

|आयकर अपीलिय न्यायाधिकरण न्यायपीठ, मुंबई|

IN THE INCOME-TAX APPELLATE TRIBUNAL "F" BENCH,
MUMBAI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
&
SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 2037/MUM/2024

(निर्धारण वर्ष / Assessment Year :2020-21)

आयकर अपील सं./ITA No. 2038/MUM/2024

(निर्धारण वर्ष / Assessment Year :2021-22)

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| Union Bank of India, Finance & Accounts, Union Bank Bhavan, 239, Vidhan Bhavan Marg, Nariman Point, Mumbai, Maharashtra- 400021 | v/s. बनाम | DCIT, Circle- (LTU) 2, Mumbai Room No. 421, 4 th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACU0564G | | |
| Appellant/अपीलार्थी | .. | Respondent/प्रतिवादी |

आयकर अपील सं./ITA No. 2119/MUM/2024

(निर्धारण वर्ष / Assessment Year :2020-21)

आयकर अपील सं./ITA No. 2118/MUM/2024

(निर्धारण वर्ष / Assessment Year :2021-22)

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| ACIT, Circle-3(4), Mumbai Room No. 559, 5 th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020 | v/s. बनाम | Union Bank of India, Finance & Accounts, Union Bank Bhavan, 239, Vidhan Bhavan Marg, Nariman Point, Mumbai, Maharashtra- 400021 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACU0564G | | |
| Appellant/अपीलार्थी | .. | Respondent/प्रतिवादी |

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|-----------------------------------|---------------------------|
| निर्धारिती की ओर से /Assessee by: | Shri C. Naresh |
| राजस्व की ओर से /Revenue by: | Shri Vikas K. Suryawanshi |

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|--------------------------------------|------------|
| सुनवाई की तारीख / Date of Hearing | 02.06.2025 |
| घोषणा की तारीख/Date of Pronouncement | 11.06.2025 |

आदेश / ORDER

PER NARENDRA KUMAR BILLAIYA [A.M.]:-

ITA Nos. 2037/Mum/2024 & 2119/Mum/2024 are cross appeals by the assessee and the revenue preferred against the order dated 21.02.2024 by NFAC, Delhi [hereinafter referred to as "CIT(A)"] pertaining to Assessment Year [A.Y.] 2020-21. ITA Nos. 2038/Mum/2024 & 2118/Mum/2024 are cross appeals by the assessee and the revenue preferred against the order of the CIT(A) dated 21.02.2024 pertaining to AY 2021-22.

2. Since common issues are involved in the captioned appeals, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The representatives were heard at length on the facts of ITA Nos. 2037/Mum/2024 & 2119/Mum/2024. The orders of the authorities below carefully perused, and the relevant documentary evidences brought on record duly considered in the light of Rule 18(6) of the ITAT Rules, 1963.

ITA No. 2037/Mum/2024 (assessee's appeal for AY 2020-21)

4. **Ground No. 1 relates to the disallowance u/s 14A r.w. rule 8D.**



4.1 We find that an identical issue was decided by the coordinate bench in ITA No. 1440/Mum/2023 for AY 2016-17. The relevant findings of the coordinate bench read as under:

“4. The Id. AR submitted that the Co-ordinate Bench in assessee's own case for AY 2014-15 (ITA No. 1807/Mum/2018 dated 27.11.2020) has considered a similar issue and held that

"6. We have heard the submissions made by rival sides and have examined the orders of authorities below. The assessee in appeal has raised solitary ground against the disallowance under section 14A r.w.r. 8D of the Act. The Revenue in ground No.1 of the appeal has impugned the finding of CIT(A) in restoring the issue of disallowance under section 144 r.w.r. 8D of the Act to Assessing Officer. Undisputedly, the assessee has earned tax free income from Bonds and dividend income on shares held as 'stock-in-trade'. The assessee has made suo-moto disallowance of Rs.9,20,164/- under section 144 for earning tax free income. The assessee in appeal has contended that no disallowance under section 144 of the Act is warranted as tax free income has been earned on shares/stock held as 'stock-n-trade'. In so far as contention of the assessee that shares/bonds on which tax free income has been earned are held as 'stock-in-trade', is not disputed by the Revenue. The Hon'ble Apex Court in the case of Maxopp Investment Pvt. Ltd. (supra) has observed that where shares are held as 'stock-in-trade', it becomes business activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not is immaterial. It is quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the intention of the assessee is to trade in shares to earn profits. The Hon'ble Supreme Court approved the order of Hon'ble Punjab & Haryana High Court in the case of PCIT vs. State Bank of Patiala, 391 ITR 218 albiet for a different reason that provisions of section 144 would not get attracted where the shares are held in 'stock-in-trade'

Following the judgment rendered in the case of Maxopp Investment P. Ltd. (supra), the Tribunal in the case of Asstt.CIT vs. UCO Bank (supra), Punjab National Bank vs. ACI (supra) and IDBI Bank Ltd. Vs. DCIT(supra) has held that disallowance under section 144 r.w.r. 8D of the Act in case of assessee engaged in Banking business and holding shares as 'stock-in-trade' is not warranted.

7. The CIT(A) has restored the issue of disallowance under section 144 r.w.r. 8D of the Act to Assessing Officer to decide the issue in line with the order of Tribunal in assessee's own case for assessment year 2010-11. We observe that



the Co-ordinate Bench while adjudicating the issue of disallowance under section 144 r.w.r. 8D of the Act for assessment year 2010-11 in appeal by the assessee ITA No.1627/Mum/2014 has in turn followed the order of Tribunal in assessee's own case for assessment year 2008-09, wherein the issue was restored to Assessing Officer with a direction to examine the same afresh. The Tribunal while deciding the appeal of assessee for assessment year 2010-11 was not having the benefit of judgment rendered in the case of Maxopp Investment P. Ltd. (supra). The Tribunal passed the order on 08/01/2016 and the judgment in the case of Maxopp was delivered in February 2018. Even the judgment in the case of Pr.CIT vs. State Bank of Patiala (supra) and Pr.CIT vs. Punjab and Sind Bank (supra) are subsequent to the order of Tribunal.

8. Thus, in the light of the decisions discussed above, we hold that no disallowance under section 14A r.w.r. 8D of the Act is warranted where the assessee has earned exempt income on shares/stocks held as 'stock-in-trade'. Consequently, the sole ground raised in appeal by the assessee is allowed and corresponding ground No.1 raised in the appeal by the Revenue is dismissed.

9. In the result, appeal of the assessee is allowed."

5. We heard the parties and perused the material on record. The facts for the year under consideration is identical i.e. the exempt income earned by the assessee is out of the shares/stock held as stock-in-trade, therefore respectfully following the above decision of the Co-ordinate Bench in assessee's own case, we direct the AO to delete the disallowance made u/s 14A r.w.r. 8D."

On finding of parity of facts, respectfully following the decision of the coordinate bench (supra), we direct the AO to delete the disallowance made u/s 14A r.w. rule 8D. Ground No. 1 with its sub-grounds allowed.

5. Ground No. 2 relates to the taxability of recovery in respect of bad debts written off not allowed as deduction.

5.1 We find that an identical issue was decided by the coordinate bench in ITA No. 1440/Mum/2023 in AY 2016-17. The relevant findings read as under:

"11. We heard the parties and perused the material on record. The Id. AR brought to our attention that a similar issue in assessee's own case for AY 2013-14 (ITA No.



1439/Mum/2023 dated 13.03.2024) was considered by the Co-ordinate Bench where it has been held that

"11. Considered the rival submissions and material placed on record, we observe from the record that the issue raised by the assessee is covered in its favour by the order of the Coordinate Bench in assessee's own case, the same is reproduced by the Ld. CIT(A) in his order at Page No. 17 of the order. Since the issue under consideration is already covered in favour of assessee, however, Ld. CIT(A) has elaborately discussed his point of view that why he is not in a position to follow the decision of the Coordinate Bench, even though it is not as per the legal conventions still we proceed to explain the issue in the following paragraphs.

12. In the factual matrix submitted before us, the Bank makes provision for bad and doubtful debts as per RBI norms. Out of the said provisions made, deduction is allowed under section 36(1) (vita) to the extent of eligible amount as prescribed (an amount not exceeding 8.5% of the total income and an amount not exceeding 10% of the aggregate average advances by the rural branches). This is the first stream of deduction specified u/s 36(1) (vita) of the Act.

13. Therefore, Let us understand this transaction with an example, if a provision of say 2.1000 is made in the books as per RBI norms, a deduction of say .500 is allowed based on formula (an amount not exceeding 8.5% of the total income and an amount not exceeding 10% of the aggregate average advances by the rural branches) under section 36(1)(viiia). However, if no provision is made in the books, no deduction is allowed under section 36(1)(viiia) as per section 36(2)(v) of the Act.

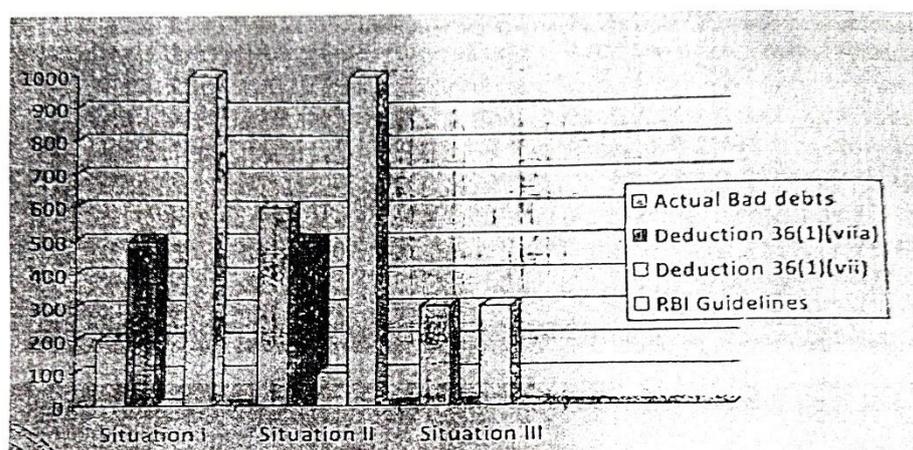
14. Accordingly, for the purpose of determining taxable income, the provision made of 2.1000 is added back and offered to tax, the deduction of ₹.500 is claimed u/s 36(1)(viiia) in the tax computation. Therefore, the actual bad debts written off is charged to the provision account, which the assessee ultimately reverses in the tax computation and allowed only the statutory deduction u/s 36(1)(viiia) of the Act, in the books it never crossed the amount allowed under section 36(1)(viiia) of the Act.

