 302) dated 22.08.2012.

7.2 Per contra, the Ld. DR invited our attention to para 12 of the Memorandum of Understanding, which is extracted as under:

"12. Regarding Goodwill:-Since the business of Transferor Bank is under moratorium from 14/09/2006, the Transferor Bank does not enjoy any goodwill in commercial terms. Accordingly, no monetary consideration is provided for goodwill."

and submitted that as per the agreement, it is clear the transferor bank does not enjoy any goodwill in commercial terms and hence, there is no goodwill. The Ld. DR further invited our attention to the following portion of the judgement of the Hon'ble Supreme Court in the case of Smifs Securities Ltd. (348 ITR 302):

"Assessing Officer, as a matter of fact, came to the conclusion that no amount was actually paid on account of goodwill. This is a factual finding. The Commissioner of Income Tax (Appeals) ['CIT(A)', for short] has come to the conclusion that the authorised representatives had filed copies of the Orders of the High Court ordering amalgamation of the above two Companies; that the assets and liabilities of M/s. YSN Shares and Securities Private Limited were transferred to the for a consideration; that the difference between the cost of an asset and the amount paid constituted goodwill and that the assessee Company in the process of amalgamation had acquired a capital right in the form of goodwill because of which the market worth of the assessee-Company stood increased. This finding has also been upheld by Income Tax Appellate Tribunal ['ITAT, for short]. We see no reason to interfere with the factual finding"

and submitted that the decision of the Supreme Court is distinguishable on facts of the assessee's case. In the reported case, the assets and liabilities of M/s. YSN Shares and Securities Private Limited were transferred to the assessee for a consideration; that the difference between the cost of an asset and the amount paid constituted goodwill and that the assessee-Company in the process of amalgamation had acquired a capital right in the form of goodwill because of which the market worth of the assessee-Company stood increased. This finding has also been upheld by Income Tax Appellate Tribunal. However, in the assessee's case, there is a deficit or loss of Rs.207.55 crores in the purchase consideration. Further, as per transfer agreement

extracted, supra, itself it is clear that the transferor bank does not enjoy any goodwill in commercial terms and hence, there is no goodwill. When there is no goodwill and the assessee has also not paid any amount for goodwill it is not entitled to claim any goodwill, consequently no depreciation can be allowed. 7.3 We heard rival submissions and gone through relevant material. It is clear from the above that the assessee did not have any goodwill in commercial terms as it has acquired more liabilities than the assets. The Ld.DR's submission that when there is no goodwill as per the terms of the agreement as well as in reality. When the assessee has not paid any amount for the goodwill, it cannot claim existence of any goodwill. When there is no existence of goodwill, it is not entitled for any depreciation. Therefore, the assessee's corresponding grounds fail."

8. We have heard the rival submissions. In view of the above findings in the assessee's own case in the earlier assessment years, respectfully following it, we reject the corresponding grounds of the assessee.

In view of the above findings of the Tribunal in assessee's own case in the earlier assessment years, respectfully following the co-ordinate bench order referred supra we also reject and decide this ground against the assessee. Accordingly, this ground of assessee is dismissed."

8. Since the Tribunal has already decided a similar issue of depreciation on goodwill raised by the assessee in earlier assessment years, respectfully following the co-ordinate Bench decision of this Tribunal in ITA No. 419/Chny/2023 (supra), we also reject the grounds raised by the assessee on the issue depreciation on goodwill. Thus, ground raised by the assessee is dismissed.

9. The next ground of appeal raised by the assessee is in regard to disallowance of provision for leave encashment. The assessee claimed

leave salary based on actuarial valuation u/s.43B amounting to Rs.120 crores. The learned AR fairly conceded that this issue was also decided by this Tribunal against the assessee in assessee's own case for the AY 2018-19 in ITA No.419/Chny/2023 vide its order dated 31.01.2025. The CIT(A) also by following the decision of this Tribunal in ITA No.948 & 777/Chny/2018 dated 22.01.2020 for AY 2014-15 has dismissed the ground raised by the assessee. The relevant portion of Tribunal order was reproduced by the CIT(A) at page 45 & 46 of the impugned order.