15. If there is a reversal of provision which is credited to P&L account, the same will be offered to tax and no deduction is allowed under section 36(1)(viiia) of the Act. Therefore, the provision made/reversed and deduction allowed under section 36(1)(viiia) / amount offered to tax form a separate stream of deduction under the Income-tax Act. When a bad debt is written off, the same is written off by debit to provision account for the reason that the assessee's claim of actual bad debts written off never crossed the claim of deduction claimed under section 36(1)(viiia) of the Act by the assessee. Whereas, the deduction under section 36(1) (vii) is allowed to the extent it exceeds the opening credit balance in the provision account maintained under section 36(1)(viiia) of the Act. This is the 2nd stream of deduction.



16. No deduction of the bad debts written off is allowed under section 36(1)(vii) of the Act, if it is lower than the deduction allowed under section 36(1)(viiia). In this regard, if a recovery is effected out of the said write off which falls under the 2nd stream of deduction, the same cannot be taxed unless a deduction has been allowed under the 2nd stream in respect of the bad debts written off.

17. The provisions of section 41(4) of the Act which provides for taxing the recovery effected out of the bad debts written off, therefore, clearly stipulates that the said recovery will be taxed if a deduction has been allowed in respect of bad debts written off which falls under the second stream of deductions as stated above. Accordingly, the section provides that if a bad debt written off has been allowed as deduction under section 36(1)(vii) of the Act i.e., in second stream of deductions, the recovery effected out of such write off, which has been allowed, will be charged to tax. This is explained in the below chart and table:



| Particulars | Situation I | Situation II | Situation III |
|---|-------------|--------------|---------------|
| Actual Bad debts | 200 | 600 | 300 |
| Deduction 36(1)(viiia) (first stream of deduction) | 500 | 500 | 0 |
| Deduction 36(1)(vii) (second stream of deduction) | 0 | 100 | 300 |
| Provisions as per RBI Guidelines | 1000 | 1000 | 0 |

18. From the above, in situation I, the deduction u/s 36(1)(viiia) is allowed the extent of ₹.500 because there is a provision created as per RBI guidelines. In situation II, deduction of ₹.500 is allowed under 36(1)(viiia) and also the actual bad debts is more than the first stream of deduction, the additional deduction is allowed of 2.100/- u/s 36(1)(vii) of the Act. In situation III, if the provision is not created in the books of account, then no deduction is allowed

under section 36(1)(viia) of the Act and only option available to the assessee is to claim u/s 36(1)(vii) of the Act.

19. Therefore, it is clear that where a deduction has not been allowed in respect of bad debts written off under the 2nd stream, the question of charging the recovery effected out of such bad debts written off to tax will not arise. In the third situation discussed in the chart, when the assessee does not make any provision as per RBI Guidelines, then it cannot claim any deductions under section 36(1)(viia) of the Act and it can only claim deduction under section 36(1)(vii) of the Act, if there is any recovery, it can be charged to tax under section 41(4) of the Act. Therefore, the proposed addition of recovery of bad debts by the Assessing Officer is not proper and observation of Ld.CIT(A) is also not correct, the revenue has to appreciate the actual claim of deductions made by the assessee under various provisions exclusively enacted for the purpose of banking companies has to be read along with the tax computation submitted by the assessee and not express their opinion without properly verifying the impact in the tax computation. It may look double deduction while reading the provisions in isolation. Accordingly, the grounds raised by the assessee is allowed.

20. In the result, appeal filed by the assessee is allowed."

12. From the observations of the AO as extracted in earlier part of this order, it is clear that the AO has held the recovery to be taxable for the reason that the adjustment made to the provision is indirectly charged to P&L A/c. This scenario is considered in the above decision and therefore respectfully following the same, we hold that the recovery of bad-debts which has not been claimed as a deduction u/s 36(1)(vii) in earlier years is not taxable. Accordingly, the AO is directed to delete the addition made in this regard."

5.2 Respectfully following the findings of the coordinate bench, we direct the AO to delete the impugned addition. Ground No. 2 is allowed.

6. Ground No. 3 relates to the disallowance of FCTR (Foreign Currency Translation Reserve) relating to monetary items.

6.1 A perusal of the assessment order shows that this claim was disallowed as the same was not routed through the P&L account. We find that the treatment given in accounts is strictly as per the RBI norms, which require the transitional difference arising on account of the restatement of accounts of foreign branches is to be credited/debited to FCTR. We further find that for the purposes of tax,



the assessee had segregated the amount of FTCD relating to monetary items and since it was a loss claimed the same as deduction. We further find that this action of the assessee is in accordance with the binding Income Computation and Disclosure Standard (ICDS)-VI relating to effects of changes in Foreign Exchange Rates. The relevant part of the ICDS reads as under:

“Conversion at Last Date of Previous Year

4. At last day of each previous year:-

- (a) foreign currency monetary items shall be converted into reporting currency by applying the closing rate;
- (b) where the closing rate does not reflect with reasonable accuracy, the amount in reporting currency that is likely to be realised from or required to disburse, a foreign currency monetary item owing to restriction on remittances or the closing rate being unrealistic and it is not possible to effect an exchange of currencies at that rate, then the relevant monetary item shall be reported in the reporting currency at the amount which is likely to be realised from or required to disburse such item at the last date of the previous year; and
- (c) non-monetary items in a foreign currency shall be converted into reporting currency by using the exchange rate at the date of the transaction.
- (d) non-monetary item being inventory which is carried at net realisable value denominated in a foreign currency shall be reported using the exchange rate that existed when such value was determined.

Recognition of Exchange Differences

- 5. (i) In respect of monetary items, exchange differences arising on the settlement thereof or on conversion thereof at last day of the previous year shall be recognised as income or as expense in that previous year.
- (ii) In respect of non-monetary items, exchange differences arising on conversion thereof at the last day of the previous year shall not be recognised as income or as expense in that previous year.

Exceptions to Paragraphs 3, 4 and 5

6. Notwithstanding anything contained in paragraphs 3, 4 and 5; initial recognition, conversion and recognition of exchange difference shall be subject to provisions of section 43A of the Act or Rule 115 of Income-tax Rules, 1962, as the case may be.

Financial Statements of Foreign Operations

7. The financial statements of a foreign operation shall be translated using the principles and procedures in paragraphs 3 to 6 as if the transactions of the foreign operation had been those of the person himself”



6.2 It is pertinent to mention here that in earlier years, since there was gain, the same has been accepted by the AO and taxed accordingly. Therefore, following the same principle, we do not find any reason to disallow the loss and the same is directed to be allowed. Ground No. 3 is allowed.

7. Ground No. 4 relates to the disallowance of interest expenses incurred on Innovative Perpetual Debts Instruments (IPDI) Bonds.

7.1 We find that a similar issue was considered by the coordinate bench in ITA No. 1440/Mum/2023 for AY 2016-17. The relevant findings of the coordinate bench read as under:

"8. We heard the parties and perused the material on record. We notice that the Co-ordinate Bench in the case of DCIT Vs. State Bank of India (ITA Nos. 3033 & 2873/Mum/2019 dated 29.09.2022) has considered a similar issue where it has been held that

"16 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. As far as argument of rule of consistency is concerned the Ld. CIT(A) has rejected the contention of the assessee following the decision of the Hon'ble Delhi High Court in the case of Krishak Bharati cooperative Ltd (supra). The said finding being based on the precedent, we concur with the finding of the Ld. CIT(A).

16.1 The assessee has distinguished the decision of Hon'ble Punjab Haryana High Court in the case of Pepsu Road transport Corporation (supra) on the ground that in said case capital was provided by the Union of India under a statutory obligation which had no provision of repayment. Further in the event of the liquidation of Pepsu Road transport Corporation after meeting the liabilities if any, the assets were to be divided among Central Government and the State Government and such other parties, if any as may have subscribed to the capital in proportion to the contribution made by each of them to the total capital. However in the instant case there was no statutory obligation on the investors to subscribe to IPDs and further the claim of the investor of the IPD bonds is superior to that of equity investor and subordinate to other creditors. Further, it was submitted that interest paid on IPD cannot be equated with the dividend as dividend is not mandatory to be paid each year and it has to be paid if there is profit during the any financial year and on approval of the proposal of the Board of Directors by the shareholders in the annual general meeting. Whereas in the case of the IPD, it is mandatory to pay interest irrespective of the availability of the profit and no approval of



the Board of Directors or shareholders was required. In view of the above discussion, we concur with the contention of the assessee that ratio in the case of Pepsu Road transport Corporation Ltd (supra) cannot be applied or the instant case.

16.2 However as far as finding of the Coordinate bench of Tribunal in the case of Tata Power Co Ltd (supra) is concerned, the Tribunal has in principle held that perpetual bond are not in the nature of equity and therefore quashed the revision proceedings passed by the Ld. PCIT, The relevant finding of the Tribunal (supra) is reproduced as under:

Heard both the sides and perused the material on record. Assessment in the case of the assessee was completed by the Assessing Officer u/s 143(3) r.w.s 144C(13) of the I.T. Act, 1961 on 30.06.2017. The ld. Pr.CIT has held vide order u/s 263(3) of the Act, dated 28.03.2018 that assessment order passed u/s 143(3) r.w.s 144C(13) as erroneous insofar as it was prejudicial to the interest of revenue holding that the Assessing Officer was not correct in allowing the interest on perpetual debt instruments without examining and verifying the allowability of such expenditure. With the assistance of ld. representatives we have gone through the copies of documents and detailed submission made before the A.O during the course of assessment proceedings as per page no. 1 to 160 of the paper book filed by the assessee. It is noticed that assessing officer has specifically asked the assessee vide notice dated 24.11.2016 to provide the detail of income tax reversal on distribution of unsecured perpetual securities. In this regard assessee has given detailed submission vide letter dated 16.12.2016 stating that it has issued 11.4% unsecured perpetual securities (bonds) for the purpose of business use. Interest of such securities is payable @ 11.40% per annum. The assessee has also specifically explained in line with accounting standard, the aforesaid interest is charged to reserve and surplus. The gross amount of interest of aforesaid securities was of Rs.142.03 crores for F.Y. 2010-11. But the same was charged to Rs.113.61 crores after netting off taxes [142.03-28.42]. The amount of tax impact of Rs.28.42 crores has been charged to reserve and surplus during the year. Thereafter again on 23.12.2016 the assessee has explained to the assessing officer that during the year the company has incurred Rs. 18.63 crores on issue of 10.75% debenture of Rs. 1500 crores. This amount being expenditure of capital nature has not been claimed by the assessee in its return of income. The assessee has also supplied to the Assessing Officer detailed offer document issued for unsecured perpetual debentures of Rs.1500 crores during the course of assessment proceedings. In the offer document the terms and conditions of issuing perpetual debentures, basis of allotment, creation of debenture redemption reserves along with object of the issue were clearly mentioned. As per the copy of object of the issue placed at page 67 of the paper book, it is mentioned that utilization of funds to be raised through this private placement will be for general business purpose and at page no. 62 issue size was mentioned of 15000 debentures of face value of Rs. 10 lac each aggregating to Rs.1500 crores. It is demonstrated from the detailed submission and copies of documents placed in the paper book that assessing officer has made detailed inquiry/verification during the course of assessment proceedings that assessee has borrowed funds for business use by issue of debentures. The



borrowed fund were payable on call option exercising by company after the 10th year or any at the end of every year thereafter. It was also explained that the lenders were not entitled to share any surplus or bear any loss like shareholders. Debentures trustee were appointed to safeguard interest of the lenders. The assessee company had also stated on the basis of aforesaid discussion that it had borrowed fund for the purpose of its business and the interest on debenture was deductible in computing the income from profit and gains from business and profession. In the light of the above facts and after considering the detailed material furnished by the assessee during the course of assessment proceedings before the assessing officer we observe that the assessee has categorically explained to the assessing officer with relevant supporting material that it has issued unsecured perpetual non-convertible debentures and such lenders were not entitled to share any surplus or bear any loss like shareholders. These debentures were entitled for fixed year. These facts and submissions were also brought to the notice of the Id. Pr.CIT during the course of proceedings u/s 263 of the Act, however, the Id. Pr.CIT without controverting these undisputed fact held that assessment order was erroneous so far it was prejudicial to the interest of Revenue. Therefore, we consider that the order passed by the Id. Pr.CIT u/s 263 is unjustified and we quash the same. Therefore, we allow the ground of appeal of the assessee.

16.3 Respectfully, following the finding of the Tribunal (supra), we set aside the finding of the Ld. CIT(A) on the issue in dispute and direct the Ld. A.O. to delete the disallowance of interest amounting to Rs. 18,00,00,000/-, which was made u/s 36(1) (iii) of the Act. The ground No. 4 of the appeal of the assessee is accordingly allowed.

9. The facts pertaining to the issue in assessee's case is identical to the above and therefore in our considered view the decision of the Co-ordinate Bench the above case is applicable to assessee also. Accordingly, we hold that the interest claimed by the assessee is allowable as deduction u/s 36(1)(iii) and the AO is directed to delete the disallowance made in this regard.”

7.2 Respectfully following the findings of the coordinate bench (supra), we direct the AO to delete the impugned disallowance. Ground No. 4 is accordingly allowed.

8. Ground No. 5 relates to the addition of interest accrued but not due.

8.1 While scrutinising the return of income, the AO noticed that the assessee has claimed deduction of accrued interest on securities amounting to Rs.



124,15,01,433/- . A show cause notice was issued to the assessee, asking it to justify the claim. In its reply, the assessee explained that the interest on these securities is payable only on the respective due dates, and therefore, they accrue only on the said due dates. The bank does not have the right to claim the interest before the due dates specified in the bonds, and hence, the interest on these securities accrues and becomes income only on the said due dates. Therefore, the interest accrued but not due cannot be taxed.

8.2 The contention of the assessee did not find favour with the AO, who made the addition of Rs. 124,15,01,433/-. The action of the AO was confirmed by the CIT(A).

8.3 We have given a thoughtful consideration to the orders of the authorities below. We find that an identical quarrel was decided by the Hon'ble jurisdictional High Court of Bombay in the case of *Credit Suisse First Boston (Cyprus) Ltd.* 351 ITR 323. The Hon'ble High Court held as under:

“When an instrument or an agreement stipulates interest to be payable at a specified date, interest does not accrue to the holder thereof on any date prior thereto. Interest would accrue or arise only on the date specified in the instrument. That a creditor has a vested right to receive interest on a stated date in future does not constitute an accrual of the interest to him on any prior date. interest only on a particular date, an action filed prior to such date would be dismissed as premature and not disclosing a cause of action. Subject to a contract to the contrary, a debtor is not bound to pay interest on a date earlier to that stipulated in the instrument.

Where interest is not calculated on the date on which it falls due in accordance with the terms of the security but only for a broken period between two consecutive due dates for payment of interest, interest can be said to accrue or arise only to the holder of the instrument and only on the date stipulated in the security for the payment of interest. The holder of a security would not be liable to tax on the notional interest for the proportionate period as on the last date of the financial year in respect of securities held on that date or on notional interest to the extent of the proportionate



amount from the day he purchased it to the date of the sale or for any other broken period.

The assignee or purchaser of such a security does not stand on a different footing. He has, by virtue of the assignment or purchase, the right vested in him to receive the interest but only on the terms of the security and subject to all the incidents thereof as applicable to the original owner.

Whatever be the connotation of the term "accruing" in general parlance, for the purpose of the Income-tax Act, 1961, interest does not accrue during such periods to the creditor. During such periods interest keeps mounting but the creditor does not during these periods have an enforceable right to demand interest. On the date stipulated in the agreement for payment of interest, the creditor has an enforceable right to be paid interest calculated at the rate and for the period stipulated therein.

Such securities or agreements do not regulate the price at which the holder is to sell them to a third party. The holder is at liberty to sell them at any price. The interest component for the broken period, i.e., the period prior to the due date for interest is only one of the factors that may determine the sale price of the security. What is paid for is not the face value of the security and the interest to be paid for the broken period from the last date of payment of interest till the date of purchase. What, in fact, is purchased is the possibility of recovering interest on the date stipulated in the security.

The interpretation of law does not depend upon the solvency of the debtor or the degree of probability of the debts being discharged. Indeed the solvency, reputation and the degree of probability of recovering the interest are factors which would go into determining the price at which such securities are bought and sold.

The principal or governing words in article 11(4) of the Double Taxation Avoidance Agreement between India and Cyprus (DTAA) are "interest means income from debt-claims of every kind". These words predicate the existence of a debtor-creditor relationship. Paragraph (4) relates to interest "from" debt-claims. In other words, the income must arise out of, on account of a debt-claim. There is a difference between the debt-claim itself and any accretion thereto, such as interest and the price realised upon the sale of the debt-claim itself is not interest. Interest arises from and on the terms of the debt-claim/security and would be on revenue account. The sale proceeds upon a transfer or assignment of the security arise not from but on account of and represent the debt claim/security itself.

The words in paragraph (4) "whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits" appear after the opening words "The term 'interest', as used in this article, means income from debt-claims of every kind" and, therefore, clearly relate to income from debt-claims. Thus, if and only if the transaction is a debt-claim, it matters not whether it is secured by a mortgage and whether or not it carries a right to participate in the debtor's profits.

The subsequent words in article 11(4) "in particular, income from Government securities and income from bonds or debentures" constitute merely an inclusive provision which by way of illustration refer to Government securities and income



from bonds or debentures which, in turn, include the further and other accretions thereto as stated therein, viz., premiums and prizes attaching to securities, bonds or debentures.

Article 11(4) includes within the ambit of the term "interest", income from Government securities and interest front bonds and debentures as well as "premiums and prizes attached to such securities, bonds or debentures". The sale price recovered in excess of the value of the security, bond or debenture cannot be said to be a premium "attaching to such securities, bonds or debentures". The amount paid by the purchaser of a bond in excess of its value would not be a premium attaching to the bonds/securities/debentures. To fall within the term "interest", the premium or prize referred to in article 11(4) must be attached to and arise from and in terms of the security, bond or debenture to wit it must be an inherent part of, and a right created by and contained in the instrument itself realisable on the terms of the instrument and not de hors the same. The sale price in excess of the value of the bond cannot be said to be attached to the instrument or transaction. It arises independently and de hors the terms of the instrument. A claim cannot be made in respect thereof by the holder of the instrument/promisee against the issuer of the security, bond or debenture as it is not a right inherent in or attached to the instrument. If the issuer of the debt instrument demands a premium while issuing it, it may be a different matter. business of banking,

The assessee; a tax resident of Cyprus, carried on the and was an approved sub-account of a foreign institutional investor. The Securities and Exchange Board of India had permitted the assessee to invest in India exclusively in debt-securities, including Government securities. For the assessment year 2001-02, it claimed exemption in respect of income on sale of Government debt-securities, interest whereunder was payable every six months. The Assessing Officer taxed the interest accrued though not due on securities held by the assessee as on the last date of the financial year, rejecting the assessee's contention that it had not accrued to it as under the Government securities, the interest was not due on that date. The Assessing Officer held the gains in transactions of Government debt-securities interest within the meaning of that term in article 11(4) of the DTAA and liable, therefore, to tax in India rejecting the assessee's contention that the income from sale of these securities constituted capital gains within article 14(4) of the DTAA and were, therefore, exempt from tax in India. The Commissioner (Appeals) deleted both additions and the Tribunal upheld his order. On appeal:

Held, dismissing the appeal, (i) that the securities in this case expressly provided for payment of interest in respect thereof only on the dates specified therein at six monthly intervals and such dates did not fall on the last date of the assessee's financial year, viz., March 31. Therefore, the interest could be said to have accrued only on the date on which it was due in accordance with the terms and conditions of the security. The right to receive interest on the Government securities vested in the assessee only on the due date mentioned in the securities. Consequently, interest accrued on the securities only on the due dates and could not be said to have accrued to the assessee on any date other than the date stipulated therein. In respect of the securities held by the assessee on March 31, 2001, the due date for payment of interest thereon had not arrived on March 31, 2001, and the assessee sold some of such securities 1... prior to the next due date for payment of interest. It was only the holder of the security on



such date to whom interest could be said to have accrued. In any event interest did not accrue to the assessee on March 31, 2001, as admittedly interest was not payable on that date under the terms of the securities. The appellate authorities, therefore, rightly deleted the addition of Rs. 1,21,57,517/- by the Assessing Officer as interest income.”

8.4 Respectfully following the decision of the Hon’ble jurisdictional High Court (supra), we direct the AO to delete the impugned disallowance. Ground No. 5 with its sub-ground is allowed.

9. Ground No. 6 relates to the disallowance of the write-off of bad and doubtful debts claimed u/s/ 36(1)(vii).

9.1 While scrutinising the write-off income, the AO found that the assessee has made the provision on bad debt and doubtful debts amounting to Rs. 11814.17 lakh. The AO was of the opinion that since the amount is provision and not writ-off, the same cannot be allowed as a write-off. Accordingly, disallowed the claim which was confirmed by the CIT(A).