10. Having heard both sides and gone through the orders of this Tribunal in assessee's own case for earlier assessment years, by respectfully following the decision of this Tribunal cited supra, we decide the issue of disallowance of provision for leave encashment u/s.43B against the assessee and thus, reject the grounds raised by the assessee. Therefore, this ground raised by the assessee is dismissed.

11. The next ground raised by the assessee is in regard to disallowance of irrecoverable advances written off amounting to Rs.65.36 crores.

12. The learned counsel for the assessee submitted that assessee has claimed deduction of Rs.65.36 crores from the profit on account of amount written off towards loans given to GMR Chattisgarh Energy Ltd. from out of provision made towards advances, where arrears was

less than 90 days. According to the assessee, in its books of account it makes provision every year in respect of advances which are in arrears for more than 90 days, which are called as non-performing assets and for advances where the arrears is less than 90 days, which are termed as advances. The learned counsel for the assessee submitted that in respect of non-performing advances, i.e, bad and doubtful debts, deduction u/s/ 36(1)(vii) is computed as percentage of total income and percentage of rural advances is allowed in respect of provision made for standard assets, no such deduction is allowed. He further contended that when a write off is made out of provision created for non-performing assets, the proviso 36(1)(vii) places an embargo that deduction will be allowed as deduction only if it exceeds credit balance in provision for bad and doubtful debts allowed. However, where a write off is made on account for which provision is made in respect of standard assets, it should be allowed a deduction, since the provision made was never allowed as deduction in any year. The Id.counsel further submitted that a term loan of Rs.224.49 crores was outstanding in respect of GMR Chhattisgarh Energy Ltd. and said account was non-performing account with the assessee from 2016. Therefore, resolution plan was formulated in respect of the said account along with the consortium bankers which was implemented on 02.08.2019 with the

said account being taken over by Adani Power Ltd with some sacrifice for each of consortium members. As per RBI circular dated 07-06-2019, in case of change of ownership of the borrowing entities, credit facilities on change of ownership can be treated as standard assets. Accordingly, the provision made in this account when it was non-performing was credited to P & L a/c and offered to tax and simultaneously a provision was made under standard asset category. In respect of the assessee, out of the outstanding of Rs. 224.49 crore, a sum of Rs. 65.36 crore was quantified as the sacrifice amount. Accordingly, the assessee had to write off the said sum, which was not classified as non-performing asset. Though the assessee claimed deduction u/s.36(1)(vii) by furnishing all the requisite documents and details, the AO has disallowed the same for the reason that no details were furnished by the assessee in support its claim. On appeal, the CIT(A) sustained the order of the AO and dismissed the ground raised by the assessee.

13. Per contra, the Ld.DR supported orders of the lower authorities.

14. We have heard rival submissions and perused the records. After due consideration of material facts, we are inclined to restore this matter back to the file of Ld. AO with a view to enable the revenue to take a consistent stand in the matter and the issue shall be adjudicated de novo

in the light of the evidences furnished by the assessee on record. This ground raised by the assessee stands allowed for statistical purposes.

15. The next ground raised by the assessee is in regard to restricting relief amounting to Rs.98.41 crores u/s 90 to the extent of foreign tax paid instead of tax charged on foreign income which is included in taxable Income.

16. The AO did not allow Double Income Tax Relief by way of exclusion of income of foreign branches from chargeability in India based on the Double Tax Avoidance Agreements entered into with respective countries. From the chart submitted by the Id. counsel, we find that this ground has been decided against the assessee by the co-ordinate bench of the Tribunal in assessee's own case in ITA Nos.419/Chny/2023 for AY 2018-19 which held as under:

"5. On the issue of Restriction of relief u/s. 90 to the extent of tax paid in foreign country instead of tax charged on foreign income which is included in total income, the AR relied on the order of this tribunal in the assessee's own case in ITA No. 776/Chny/2018 dated 28.02.2019 for assessment year 2013-14, the relevant portion is extracted as under:

" 6.1 On hearing rival contentions, we find that this issue was decided against the assessee in its own case for the assessment year 2011-12 in ITA No.77/Mds/2014 vide order dated 03.04.2017. The relevant portion of the said order is extracted here under:-

18. The last ground: in this appeal is with regard to restricting the relief u/s.90 to the extent of tax paid in the foreign country.