9.2 It is true that provisions for bad and doubtful debts are not allowed, but it is equally true that the treatment given in the balance sheet is paramount. All that we have to see is whether by the impugned provision the assets side is reduced. If the assets side are reduced by the amount of provision, the same amounts to writ-off and has to be allowed. Our view is fortified by the decision of the Hon’ble Supreme Court in the case of *M/s Vijaya Bank 190 taxmann.com 257*. The relevant findings read as under:

“FACTS

For the relevant assessment year, the Assessing Officer disallowed the amount which the assessee-bank had reduced from loans and advances or debtors on the ground that the impugned bad debts had not been written off in an appropriate manner as



required under the accounting principles. According to him, write off of each and every individual account under the head 'loans and advances' or debtors was a condition precedent for claiming deduction under section 36(1)(vii). On appeal, the Commissioner (Appeals) held that it was not necessary for the purpose of writing off of bad debts to pass corresponding entries in the individual account of each and every debtor, and that it would be sufficient if the debit entries were made in the profit and loss account and corresponding credit was made in the 'bad debt reserve account'. On the revenue's appeal, the Tribunal affirmed the view taken by the Commissioner (Appeals) on the following three grounds: Firstly, according to the Tribunal, the assessee had rightly made a provision for bad and doubtful debt by debiting the amount of bad debt to the profit and loss account so as to reduce the profits of the year. Secondly, the provision account so created was debited and simultaneously, the amount of loans and advances or debtors stood reduced and, consequently, the provision account stood obliterated. Lastly, according to the Tribunal, loans and advances or the sundry debtors of the assessee as at the end of the year lying in the balance sheet were shown as net of 'provisions for doubtful debt' created by way of debit to the profit and loss account of the year. Consequently, the Tribunal came to the conclusion that deduction under section 36(1)(vii) was allowable. That view was not accepted by the High Court which held that in view of the insertion of the Explanation to section 36(1)(vii) vide the Finance Act, 2001, with effect from 1-4-1989, merely creation of a provision did not amount to actual write off of bad debts. On appeal to the Supreme Court:

Held

According to the revenue, in view of the insertion of the Explanation in section 36(1)(vii) with effect from 1-4-1989, a mere debit of the impugned amount of bad debt to the profit and loss account would not amount to actual write off. According to it, the Explanation makes it very clear that there is a dichotomy between actual write off on the one hand and a provision for bad and doubtful debt on the other. It was submitted that a mere debit to the profit and loss account would constitute a provision for bad and doubtful debt; it would not constitute actual write off and that was the very reason why the Explanation stood inserted. According to the department, prior to the Finance Act, 2001, many assessees used to take the benefit of deduction under section 36(1)(vii) by merely debiting the impugned bad debt to the profit and loss account and, therefore, the Parliament stepped in by way of the Explanation to say that mere reduction of profits by debiting the amount to the profit and loss account per se would not constitute actual write off. To that extent, the contentions of the revenue were to be accepted. However, as stated by the Tribunal, in the instant case, besides debiting the profit and loss account and creating a provision for bad and doubtful debt, the assessee-bank had correspondingly/simultaneously obliterated the said provision from its accounts by reducing the corresponding amount from loans and advances/debtors on the asset side of the balance sheet and, consequently, at the end of the year, the figure in the loans and advances or the debtors on the assets side of the balance sheet was shown as net of the provision 'for impugned bad debt'. After the insertion of the Explanation, the assessee(s) is now required not only to debit the profit and loss account but simultaneously, also to reduce loans and advances or the debtors from the assets side of the balance sheet to the extent of the corresponding amount so that at the end of the year the amount of loans and advances/debtors is shown as net of provisions for impugned bad debt. [Para 7]

However, what was being insisted upon by the Assessing Officer was that mere reduction of the amount of loans and advances or the debtors at the year-end would



not suffice and, in the interest of transparency, it would be desirable for the assessee-bank to close each and every individual account of loans and advances or debtors as a pre-condition for claiming deduction under section 36(1)(vii). That view had been taken by the Assessing Officer because he apprehended that the assessee-bank might be taking the benefit of deduction under section 36(1)(vii). In that context, it must be noted that there was no finding of the Assessing Officer that the assessee had unauthorisedly claimed the benefit of deduction under section 36(1)(vii), twice over. The order of the Assessing Officer was based on an apprehension that if the assessee failed to close each and every individual account of its debtor, it might result in the assessee claiming deduction twice over. In the instant case, the Court was concerned with the interpretation of section 36(1)(vii). The matter could not be decided on the basis of apprehensions/desirability. It was always open to the Assessing Officer to call for details of individual debtor's account if the Assessing Officer had reasonable grounds to believe that the assessee had claimed deduction twice over. In fact, that exercise had been undertaken in subsequent years. There was also a flipside to the argument of the department. The assessee had instituted recovery suits in the Courts against its debtors. If individual accounts were to be closed, then the debtor/defendant in each of those suits would rely upon the bank statement and contend that no amount was due and payable, in which event the suit would be dismissed. [Para 8]

According to the department, it was necessary to square off each individual account failing which there was likelihood of escapement of income from assessment. According to the department, in cases where a borrower's account was written off by debiting profit and loss account and by crediting loans and advances or debtors accounts on the asset side of the balance sheet, then as and when in the subsequent years the borrower would repay the loan, the assessee would credit the repaid amount to the loans and advances account and not to the profit and loss account which would result in escapement of income from assessment. On the other hand, if bad debt was written off by closing the borrower's account individually, then the repaid amount in the subsequent years would be credited to the profit and loss account on which the assessee-bank would have to pay tax. Although, prima facie, the argument of the department appeared to be valid, on a deeper consideration, it was not so for three reasons. Firstly, the head office accounts clearly indicated in the instant case that on repayment in subsequent years, the amounts were duly offered for tax. Secondly, one has to keep in mind that, under the accounting practice, the accounts of the rural branches have to tally with the accounts of the head office. If the repaid amount in subsequent years would not be credited to the profit and loss account of the head office, which is ultimately what matters, then there would be a mismatch between the rural branch's accounts and the head office accounts. Lastly, in any event section 41(4), inter alia, lays down that, where a deduction has been allowed in respect of a bad debt or a part thereof under section 36(1)(vii), then if the amount subsequently recovered on any such debt is greater than the difference between the debt and the amount so allowed, the excess shall be deemed to be profits and gains of business and, accordingly, chargeable to income-tax as the income of the previous year in which it is recovered. In the circumstances, the Assessing Officer was sufficiently empowered to tax such subsequent repayments under section 41(4) and, consequently, there was no merit in the contention that if the assessee would succeed, then it would result in escapement of income from assessment. [Para 9]"



9.3 Respectfully following the decision of the Hon'ble Supreme Court (supra), we direct the AO to delete the impugned addition. Ground No. 6 is allowed.

10. Ground No. 7.1 relates to the disallowance of the exclusion of profit of Foreign Branches.

10.1 The AO found that the assessee has claimed deduction of Rs. 25,73,11,908/- relating to profit earned by the Sydney branch based on section 90 of the Act. As per the CBDT notification, the income of foreign branches is required to be considered for tax in the resident state of the resident assessee. Accordingly, the AO disallowed Rs. 25,73,11,908/-, which was confirmed by the CIT(A).

10.2 We find that the coordinate bench in the case of *Bank of India 122 taxmann.com 246* has decided this quarrel in favour of the revenue and against the assessee. The relevant findings of the coordinate bench read as under:

"3. So far as the first issue is concerned, i.e. exclusion of profits of foreign branches from taxable income in India, this is certainly an issue of wider ramification touching the assessment of every Indian enterprise which has branch offices abroad inasmuch as whatever we decide in this case of a public sector undertaking will have equal application in other cases of Indian companies having branch offices abroad in the countries with which India has entered into the double taxation avoidance agreements. The related grounds of appeal are as follows:

"3. On the facts and in the circumstances of the case and in law, the learned ACIT has erred in disallowing exclusion of profits of branches of the Appellant Bank situated in countries with whom India has entered into a Double Taxation Avoidance Agreement (DTAA) namely United Kingdom, France, Belgium, Kenya, Japan, United States of America, Singapore, China and South Africa (herein after referred to as "foreign branches of the Appellant Bank") aggregating to Rs. 1408,32,77,584 and the Hon'ble CIT(A) has erred in upholding the decision of the learned ACIT. The learned ACIT be directed to allow deduction for exclusion of profits of foreign branches of the Appellant



Bank aggregating to Rs. 1408,32,77,584 and reduce the total income accordingly.

3A. Without prejudice to Ground no. 3 above, assuming without accepting that the exclusion of profit of the aforesaid foreign branches aggregating to Rs. 1408,32,77,584 is not allowed and therefore, taxed in India, then the Appellant Bank prays that the credit for taxes paid by the said branches in their respective countries be allowed as a deduction while determining tax liability in India in accordance with sec.90 of the Act."

4. The assessee bank has branches abroad, in Belgium, China, France, Japan, Kenya, Singapore, South Africa, United Kingdom, and United States of America. During the relevant financial period, the assessee earned income aggregating to Rs. 1408,32,77,584 (i.e. Rs. 1408.32 crores) from these foreign branches. While filing its income tax return, however, the assessee did not include this income of Rs. 1,408.32 crores in its taxable income. The plea of the assessee was that since India has Double Taxation Avoidance Agreements with all these countries, the right to tax the profits of these foreign branches exclusively vests with the respective tax jurisdictions and these profits cannot be taxed in India. This plea was negated by the Assessing Officer on the ground that, under the scheme of the law as it prevails-particularly in the light of the provisions of section 90(3) read with notification no SO 2123(E) dated 28th August 2008, entire global income of an Indian resident assessee is to be taxed in India and that where a DTAA provides that "any income of a resident of India 'may be taxed' in the other country, such income shall be included in his total income chargeable to tax in India, in accordance with the provisions of the Income-tax Act, 1961, and relief shall be granted in accordance with the method of elimination or avoidance of double taxation provided in such agreement". Aggrieved, assessee carried the matter in appeal before the CIT(A) but without any success. The assessee is not satisfied and is in further appeal before us.

5. Learned counsel's contention, as articulated in the written note filed before us, is that the issue in appeal is covered, in favour of the assessee, by decisions of the coordinate benches in two immediately preceding assessment years, namely 2013-14 and 2014-15, wherein the matter has been remitted back to the file of the Assessing Officer in the light of certain directions. It is thus contended that when profits of a branch abroad has been subjected to tax abroad, under article 7 of the applicable double taxation avoidance agreement, the same income cannot again be taxed in India. On the first principle, the merits of this argument, merit if there is any, could only be its simplicity, or naivety- to be more apt, in its approach. It proceeds on the fallacy that there is only one method of relieving double taxation of an income, due to inherent conflict of the source taxation vs residence taxation rule, and that method is exemption method, and that is the method of relieving double taxation of income in the Indian tax treaties as well. Nothing can be farther from the truth. Not only that credit method is an equally, even if not more, effective a method of relieving double taxation of income in a cross border situation, that is the method which is used in an overwhelming majority of the Indian tax treaties- including, of course, all the tax



treaties that we are concerned about in this case. What essentially follows is that the so far income of the branches, which are subjected to tax abroad under the respective tax treaties, is to be included in the taxable income of the assessee, and so far as taxes paid abroad are concerned, credit for the taxes so paid abroad is to be given to the assessee, in computation of its Indian income tax liability, in accordance with the provisions of the related tax treaty. Having so set out the correct position from an academic point of view, we may hasten to add that there is indeed a judicial precedent from Hon'ble Supreme Court, in the case of CIT v. PVAL Kulandagan Chettiar [2004] 137 Taxman 460/267 ITR 654 (SC), which touches a different chord, but then, in the light of subsequent legal amendments, the impact of this judicial precedent stands nullified. What is thus correct on the first principles and as per the text books, is also the binding legal position.

6. When we put our above understanding to the learned counsel in the beginning of hearing on this issue, learned counsel did fairly admit that, even on the same facts of the case this issue was decided in favour of the assessee by the coordinate benches, this issue is now covered against the assessee, by a rather recent coordinate bench decision in the case of Technimont (P.) Ltd. v. Asstt. CIT [2020] 116 taxmann.com 996/184 ITD 474. Learned counsel frankly submits that the reasoning adopted by those coordinate benches, in the light of this recent decision, does not hold good, and he has nothing to say on the same on the same-except for one new reason which we will take up a little later. In the case of Technimont (P.) Ltd. (supra), the coordinate bench, speaking through one of us (i.e. the Vice President), has, inter alia, observed, and we are in considered agreement with these observations, as follows:

"4. To adjudicate on the issue on merits, only a few undisputed material facts need to be taken note of. The assessee before us is an Indian company with branch offices in UAE and Qatar. The assessee has earned profits aggregating to Rs. 11,91,18,391 in these branches, which, for the purposes of the provisions of the respective tax treaties, constitute permanent establishments. The claim of the assessee, as noted by the DRP at page 10, is that "the foreign branches create permanent establishments (PEs) in the foreign countries, the income from the same is liable to tax in these foreign countries, i.e. source states, and, hence, the income from aforesaid foreign branches should be exempt in India as per Article 7 of the tax treaties". The assessee has further contended that "according to many judicial precedents cited below, it has been held that under a tax treaty, it has been provided that tax 'maybe' charged in a particular state in respect of specified income, it is implied that tax will not be charged by the other state in respect of such income". As noted in the DRP's order, further at page 11, the contentions of the assessee have been that "it has been held that once an income is held to be taxable in a particular jurisdiction under a tax treaty, unless there is a specific mention that it can be taxed in the other jurisdiction as well, the latter is denuded of the powers to tax such income" and that "accordingly, income earned by the foreign branches in UAE



and Qatar where the assessee was forming PE should not be liable to tax in India based on relevant tax treaties". The assessee has also relied upon a large number of judicial precedents, including the judicial precedents in the cases of PAVL Kulandayan Chettiar v. ITO [1983] 3 ITD 426 (Mad.) (SB), which has been upheld right upto Hon'ble Supreme Court P.V.A.L. Kulandayan Chettiar (supra) and a review petition has also been dismissed by Hon'ble Supreme Court CIT v. P.V.A.L. kulandavan Chettiar [2008] 300 ITR 5, CIT v. Bank of India [64 taxmann.com 335 (Bom)], CIT v. VRSRM Firm [1994] 208 ITR 400 (Mad.), CIT v. R M Muthiah [1993] 67 Taxman 222/202 ITR 508 (Karnataka). Dy. CIT v. Patni Computer Systems Ltd. [2008] 114 ITD 159 (Pune), Apollo Hospitals Enterprises Ltd. v. Dy. CIT [2012] 23 taxmann.com 168/53 SOT 103 (Chennai)]. Dy. CIT v. Turquoise Investments & Finance Ltd. [2008] 168 Taxman 107/300 ITR 1 (SC), Ms. Pooja Bhatt v. DY. CIT [2008] 26 SOT 574 (Mum.), Dy. CIT v. Mideast India Ltd. [2009] 28 SOT 395 (Del.), CIT v. Patni Computer Systemis Ltd. [2013] 33 taxmann.com 3/215 Taxman 108 Hon'ble Bombay High Court and Apollo Enterprises Ltd. v. (supra)

5. Learned counsel for the assessee has more armoury in store. He begins by inviting our attention to a coordinate bench decision in the case of Bank of India v. Dv. CIT. and vice versa [IT Appeal Nos. 5977 and 6016 (Mum.) of 2011, order dated 26-7-2017] wherein it has been held that the income of the foreign branches, covered by tax treaties with respective jurisdictions, is to be excluded from total income of the assessee and is to be held as not taxable in India. It is submitted that this decision is a binding judicial precedent and it is not open to us to deviate from the stand so taken by the coordinate bench. When learned counsel's attention was invited to the provisions of Section 90(3) read with notification no. 91/2008 dated 28th August 2008, and impact of this legal position on the claim of the assessee, he submits that section 90 was re-enacted with effect from 1st October 2009, and the notifications issued prior to re-enacted section 90 will not hold good in law. In support of this proposition, our attention is invited to a coordinate bench decision in the case of Essar Oil Ltd. v. Addl. CIT [2014] 42 taxmann.com 21 wherein it is said to have been held, in paragraph no. 76, that notifications issued under earlier section 90 shall hold good till 1st October 2009. As a corollary to this observation, according to the learned counsel, the notifications issued under earlier section 90 will not hold good after 1st October 2009. He submits that in this view of the matter, nothing really turns on the notification no 91/2008 under section 90(3). He submits that the impact of notification having been nullified by re-enactment of section 90, the law laid down by Hon'ble Supreme Court in the case of CIT v. PVAL Kulandagan Chettiar [2004] 137 Taxman 460/267 ITR 654 (SC) will hold the field, and, therefore, income taxable in the source jurisdiction under the treaty provisions cannot be included in total income of the assessee. He hastens to add, and rather curiously so, that he



would once again urge us not to decide the matter on merits and simply remit the matter to the file of the Assessing Officer. Learned Departmental Representative, on the other hand, vehemently relies upon the stand of the authorities below, and leaves the matter to us.

6. For the sake of completeness, we may also place on record that the fact that in assessee's own case for the assessment year 2012-13, the Dispute Resolution Panel has given relief of Rs. 10,81,17,104 on this issue, and likewise for the assessment year 2013-14, the Dispute Resolution Panel has given relief of Rs. 28,47,44,212 on the same issue. That is what probably explains the assessee's eagerness to go back to the assessment stage, and claim it as a covered issue before them. The reasoning adopted by the Dispute Resolution Panel, for example for the assessment year 2013-14 (at page 294 of the paper book, and internal page 15 of the respective order), is as follows:

9.1 We have gone through the core objection raised with respect to inclusion of foreign branches income in the hands of the assessee. It is a fact that the assessee has two foreign branches situated in UAE and Bahrain. It is also a fact that there exists a DTAA between India and UAE. Reference is made to the decision of Hon'ble Supreme Court in PAVL Kulandagan Chettiar's case (267 ITR 654) wherein Hon'ble Court has upheld the finding of the High Court which took the view that where there exists a provision to the contrary in the agreement, there is no scope for applying the law of any one of the respective contracting states to tax paid on the liability to tax has to work doubt (sic-out) in the manner and to the extent permitted and allowed under the terms of the agreement. The AO is directed to verify the total income of the UAE branch and reduce the same from assessee's total income. The ground of objection is, accordingly, accepted.”

10.3 Respectfully following the findings of the coordinate bench, ground No. 7.1 is dismissed.

11. Ground No. 7.2 relates to the taxability of the income of foreign branches as per the local laws of the respective country.

11.1 A similar issue has been decided against the assessee in the case of the *Bank of Baroda* in ITA Nos. 2480 & 3081/Mum/2015. The relevant findings read as under:



“26. A reading of the above makes it clear the Tribunal had held that the income of the foreign branches of the assessee shall also be taxable in India that is it would be included in the return income filed by the assessee in India and whatever taxes have been paid by the branches in the other countries credit of such taxes shall be given. We find that the Tribunal as above has not held that it is only that income of the foreign branches which was taxed in that foreign country which is to be included in the return of income filed by the assessee. Hence, we are in agreement with the revenue plea that Ld. CIT-A has not properly followed the Tribunal decision as referred by him. A reading of the notification canvassed by the Ld. Counsel by the assessee also does not help the case of assessee. The notification also does not support the direction of Ld. CIT-A. The doctrine of stare decisis mandates that we follow the coordinate bench decision as above and hold that the income of the branches of assessee situated abroad shall also be taxable in India and whatever tax have been paid by the branches in the foreign country, credit of such taxed shall be given. Accordingly, we allow the ground raised by the revenue.”

11.2 Respectfully following the decision of the coordinate bench, ground No. 7.2 is dismissed.

12. Ground No. 7.3 relates to the non-granting of credit towards foreign taxes in computing book profits.

13. Before embarking on these grounds, we will first consider ground No. 8, which relates to the applicability of provisions of section 115JB of the Act.

13.1 An identical issue has been decided by the coordinate bench in *ITA No. 1440/Mum/2023 for AY 2016-17*. The relevant findings read as under:

13. We notice that the issue of applicability of provisions of section 115JB has been considered by the Special Bench in assessee's own case for AY 2015-16 (ITA No. 424/Mum/2020 dated 06.09.2024) where it has been held that

"39. We have heard both the parties and also perused the relevant material referred to before us and the various provisions of the relevant Acts cited which are relevant for adjudication of the issue before us.

40. The question which has been referred to the Special Bench is whether the requirement of sub-section (2) of 115JB is fulfilled in the present case of the assessee. Sub-section (1) of Section 115JB mandates charge of income based on book profits subject to fulfilment of certain conditions and also provides the rate on which such tax shall be charged. The Section starts with non-obstante clause and therefore, it is a departure from normal charge of tax on the total income of the company. Sub-section (2) is the computation provision dealing with the manner in which such book profits are to be computed. Upto



A.Y.2012-13, subsection (2) of Section 115JB applied only to such companies which were required to prepare its profit and loss account in accordance with part II & III of Schedule VI to the Companies Act 1956. The assessee bank is required to prepare its profit and loss account in accordance with Section 52 r.w.s. 29 of the Banking Regulation Act and not as per the Companies Act. Earlier in the case of the assessee it has been settled by the Hon'ble Jurisdictional High Court that provision of Section 115JB has no application to its case. Now after the amendment w.e.f. A.Y.2013-14, Sub-section (2) has been amended to bring into the ambit of Section 115JB, those companies to which second proviso to subsection (1) of Section 129 of the Companies Act is applicable, who are required to prepare its statement of profit and loss account in accordance with provisions of the Act governing such company. For the sake of ready reference the amended subsection (2) of Section 115JB is again reproduced hereunder:-

(2) Every assessee,-

(a) being a company, other than a company referred to in clause (b), shall, for the purposes of this section, prepare its statement of profit and loss for the relevant previous year in accordance with the provisions of Schedule III to the Companies Act, 2013 (18 of 2013); or

(b) being a company, to which the second proviso to subsection (1) of section 129 of the Companies Act, 2013 (18 of 2013) is applicable, shall, for the purposes of this section, prepare its statement of profit and loss for the relevant previous year in accordance with the provisions of the Act governing such company:

Provided that while preparing the annual accounts including statement of profit and loss,

(i) the accounting policies;

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

(iii) the method and rates adopted for calculating the depreciation,

shall be the same as have been adopted for the purpose of preparing such accounts including statement of profit and loss and laid before the company at its annual general meeting in accordance with the provisions of section 129 of the Companies Act, 2013 (18 of 2013):

Provided further that where the company has adopted or adopts the financial year under the Companies Act, 2013 (18 of 2013), which is different from the previous year under this Act,-

(i) the accounting policies;



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

(iii) the method and rates adopted for calculating the depreciation,

shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including statement of profit and loss for such financial year or part of such financial year falling within the relevant previous year.