19. We have heard both the parties and perused the material on record. In our opinion, the same issue came for consideration before the co-ordinate Bench of Chennai Tribunal in assessee's own case for assessment year 2010-11 cited supra, wherein Tribunal held that:-

'76. Counsel for the assessee submits that this issue has been decided against the assessee by the coordinate Bench for the assessment year 2009-10/n 174 No.1949/Mds/2012 dated 18.6.2014 at pages 11 to 13 in paras 21 to 25 of the order,

77. We have perused the said order of this Tribunal and find that the issue has been decided against the assessee holding as under:

21. The seventh substantive ground challenges the CIT(A)'s order restricting relief 90% of the tax paid in foreign countries.

22. Factual backdrop qua this issue is that the assessee had raised a claim of double taxation relief in memo of income from its overseas branches in south Korea, Singapore, Thailand, Sri Lanka and Hong Kong amounting to Rs.357,573/- Rs.21,32,37,338/-, Rs.17,84,71,232, Rs.42,94,845/- and Rs.39,80,57,968/- respectively. Its thrust was upon various Double Taxation Avoidance Agreements DTAA's between India and the said countries except Hong Kong. The Assessing Officer had restricted this relief @ 16.5% i.e. the prevailing tax rate in Hong Kong. Thereafter, he distinguished case law PVAL .Kulandaganthetti v CIT, 267 ITR 654 by observing that contrary to the facts of this case, Shri Chéttiar was fiscally domiciled in Malaysia and did not have any permanent establishment in India. On DTAA with south Korea, the Assessing Officer was of the view that the terms contained therein did not give exclusive rate of tax to the concerned country and it had only provided for credit method of relief in double taxation. Accordingly, he declined to accept the assessee's claim.

23. Coming to the DTAA's between India and Singapore, Thailand and Sri Lanka, the Assessing Officer observed that they also recognized 'credit' method. He alleged the assessee not to have provided any difference in rates of tax in the above stated tax jurisdictions. Simultaneously, the Assessing Officer held that on furnishing details on assessee's part; the claim would be allowed in its favour. This resulted in disallowance/addition of 55,65,44,48/-.

24. In lower appellate order, the CIT(A) has quoted a notification No. SO 2123(E) dated 28.8.2008 reported as 304 ITR(St)63, clarifying that in such a case involving a DTAA, an income has to be included in the total receipts and the necessary relief is to be granted by 'elimination' method or as

per the terms of agreement seeking to avoid double taxation. He relies upon Finance Act, 2012 inserting explanation 3 to 14 ITA Nos .661 & 914/19, 202,203/23 others section 90 making the notification retrospectively applicable. In this manner, the CIT(A) has directed the Assessing Officer to allow relief to the assessee as per the aforesaid notification.

25. We have heard both parties and gone through the relevant findings in the orders of Assessing Officer as well as the CIT(A). The parties are unanimous before us that this vary issue stands decided in the Revenue's favour by the 'tribunal'supra) in preceding assessment year. So, we also follow suit and reject the assessee's relevant grounds."

78 Respectfully following the said decision, we dismiss the ground raised by the assessee on this issue."

6.2 In view of the above findings of this Tribunal, we find no reason to interfere with the order of the Ld. CIT(A) on this issue and reject the grounds raised by the assessee."

6. We heard the rival submissions. In view of the above findings of the Tribunal in assessee's own case in the earlier assessment years, respectfully following it , we find no reason to interfere with the order of the Ld. CIT(A) and hence reject the corresponding grounds of the assessee".

In view of the above findings of the Tribunal in assessee's own case in the earlier assessment years, respectfully following the co-ordinate bench order referred supra we also reject and decide this ground against the assessee. Accordingly, this ground of assessee is dismissed."