41. In so far as Clause (a), the same applies to a case of a company other than referred to in Clause (b). According to clause (a), for the purpose of Section 115JB the company has to prepare its profit and loss account for the relevant previous year in accordance with the Companies Act, 2013 and the First proviso to sub-section (2) requires that while preparing the accounts including the profit and loss account, the accounting policies, the accounting standards and the method and rates adopted for the purpose of preparing such accounts including the profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of Section 129 of the Companies Act, 2013. Since assessee bank has to prepare its accounts in accordance with the provisions contained in Section 51 r.w.s. 29 of the BR Act, therefore, Schedule III of the Companies Act is not applicable. Thus, Clause (a) of Section 115JB (2), the computation provision, will not apply and this matter has attained finality in the case of the assessee by the Hon'ble Jurisdictional High Court in the case of the assessee (cited supra).

42. Now for Clause (b), following conditions need to be satisfied for applying section 115JB in the case of a company:-

- i. it applies to a company to which the second proviso to subsection (1) of section 129 of the Companies Act, 2013 is applicable;
- ii. once this condition is fulfilled, it requires such assessee for the purpose of this section to prepare its profit and loss account in accordance with the provisions of the Act governing such company.

43. Since 115JB is applicable to the company to which second proviso to Section 129(1) applies, therefore, it would be relevant to quote Section 129 of the Companies Act which reads as under:-

"129. Financial statement-(1) The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III:

Provided that the items contained in such financial statements shall be in accordance with the accounting standards.



Provided further that nothing contained in this subsection shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company

Provided also that the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose (a) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938 (4 of 1938), or the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999).

(h) in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949 (10 of 1949),

(c) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003 (36 of 2003),

(d) in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law."

44. The second proviso applies to any insurance company, banking company or any company engaged in the generation or supply of electricity or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company. In so far as the present case is concerned, one has to consider whether the assessee could be regarded as a 'banking company' for the purposes of section 129 of the Companies Act, 2013).

45. Now whether the assessee bank can be termed as a company within the meaning of the Companies Act, 2013, first of all, Section 115JB(2) is applicable to every assessee „being a company". The company has been defined in Section 2(17) of the Income Tax Act which we have already reproduced in para 22 above. Thus, the company means any Indian company. Indian company has been defined in Section 2(26) (incorporated in para 23 of the order) which defines „Indian company" means company formed and registered under the Companies Act. Thus, the company for the purpose of the Income Tax Act is a company which is formed and registered under the Companies Act. Section 2(9) of the Companies Act, 2013, a banking company has been defined to mean a banking company as defined in section 5(c) of the BR Act). Section 5(c) of the BR Act defines a „banking company" as under:

"(c) "banking company" means any company which transacts the business of banking in India"

Therefore, for an entity to qualify as a banking company it should first of all, be a company' and secondly the said company should transact the business of banking in India.



46. The expression "company" has been defined in section 5(d) of the BR Act as under:

"(d) "company" means any company as defined in section 3 of the Companies Act, 1956 (1 of 1956); and includes a foreign company within the meaning of section 591 of that Act;"

47. Therefore, in so far as is relevant, the entity has to be a company as defined in section 3 of the Companies Act, 1956 (Now 2013) to be regarded as a banking company. Section 3(1)(i) of the Companies Act, defines a 'company' as under:

"(i) "company" means a company formed and registered under this Act or an existing company as defined in clause (ii)"

48. Therefore, it is sine-qua-non that for an entity to qualify as a company it must either be a company formed and registered under the Companies Act or it should be an existing company as defined in sub-clause (ii) thereof. Since the Assessee is not formed and registered under the Companies Act, 1956, albeit came into existence by a separate Act of Parliament, that is, „Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970", therefore, it does not fall in the first part of the said section.

49. Further, the expression "existing company has been defined in Section 3(1)(ii) to mean as under:

"(ii) "existing company" means a company formed and registered under any of the previous companies laws specified below :-

(a) any Act or Acts relating to companies in force before the Indian Companies Act, 1866 (10 of 1866), and repealed by that Act;

(b) the Indian Companies Act, 1866 (10 of 1866);

(c) the Indian Companies Act, 1882 (6 of 1882);

(d) the Indian Companies Act, 1913 (7 of 1913);

(e) the Registration of Transferred Companies Ordinance, 1942 (54 of 1942); and

(f) any law corresponding to any of the Acts or the Ordinance aforesaid and in force -

(1) in the merged territories or in a Part B States (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913 (7 of 1913);

Or (2) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956 (62



of 1956), insofar as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu & Kashmir) Act, 1968 (25 of 1968), insofar as other corporations are concerned; and

(3) the Portuguese Commercial Code, insofar as it relates to sociedades anonimas";"

50. The assessee bank was neither formed or registered under the Companies Act, 1956; nor it is in existing company as per the above definition. Once it is not a company under the Companies Act, then the first condition referred to in clause (b) of Section 115JB(2) is not fulfilled, and consequently second proviso below Section 129(1) of the Companies Act is also not applicable.

51. The main crux of the department is that since assessee bank has come into existence by the Acquisition Act" and Section 11 thereof states that for the purpose of Income Tax Act, every corresponding new bank shall be deemed to be an Indian company" and the company in which the public are ..substantially interested' and since in Section 2(17) of the Income Tax Act, the company" has been defined as any Indian company therefore, the provisions of the Income Tax Act would apply because Section 2(26) of the Act defines Indian company" means the company formed and registered under the Companies Act and therefore, it is deemed to be a company under the Companies Act.

52. Section 11 of the Acquisition Act states that "For the purposes of Income-tax Act, 1961 (43 of 1961), every corresponding new bank shall be deemed to be an Indian company and a company in which the public are substantially interested". Therefore, the said deeming fiction is created only for the purposes of the Income-tax Act. Further, for the purposes of the said Act, it treats every corresponding new bank to be an Indian company and also a company in which the public are substantially interested.

53. First of all, deeming an entity to be an Indian Company or a company in which public are substantially interested for the purposes of the Income-tax Act would not ipso facto make such entity as a 'company' for the purposes of the Companies Act, 2013, unless the conditions specified in Section 3 thereof are fulfilled. There is no provision to deem a nationalised bank to be a company for the purposes of Section 3 of the Companies Act, 1956.

54. As explained in the foregoing paragraphs, Section 2(17) of the income Tax Act r.w.s. 2(26) which defines company" to mean a company formed and registered under the Companies Act, 1956, does not meet the requirement of being a company in the case of assessee bank, because the Indian company has to be formed and registered under the Companies Act. Notwithstanding that Section 11 of the Acquisition Act deems assessee bank to be a company for the purpose of Income Tax Act, but that does not lead to an inference that merely regarded as a company for the purpose of the Income Tax Act it is also Company registered under the Companies Act. The fiction created by Section 11 of the Acquisition Act, does not imply that the assessee bank would also



become a company for the purpose of the Companies Act for which Clause (b) of Sub-Section 2 of Section 115JB is applicable.

55. In the earlier part of the order, we have already noted that by the Acquisition Act, the banking business of the existing bank was transferred from Union Bank of India Ltd to The Union Bank of India. The earlier entity, i.e., Union Bank of India Ltd. was a company under the earlier Companies Act, however, that company as a whole was not taken over or acquired but only banking business was acquired by the Acquisition Act. That is the reason why Union Bank of India Ltd. still existed at the point of acquisition and continues till now and the shareholders of Union Bank of India Ltd. were paid compensation as a consideration for acquiring the banking business. It was by the Acquisition Act that these banks were nationalized and the banking business was acquired from the erstwhile banking companies. These new acquiring banks including Union Bank of India is neither registered under the Companies Act, 2013 nor under any other previous company law. Already the Hon'ble Supreme Court in the case of *Rustom Cavasjee Cooper v. Union of India (supra)* as noted above, the Hon'ble Supreme Court had held that only undertaking was acquired for the banking companies acquisition and transfer of invoking ordinance which was promulgated on 19/06/1969, which culminated into the Act of Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970. Thus, assessee cannot be treated as a company under the Companies Act, because it was never registered under the Companies Act. Ergo, the deeming fiction by way of Section 11 of the Acquisition Act has to be read purely in the context for the purpose of Income Tax Act where the corresponding new bank have been deemed to be an Indian Company and a company in which public are substantially interested. This deeming section cannot be extended to a company registered under the Companies Act to which alone Section 115JB is applicable.

56. Thus, we hold that Section 11 of the Acquisition Act which deals a corresponding new bank treated as Indian company for the purpose of Income Tax, however, Clause (b) in Sub-Section 2 to Section 115JB does not permit treatment of such bank as a company for the purpose of the said clause, because it should be company to which second proviso to sub-section (1) to Section 129 of the Companies Act is applicable. The said proviso has no application to the corresponding new bank as it is not a banking company for the purpose of the said provision. The expression "company" used in section 115JB(2)(b) is to be inferred to be company under the Companies Act and not to an entity which is deemed by a fiction to be a company for the purpose of the Income Tax Act.