17. Respectfully following the decision of the co-ordinate Bench of this Tribunal in ITA No.419/Chny/2023 dated 31.01.2025, we also uphold the order of the CIT(A) on the issue of double taxation relief amounting to Rs.98.41 crores and reject the grounds raised by the assessee. Thus, the ground raised by the assessee is dismissed.

Additional Grounds:

Additional grounds with regard to computation of income u/s.115JB, Non applicability of provisions of the section 115JB and various additions under MAT are not raised in the appeal by assessee separately, however raised during the course of hearing by way of chart. On the additional grounds, the Id. Counsel for the assessee pleaded that these issues are covered by the order of the Tribunal in earlier assessment year 2018-19 in ITA No.524/Chny/2023 dated 31.01.2025, ITA No.948 & 777/Chny/2018 for AY 2014-15 in assessee's own cases and by the Special Bench decision of this Tribunal in the case of Union Bank of India in ITA No.424/Mum/2024. We have perused the orders of the lower authorities and find that nothing is emanating from the impugned order. Hence, we refrain ourselves to decide these additional grounds as there are no discussion/facts in the order of AO or CIT(A) in these issues.

18. In the result, appeal filed by the assessee for AY 2020-21 is partly allowed for statistical purposes.

ITA No.300/Chny/2024 (AY 2021-22) (Assessee's appeal):

19. The assessee in the above appeal has raised three grounds namely (i)deduction u/s.36(1)(viiia), (ii) Disallowance u/s.43B in respect of provision for leave encashment; & (iii) Tax relief u/s.90.

20. At the outset, the learned counsel for the assessee submitted that the first ground of appeal i.e, deduction u/s.36(1)(viiia) is not pressed and prayed that the said ground may be dismissed as withdrawn. The Ld.DR has no objection for the same. In view of the above submission, we dismiss the ground no.1 raised by the assessee as withdrawn.

21. In regard to second ground raised by the assessee i.e, disallowance u/s.43B of the Act in respect of provision for leave encashment. We find that an identical issue raised by the assessee for the assessment year 2020-21 in ITA No.299/Chny/2024 has been decided by us hereinabove in para 9 & 10. The findings rendered by us on this issue for the assessment year 2020-21 in ITA No.299/Chny/2024 would apply *mutatis mutandis* to the AY 2021-22 as well to the appeal in ITA No.300/Chny/2024. Thus, the ground raised by the assessee is dismissed.

22. The third ground raised by the assessee for AY 2021-22 is in regard to restricting relief u/s 90 to the extent of foreign tax paid instead of tax charged on foreign income which is included in taxable Income.

23. We find that an identical issue raised by the assessee for the assessment year 2020-21 in ITA No.299/Chny/2024 has been decided by us hereinabove in para 15 to 17. The findings rendered by us on this issue for the assessment year 2020-21 in ITA No.299/Chny/2024 would apply *mutatis mutandis* to the AY 2021-22 as well to the appeal in ITA No.300/Chny/2024. Thus, the ground raised by the assessee is dismissed.

24. In the result, appeal filed by the assessee for AY 2021-22 is dismissed.

ITA No.354/Chny/2024 (AY 2020-21) (Revenue's appeal):

25. The grounds raised by the Revenue read as under:-

"1. The order of the learned Commissioner of Income Tax (Appeals) in ITA No.ITBA/NFAC/S/250/2023-24/1058674698(1) dated 12/12/2023 for the Assessment year 2020-21 is erroneous in law, facts and circumstances of the case.

2. The learned Commissioner of Income Tax (Appeals) erred in deleting the addition of Rs.3,96,50,286/- on account of the claim of expenditure of prior period debited to P&L account which was reported in the Tax Audit report in Form 3CD and the assessee could not demonstrate that the said prior period liability had crystalized during the relevant year.

3. The learned Commissioner of Income Tax (Appeals) erred in allowing depreciation @ 60% on ATM machines which fall under the category of "Plant & Machinery" and accordingly are entitled for depreciation only @ 15%.

4. The learned CIT(A) has erred in allowing the depreciation @ 60% on ATM machines by treating them as part of computer, without appreciating that the AO had rightly allowed depreciation @ 15% by treating it as part of any General Plant and Machinery equipment operated through Command or Software.

5. The learned Commissioner of Income Tax (Appeals) erred in deleting the addition of Rs. 11.89 crores on account of section 14A r.w Rule 8D, 1962 by relying upon the decision of the Hon'ble ITAT in its own case for the AY: 2015-16 in ITA No.948 & 777/Chny/2018 dated 22/01/2022 wherein it has been held that the provisions of the section 14A cannot be invoked for investments held as Stock in trade which is contrary to the decision of Hon'ble Supreme Court in the case of Maxopp Investments Ltd (91 taxmann.com 154)wherein it has been held that there is no distinction to be made whether the stocks are held as investment or are held as Stock in trade.

6. The learned CIT(A) has deleted the disallowance made u/s 37(1) of Rs.2.64 crores without appreciating that the said expenditure was of the nature of Penalty considering that it was made for non-adherence of internal directions of RBI for which explanation to Sec.37(1) is clearly applicable."

26. The first ground raised by the Revenue is in regard to addition made on account of claim of expenditure of prior period debited to profit & loss account amounting to Rs.3,96,50,286/- which was reported in Form 3CD. The learned AR for the assessee fairly admitted that similar issue raised by the Revenue in AY 2019-20 in assessee's own case has been decided against the Revenue in ITA Nos. 420 & 525/Chny/2023 vide order dated 31.01.2025.

27. We find that while dealing with the issue of prior period expenses, the CIT(A) has followed the decision of the Mumbai Benches of this Tribunal in the case of Bank of India in ITA No.2781 & 3354/Mum/2011 for AY 2003-04 and extracted the order in page 33 of the impugned order. On identical issue, by following the decision of Mumbai Bench decision in the case of Bank of India

(supra) the co-ordinate Bench of this Tribunal in ITA No. 525/Chny/2023 dated 31.01.2025 held as under:-

"We have gone through the orders of the lower authorities and we appreciate the submissions of the appellant that the liability to pay the said sums or the invoices for the said sums were received only in the current year and hence these cannot be treated as prior period expenses. The assessee has branches spread across the country, and settlement of claim and payment thereof is a continuous process and no expenditure can be treated as prior period expenses overlooking this fact. Hence, in the light of the order of the Tribunal referred supra we refrain from interfering in the order of the Id.CIT(A). Hence, the appeal of the revenue is dismissed."

28. Since there is no change in the facts for the year under consideration, we respectfully following the decision of the Tribunal in the assessee's own case cited supra, we see no infirmity in the order of the CIT(A) to uphold the same and reject the ground raised by the Revenue. Thus, the ground raised by the Revenue is dismissed.

29. The next ground raised by the Revenue in its appeal for AY 2020-21 is in regard to claim of depreciation @ 40% on ATM machines. The AO restricted the claim of depreciation on ATM to 15%. On appeal, the CIT(A) by taking into consideration of the Tribunal in assessee's own case for AY 2014-15 in ITA No.777 & 948/Chny/2018 dated 22.01.2020 held that no disallowance is called for. We find the Tribunal in assessee's own case for AY 2018-19 in ITA No.524/Chny/2023 dated 31.01.2025 has decided the

issue against the Revenue. Respectfully following the same, we reject the ground raised by the Revenue on the claim of depreciation on ATM. The ground raised by the Revenue is dismissed.

30. The next ground raised by the Revenue for AY 2020-21 is against deletion of addition amounting to Rs.11.89 crores u/s.14A r.w. Rule 8D. We find that the co-ordinate Bench of this Tribunal in ITA No.524/Chny/2023 vide its order dated 31.01.2025 remitted the issue back to the file of the AO for fresh consideration. We also direct the AO to follow the same direction of the Tribunal in ITA No.524/Chny/2023 vide its order dated 31.01.2025. We do so accordingly.