57. Before us, ld. Counsel has given various references under the Income Tax Act itself where the corresponding new bank and a banking company have been treated separate and independent from each other for which our reference was also drawn to Section 36(1)(viii) & 72A. Apart from that, it is noticed that, Section 1941(1) of the Act which provides that if any specified person is responsible for paying to a resident any income by way of interest is obliged to deduct tax at source, however, Section 194A(3) provides that



Section 194A(1) shall not apply if the payment has been made to certain entities. Clause (iii) of subsection (3) of section 194A, deals with such entities. The said clause reads as under:-

iii) to such income credited or paid to-

(a) any banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies, or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank), or

(b) any financial corporation established by or under a Central, State or Provincial Act, or

(c) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or

(d) the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), or

(e) any company or co-operative society carrying on the business of insurance, or

such other institution, association or body [or class of institutions, associations or bodies] which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette: [Provided that no notification under this sub-clause shall be issued on or after the 1st day of April, 2020;]

58. The aforesaid clause (f) provides that if Central Government notifies any such entity then TDS is not to be deducted. It is very relevant to note that at the time of Acquisition Act was enacted, Central Government had issued a Notification No. SO 710 dated 16/02/1970 [1970] [Reported in 75 ITR (Stat) 106] which reads as under:-

Income-tax Act, 1961: Notification under sec. 194A(3) (iii) (f)

Notification No. S. O. 710, dated February 16, 1970. (1)

In pursuance of sub-clause (f) of clause (iii) of sub-section (3) of section 194A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notify with effect from the 19th July, 1969, the following banks for the purposes of the said sub-clause:-

1. Indian Overseas Bank, 151, Mount Road, Madras-
2. Indian Bank, Indian Chamber Building, Madras-1.
3. Allahabad Bank, 14, India Exchange Place, Calcutta-1.
4. Dena Bank, Devkaran Nanjee Building. 17. Horniman Circle, Fort, Bombay-1.



5. Canara Bank, 112, Jayachamarajendra Road, Bangalore-1.
6. Union Bank of India, 66/80, Apollo Street, Fort, Bombay-1.
7. United Commercial Bank, 10, Brabourne Road, Calcutta-1.
8. Bank of Baroda, 3. Walchand Hirachand Marg, Bombay-1.
9. Punjab National Bank, Parliament Street, New Delhi-1. 10. Bank of India, 70/80 Mahatma Gandhi Road, Bombay-1.
11. Central Bank of India, Mahatma Gandhi Road, Bombay-1.
12. United Bank of India, 4, Narendra Chandra Datta Srani (Clive Ghat Street), Calcutta-1.
13. Bank of Maharashtra, 1177 Peth, Poona-2.
14. Syndicate Bank, Manipal, Mysore State, Mysore

59. Thus, the aforesaid notification read with provision of Section 1944(3), makes it clear that even Government of India considers the above entities separate and distinct from banking companies. Once under the Income Tax Act, Legislature itself has made a distinction for the aforesaid banks including the assessee are not covered as banking company, then, this further buttresses the point that these banks are separate and distinct from other banking companies.

60. Accordingly, the question referred to Special Bench is decided in favour of the assessee banks that clause (b) to sub section (2) of section 115JB of the Income-tax Act inserted by Finance Act, 2012 w.e.f. 1-4-2013, that is, from assessment year 2013-14 onwards, are not applicable to the banks constituted as 'corresponding new bank' in terms of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and therefore, the provision of Section 115JB cannot be applied and consequently, the tax on book profits (MAT) are not applicable to such banks."

14. Respectfully following the above decision, we hold that the provisions of section 115JB are not applicable to assessee's case for the year under consideration also."

13.2 Respectfully following the abovementioned findings, we hold that provisions of section 115JB are not applicable. Since we have decided ground No. 8 in favour of the assessee, Ground No. 7.3 becomes infructuous.



14. Ground No. 9 relates to the disallowance of provision & contingencies in computing book profits.

Since we have held that provisions of section 115JB of the Act did not apply, this ground becomes infructuous.

15. In the result, the appeal of the assessee is partly allowed.

ITA No. 2119/Mum/2024 (revenue's appeal for AY 2020-21)

16. Ground No. 1 relates to the disallowance of compensatory payments, treating them as penalty.

16.1 An identical issue was decided by the coordinate bench in the assessee's own case in *ITA No. 1818/Mum/2023*. The relevant findings read as under:

*36. Ground No.5 of the Revenue is with regard to the disallowance on payment made to RBI for not following the internal regulations laid down by the AO which the CIT(A) deleted during appellate proceedings. The AO noticed from the P&L A/c of the assessee that an amount of Rs. 8,43,401/- on account of penalty is debited. The AO disallowed the said amount for the reason that the assessee has not furnished any details pertaining to the same. The assessee submitted before the CIT(A) that the impugned amount is not an expenditure incurred for any purchase which is an offence or which is prohibited by law. The assessee further submitted that it was paid to RBI for deficiencies found in the working of currency chest on various parameters i.e. soiled and mutilated notes, cut notes, fake notes. The assessee also submitted that the charges for non-compliance of internal guidelines and not for violation of any law or offence. Accordingly, the assessee submitted before the CIT(A) that Explanation-1 to section 37(1) of the Act is not applicable for the impugned expenditure and hence should be allowed. The CIT(A) allowed the claim of the assessee by placing reliance on the decision of the Co-ordinate Bench in the case of *IDBI Bank Vs. DCIT (ITA No. 3394/Mum/2019 dated 09.02.2021)*.*

*37. We heard the parties and perused the material on record. We notice that the Co-ordinate Bench in the case of *IDBI Bank (supra)* has considered a similar issue and held that*

*"12. We have heard the rival submissions and perused the relevant materials on record. In *M/s Stock & Bond Trading Company (supra)* one of the questions was whether the Tribunal was justified in deleting the additions made by the AO under provisions to section 37(1) being penalty imposed by the National Stock Exchange on the assessee. The Hon'ble High Court held that:*



"3 As regards the second question is concerned, the finding of fact recorded by the CIT(A) and upheld by the ITAT is that the payments made by the Assessee to the Stock Exchange for violation of their regulation are not on account of an offence or which is prohibited by law. Hence, the invocation of explanation to section 37 of the Income Tax Act, 1961 is not justified. In our opinion, in the facts and circumstances of the present case, no fault can be found with the decision of the ITAT. Accordingly, the second question cannot be entertained."

In *Bapunagar Mahila Co-operative Bank Ltd. (supra)*, the Tribunal held that:
"20. We come to the assessee's first substantive ground. The RBI imposed a penalty of Rs.5 lacs (supra) u/s. 47A (1)(b) of the Banking Regulation Act, 1947 alleging violation of KYC norms. Both the authorities below hold that a penalty imposed does not give rise to any corresponding revenue expenditure being penal in nature.
21. It has come on record that this penalty arises from the assessee's action in opening 250 FDRs (supra) already dealt in Revenue's appeal. The question that arises for our consideration is as to whether the word 'penalty' results in a blanket disallowance or facts involved therein still need to be examined. The hon'ble Kerala high court (2004) 265 ITR 177 CIT v/s. Catholic Syrian Bank holds that an important test in such a case is as to whether the penalty for non compliance entails compensatory or penal consequences. And also that if any criminal liability or prosecution is provided, a levy is penal in nature. Section 46 r.w.s. 474(1)(b) of the Banking Regulation law does not stipulate any such criminal liability. We follow the aforesaid case law in these facts and direct the assessing authority to allow the assessee's claim of Rs.5 lacs as revenue expenditure."

In *Mangal Keshav Securities Ltd. (supra)*, the assessee was engaged in the business of share/stock broking. It paid a sum of fine/penalty to stock exchange for non-maintenance of KYC forms etc. Said penalty was disallowed by the AO by invoking Explanation 1 to section 37. The Tribunal held that:

"The assessee-company is engaged into stock broking activities and also in financial services which involves substantial compliance requirements with various regulatory authorities, e.g., BSE, NSE, CDSL, NSDL and SEBI, etc. In the regular course of the business of the assessee-company, certain procedural non-compliance are not unusual, for which the assessee is required to pay some fines or penalties. These routine fines or penalties are 'compensatory' in nature; they are not punitive. These fines are generally levied to ensure procedural compliances by the concerned persons. Only those payments, which have been made by the assessee for any purpose which is an 'offence' or which is 'prohibited by law', shall alone would be hit by the Explanation to section 37. Thus impugned amount of penalty was allowable as deduction.



12.1 In the instant case, as recorded by the AO the assessee has claimed expenses on account of penalty of Rs. 15,00,000/- imposed by the RBI u/s 47A of the Banking Regulation Act, 1949 and Rs.94,200/- for non-compliance of guidelines on customer service, guidelines in respect of exchange of coins and small de-nomination notes and mutilated notes. The ratio laid down in the decisions mentioned at para 12 is squarely applicable to the instant case instead of the decision in ANZ Grindlays Bank (supra) relied on by the Ld. DR. Therefore, following the decisions mentioned at para 12 above, we delete the disallowance of Rs. 15,94,200/-levied by the AO. Accordingly, the 2nd ground of appeal is allowed."

38. It is relevant to note that the Explanation-1 to section 37 provides that any expenditure incurred by the assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to be incurred wholly and exclusively for the purpose of business or profession and no deduction shall be allowed in respect of such expenditure. In the above decision of the Co-ordinate Bench the ratio laid down is that the penalty levied by RBI for violation of internal regulations does not fall within the purview of Explanation-1 to section 37. In the given case, the amount claimed as deduction by the assessee is with regard to the levy by the RBI for non-compliance of internal regulations with respect to maintenance of currency chest. Accordingly, in our considered view, the ratio laid down by the Co-ordinate Bench is applicable to assessee's case also and therefore we see no infirmity in the decision of the CIT(A) to delete the disallowance made by the AO."

16.2 Respectfully following the decision of the coordinate bench, ground No. 1 is dismissed.

17. Ground No. 2 relates to the deletion of doubtful debts as per Rule 6EA.

17.1 An identical issue was decided by the coordinate bench in the assessee's own case in *ITA No. 1819/Mum/2023*. The relevant findings read as under:

24. During the assessment proceedings, the AO noticed that the assessee has not recognized the interest income pertaining to the NPA on accrual basis and called on the assessee to furnish details and provide explanations. The assessee submitted before the AO that as per the provisions of section 43D of the Act in the case of Schedule Bank income by way of interest in relation to prescribed categories of bad or doubtful debts shall be chargeable to tax having regard the Guidelines issued by the RBI either in the year in which it is credited to the P&L A/c or in which actually



received by the Bank whichever is earlier. The assessee relied on the decision of the Hon'ble Supreme Court in the case of *Vasisthchay Vyapar Ltd. (253 taxaman 401)* where it is held that even in case where the provisions of section 43B are not applicable interest on bad and doubtful debits have to be taxed only in accordance with RBI Guidelines. The AO did not accept the submissions of the assessee to hold that the when the assessee is maintaining books of account on accrual basis, not accounting for interest on NPA on the basis of RBI Guideline cannot be accepted. Accordingly, the AO brought to tax interest of Rs. 236,21,71,029/- to tax towards interest on NPA. The CIT(A) gave relief to the assessee by placing reliance on the decision of the Co-ordinate Bench in the case of *State Bank of India (ITA No. 3644 & 4563/Mum/2016)*.