31. The next ground raised by the Revenue for AY 2020-21 is in regard to deletion of disallowance u/s.37(1) of the Act amounting to Rs.2,63,70,000/-. The assessee has paid said amount to RBI for not following internal guidelines laid down as reported in Tax Audit report which is not in nature of penalty.

32. We have gone through the impugned order of the CIT(A), wherein by following ratio laid down by the decision of the Mumbai Benches of the Tribunal in the case of IDBI Bank Ltd. in ITA No.3394 & 3849/Mum/2019, on identical facts, deleted the addition

made on account of penalty u/s.37(1) of the Act. Therefore, we see no infirmity in the order of the CIT(A) and thus reject the ground raised by the Revenue.

In result, revenue appeal is dismissed.

ITA No.377/Chny/2024 (AY 2021-22) (Revenue's appeal):

1. The order of the learned Commissioner of Income Tax (Appeals) in ITA No. ITBA/NFAC/S/250/2023-24/1058674286(1) dated 12/12/2023 for the Assessment year 2021-22 is erroneous in law, facts and circumstances of the case.

2. The Ld. Commissioner of Income tax(Appeals) erred in directing the Assessing officer to consider the aggregate average advances outstanding at the end of each month and not the incremental advances granted during each month while computing deduction u/s 36(1)(vii) of the Act.

3. The learned Commissioner of Income Tax (Appeals) erred in deleting the addition of Rs.2,65,33,671/- made on account of the claim of expenditure of prior period debited to P&L account without appreciating that the audit report in Form 3CD clearly showed that these expenses pertain to previous year and not for the year under consideration and that the assessee was unable to demonstrate that the said expenditure has crystalized during the relevant year.

4.The learned Commissioner of Income Tax (Appeals) erred in not appreciating that the Assessing Officer had correctly disallowed the excess claim of the assessee of depreciation on ATM, which are classified as "other plant and machinery" and therefore are eligible for depreciation @ 15% only.

5. The learned Commissioner of Income Tax (Appeals) erred in deleting the addition of Rs. 1.36 crores on account of section 14A r. w Rule 8D, 1962 by relying upon the decision of the Hon'ble ITAT in its own case for the AY: 2015-16 in ITA No.948 & 777/chny/2018 dated 22/01/2022 wherein it has been held that the provisions of the section 14A cannot be invoked for investments held as Stock in trade which is contrary to the decision of Hon'ble Supreme Court in the case of Maxopp Investments Ltd(9i taxmann.com154)wherein it has

been held that there is no distinction to be made whether the stocks are held as investment or are held as Stock in trade.

6. The learned Commissioner of Income Tax (Appeals) erred in deleting the addition made by the AO of Rs.1.59 crores related to recovery of bad debts written off which were not allowed as deduction at the time of written off, by relying upon the decision of the Hon'ble ITAT in assessee's own case for the AY 2014-15 wherein the AO was directed to verify if the bad debts written off in respect of recovery were allowed in earlier years and as such no blanket relief was allowed but the same has been given by the Learned CIT(A) for the relevant year.

7. The learned Commissioner of Income Tax (Appeals) erred in holding that the provisions u/s 115JB for computation of book profits are not applicable in respect of Banks which are governed by Banking Regulatory Act, 1949."

33. Deduction u/s 36(1)(viiia) based on advance outstanding and not on incremental advances:

Before us, the Id. Counsel for the assessee submitted that this issue has been allowed in favour of assessee by the co-ordinate bench order of the Tribunal in assessee's own case in ITA Nos.948 & 777 /Chny/2018 for AY 2014-15.

34. We have gone through the co-ordinate bench order of the Tribunal in assessee's own case referred supra and respectfully following the Hon'ble jurisdictional High Court in the case of City Union Bank judgment [TCA 961 of 2010] Para 10.2-12, we also remit this issue to AO for quantification of the deduction allowable. The AO is directed to proceed with the quantification of the deduction as per the judgment of the Hon'ble jurisdictional High Court delivered in the case of City Union Bank referred supra and shall complete the said exercise, after providing due opportunity to the respondent. Accordingly, this ground of revenue is allowed for statistical purposes.