25. We heard the parties and perused the material on record. We notice that the Co-ordinate Bench in the case of *State Bank of India (successor to State Bank of Bikaner & Jaipur) Vs. DCIT (ITA No. 3033 & 2873/Mum/2019 dt. 29.09.2022)* has considered a similar issue and held that

"4.2 The ground No. 1 of the appeal of the assessee relates to addition of Rs. 3,86,10,180/- in respect of unrealized interest on borrower accounts classified as non-performing accounts under RBI directions. The Ld. Counsel of the assessee submitted that this is one of the recurring issue in the case of the assessee and it has been decided in favour of the assessee by the Tribunal for A.Y.2008-09 vide order dated 03/02/2020 in ITA No. 3644 and 4563/Mum/2016. The Ld. Departmental Representative on the other hand relied on the order of the lower authorities.

5. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The Ld. A.O. held that since the assessee is maintaining its books of accounts on accrual basis, the income in respect of bad and doubtful debt was required to be taxed on accrual basis except for the exceptions provided under rule 6EA of Income-Tax rules, 1962 read with Section 43D of the Act. The Ld. A.O. rejected the claim of the assessee that exceptions should be provided as per RBI guidelines and accordingly he added the amount of Rs.3,86,10,180/-being the interest on NPA/NPI not recognized by the assessee as income in view of RBI guidelines ignoring the provision of section 43D read with rule 6 EA of rules. The Ld. CIT(A) following the decision of his predecessor in the case of the assessee for A.Y.2014-15 confirmed the addition.

5.1 We find that identical issue has been adjudicated by the Tribunal(supra) in the case of the assessee for A.Y. 2008-09, observing as under:

We have gone through the case law in *American Express Bank Ltd. vs. Addl. CIT [2012] 25 taxmann.com 572 (Mumbai)*, wherein the Mumbai Tribunal was considering a case where the loans on which interest/principal remained unpaid for 90 days were classified as non-accrual loans. The unpaid interest in respect of such loans was reversed to an account called Reserve for Doubtful Interest (RFDI) account. All subsequent interest accruals of such loans were credited to RFDI account and not to the profit and loss account. The assessee offered to tax the net amount credited to the RFDI account i.e. the interest accruals in the RFDI account net of recoveries. However, it



was argued that such tax treatment leads to offering interest on nonaccrual loans to tax on accrual basis, even if the same is not credited to the profit and loss account. The Mumbai Tribunal held that where the AO has not contested that the policy adopted by the assessee is not in accordance with RBI guidelines, the incidence of taxation of interest on bad and doubtful debts will be either when the same is credited to the profit and loss account for the year or in the year in which it is actually received. Mere crediting of the interest to a reserve cannot be said to be an incidence by which the said interest could be charged to tax. The aforesaid decision has been affirmed by the Bombay High Court in the case of *DIT vs. American Express Bank Ltd [2015] 235 Taxman 85 (Bombay)*. In the present case the assessee argued that there is no credit entry in the books of the account in respect of the interest on such NPAs and, accordingly, the addition made cannot be sustained. Hence according to assessee the issue stood covered by the first proposition in terms of the Bombay High Court in assessee's favour and hence, no further submissions were made on other two propositions

We noted that this issue is squarely covered by the decision of Hon'ble Bombay High Court in the case of *American Express Bank Ltd (supra)*, wherein it is held that there is no credit entry in the books of the account in respect of the interest on such NPAs, no addition can be made. Further, even the Mumbai Tribunal in the case of *American Express Bank Ltd. (supra)* has considered this issue and held that where the AO has not contested that the policy adopted by the assessee is not in accordance with RBI guidelines, the incidence of taxation of interest on bad and doubtful debts will be either when the same is credited to the profit and loss account for the year or in the year in which it is actually received. Mere crediting of the interest to a reserve cannot be said to be an incidence by which the said interest could be charged to tax. Hence, we delete the addition of interest income and allow this issue of assessee's appeal.

5.2 Since the issue-in-dispute before us of taxability of interest on Non-performing assets/Account is exactly identical to what has been decided by the Tribunal (*supra*). Therefore, respectfully following the finding of the Tribunal, being a binding precedent, the finding of the Ld. CIT(A) on the issue-in-dispute is set aside and the Ld. A.O. is directed to delete the addition-in-dispute. The ground No. 1 of the appeal of the assessee is accordingly allowed".

26. We also notice that as similar view has been expressed by the Co-ordinate Bench in the case of *ICICI Bank Ltd. Vs. ACIT (ITA No. 3215/Mum/2019 dated 22.08.2022)*. The facts in assessee's case on this issue is identical and therefore respectfully following the decisions of the Co-ordinate Bench, we uphold the decision of the CIT(A) in deleting the addition made towards interest on NPA."



17.2 Respectfully following the decision of the coordinate bench, we decline to interfere. Ground No. 2 is dismissed.

18. Ground No. 3 relates to the broken period interest.

18.1 An identical issue was decided by the coordinate bench in the assessee's own case in *ITA No. 1819/Mum/2023*. The relevant findings read as under:

16. During the year under consideration, the assessee has paid Rs. 379,53,74,991/- as broken period interest on purchase of securities during the year and held as stock-in-trade as on 31.03.2016. The assessee has treated the said amount as revenue and claimed deduction accordingly. The AO held that the broken period interest paid is nothing but part of the purchase price paid for the securities and therefore cannot be treated as revenue in nature. The AO therefore made an addition towards broken period interest. The CIT(A) deleted the disallowance by placing reliance on the decision of the Hon'ble Bombay High Court in the case of CIT Vs. HDFC Bank Ltd. (2014) 49 taxmann.com 335 (Bom.).

17. The Id. DR submitted that the Hon'ble Rajasthan High Court in the case of CIT Vs. Bank of Rajasthan Ltd. (2009) 316 ITR 391 (Raj.) has held a contrary view which has been followed by the AO while making the disallowance. Accordingly, the Id. DR supported the order of the AO.

18. The Id. AR on the other hand submitted that the Hon'ble Bombay High Court in the case of HDFC Bank (supra) has distinguished the decision of the Hon'ble Rajasthan High Court and the decision of Jurisdictional High Court is binding. The Id. AR drew our attention to the relevant observations of the Hon'ble Bombay High Court as extracted below:

"(B) Whether the ITAT was correct in law in holding that the broken period interest is allowable as a deduction, inspite of the Hon'ble Supreme Court's decision in the case of CIT v. Vijay Bank (187 ITR 541) and the Rajasthan High Court's decision in the case of Bank of Rajasthan (316 ITR 391)?

"6. Even as far as question (B) is concerned, we find no infirmity in the orders passed by the CIT (Appeals) or the ITAT. In deciding this issue, CIT (Appeals) and the ITAT have merely followed the judgment of this Court in the case of American Express International Banking Corpn. v. CIT [2002] 258 ITR 601/125 Taxman 488. On going through the said judgment, we find that question (B) reproduced above and projected as substantial by Mr Suresh Kumar is squarely answered by the judgment of this Court in the case of American Express International Banking Corpn. (supra). In view thereof, we do not find that even question (B) gives rise to any substantial question of law that needs to be answered by this Court."

19. We heard the parties and perused the material on record. We notice that the Hon'ble Supreme Court in the case of CIT Vs. Citi Bank (Appeal No. 1549 of 2006



dated 12.08.2008) while considering the following question of law has held the appeal in favour of the assessee.

"Whether on facts and in circumstances of the case, the High Court was right in law in holding that the interest paid for broken period should not be considered as part of the purchase price, but should be allowed as revenue expenditure in the year of purchase of securities."

20. Respectfully following the decision of the Hon'ble Supreme Court and the Jurisdictional High Court, we hold that the AO is not correct in making the disallowance towards broken period interest and accordingly we see no infirmity in the order of the CIT(A) in deleting the said disallowance."

18.2 Respectfully following the decision of the coordinate bench, we decline to interfere. Ground No. 3 is dismissed.

19. Ground No. 4 relates to the disallowance of amortisation of premium paid on securities in HTM category.

19.1 A similar issue was decided by the coordinate bench in the assessee's own case in *ITA No. 1819/Mum/2023*. The relevant findings read as under:

"21. The assessee has claimed amortized premium to the tune of Rs. 133,01,99,864/- on securities in Held To Maturity (HTM). The assessee submitted before the AO that as per the RBI Guidelines investments in HTM category should be carried at acquisition cost and in case the purchase price is higher than the face value, the premium should be amortized over the remaining period of maturity of the security. The assessee further submitted that the amortized premium thus claimed is to be allowed as a deduction. The AO however did not accept the submissions of the assessee stating that specific clauses in RBI Circular with regard to accounting treatment cannot be considered for Income tax purposes and accordingly disallowed the amortized premium claimed by the assessee as a deduction.

*22. We heard the parties and perused the material on record. We notice that the Hon'ble Bombay High Court in the case of *HDFC Bank Ltd. (supra)* while considering the question of law as to "whether the ITAT is right in law in holding that the assessee is entitled for deduction with respect to the diminution in value of investment and amortization of premium on investment held to maturity on the ground of mandate by RBI Guidelines thereby ignoring the decision of the Hon'ble Supreme Court in the case of *Southern Technologies Vs. CIT (320 ITR 575)?*" has held that*

"7. As far as question (C) is concerned, we find that an identical question of law was framed and answered in favour of the Assessee by this Court in its judgement dated 4-7-2014 in Income Tax Appeal No. 1079 of 2012, CIT-2 v. Lord Krishna Bank Ltd. (now merged with HDFC Bank Ltd.). Mr Suresh Kumar fairly stated that question (C) reproduced above is covered by the said



order. In view thereof, we are of the view that even question (C) does not raise any substantial question of law that requires an answer from us."

23. Considering the above decision, we see no reason to interfere with the decision of CIT(A)."

19.2 Respectfully following the decision of the coordinate bench, we decline to interfere. Ground No. 4 is dismissed.

20. Ground No. 5 relates to the deletion of disallowance u/s 14A r.w. Rule 8D in computing book profit.

In the assessee's appeal, we have held that the provisions of section 115JB did not apply. Therefore, this grievance becomes infructuous.

21. In the result, the appeal of the revenue is dismissed.

ITA No. 2038/Mum/2024 & 2118/Mum/2024 (cross appeals for AY 2021-22)

22. Identical grounds considered by us in AY 2020-21, though quantum may differ. For our detailed discussion therein, the appeal of the assessee is partly allowed, and that of the revenue is dismissed.

Order pronounced in the open court on 11.06.2025.

Sd/-

SAKTIJITT DEY

(उपाध्यक्ष/VICE PRESIDENT)

Sd/-

NARENDRA KUMAR BILLAIYA

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 11.06.2025

अनिकेत सिंह राजपूत/ स्टेनो

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



1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