35. Prior period expenses:

We find that an identical issue raised by the assessee for the assessment year 2020-21 in ITA No.354/Chny/2024 has been decided by us hereinabove in para 26 to 28. The findings rendered by us on this issue for the assessment year 2020-21 in ITA No.354/Chny/2024 would apply *mutatis mutandis* to the AY 2021-22 as well to the appeal in ITA No.377/Chny/2024. Thus, the ground raised by the revenue is dismissed.

36. Depreciation on ATM at 40%:

We find that an identical issue raised by the assessee for the assessment year 2020-21 in ITA No.354/Chny/2024 has been decided by us hereinabove in para 29. The findings rendered by us on this issue for the assessment year 2020-21 in ITA No.354/Chny/2024 would apply *mutatis mutandis* to the AY 2021-22 as well to the appeal in ITA No.377/Chny/2024. Thus, the ground raised by the revenue is dismissed.

37. Disallowance u/s 14A:

We find that an identical issue raised by the assessee for the assessment year 2020-21 in ITA No.354/Chny/2024 has been decided by us hereinabove in para 30. The findings rendered by us on this issue for the assessment year 2020-21 in ITA No.354/Chny/2024 would apply *mutatis mutandis* to the AY 2021-22 as well to the appeal in ITA No.377/Chny/2024. Thus, AO is directed to follow the same.

38. Recovery in respect of bad debts written off relating to rural branches:

The AO held that the appellant has not filed evidences to prove that this sum was already taxed in the earlier years. The appellant

submitted that orders for the earlier years are available with the revenue wherein the bad debts written off of the rural branches have never been allowed by the revenue hence no need to file evidences. As stated by the Id. Counsel for the assessee that this issue has been allowed in favour of assessee by the co-ordinate bench of the Tribunal in assessee's own case in ITA Nos.948 & 777 /Chny/2018 for AY 2014-15 and ITA No.524/Chny/2023 for AY 2018-19.

39. In view of the above orders of the Tribunal in assessee's own case in the earlier assessment years, respectfully following the co-ordinate bench order referred supra we also allow and decide this ground in favour of assessee and against the revenue. Accordingly, this ground of revenue is dismissed.

40. Non-applicability of provisions of section 115JB:

This ground has been allowed in favour of assessee by the co-ordinate bench of the Tribunal in assessee's own case in ITA Nos.948 & 777 /Chny/2018 for AY 2014-15 which held as under:

'29. On the issue of applicability of provisions of section 115JB, the Ld. AR relied on the order of the Calcutta ITAT in the case of UCI Bank (2015) 64 Taxmann.com 51 and Damodar Valley Corporation in ITA No. 438/Kol/2017, which is relied on by the Ld. CIT(A) in allowing the appeal in its favour.

30. We heard the rival submissions. Since, the Ld. CIT(A) has followed and applied the decision of Calcutta ITAT in the case of UCI Bank (2015) 64 Taxmann.com 51 and Damodar Valley Corporation in ITA No. 438/Kol/2017, we do not find any reason to interfere with the order of the Ld. CIT(A) and hence, the corresponding grounds of the Revenue on this

ground as well as the other grounds raised by the Revenue with regard to the various additions made in computing book profits are dismissed”.

It is also pointed out that this issue has been decided by the Special Bench of Tribunal Mumbai in the case of Union Bank of India [ITA 424/Mum/2020]. Hence, respectfully following the co-ordinate bench order referred supra we also decide this ground in favour of assessee and against the revenue. Accordingly, this ground of Revenue is dismissed.

41. In the result, appeal filed by the revenue for AY 2021-22 is partly allowed for statistical purpose.

Order pronounced in the open court on 30th May, 2025

Sd/-
(एस .र आ.रघुनाथा)
(S.R.Raghunatha)
लेखासदस्य / Accountant Member

Sd/-
(मनु कुमार गिरि)
(Manu Kumar Giri)
न्याय क सदस्य/ Judicial Member

चेन्नई/Chennai,
दिनांक/Date: 30.05.2025
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- 1.Appellant
- 2.Respondent
- 3.आयकर आयुक्त/CIT Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF