

**IN THE INCOME TAX APPELLATE TRIBUNAL
"H" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
& SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
ITA No. 4418/MUM/2015 (AY : 2009-10)
(Physical hearing)**

ICICI Bank Limited, ICICI Bank Towers, North East Wing, 1 st Floor, BandraKurla Complex, Bandra (East), Mumbai – 400051. [PAN No. AAACI1195H]	Vs	DCIT, 2(3)(2), Mumbai, Aayakar Bhavan, Mumbai – 400020.
Appellant / Assessee		Respondent / Revenue

**ITA No. 1550/MUM/2016 (AY : 2009-10)
(Physical hearing)**

DCIT, 2(3)(2), Mumbai, Aayakar Bhavan, Mumbai – 400020.	Vs	ICICI Bank Limited ICICI Bank Towers, North East Wing, 1 st Floor, BandraKurla Complex, Bandra (East), Mumbai – 400051. [PAN No. AAACI1195H]
Appellant / Assessee		Respondent / Revenue

Assessee by	Ms. AratiVissajnji, Sr. Advocate & Mr. Ankit Harsora & Stuti Jindal
Revenue by	Shri Ajay Chandra, CIT-DR
Date of hearing	06.10.2025
Date of pronouncement	21.11.2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER;

1. These cross-appeals by assessee as well as by revenue are directed against the order of Id. CIT(A)-56, Mumbai dated 21.05.2015 for A.Y. 2009-10. The assessee in its appeal has raised following grounds of appeal:

1. Adjustment as per Transfer Pricing Order under section 92CA(3) ₹1,84,16,207 [Paras 2 to 16, pages 2 to 8 of the CIT(A) order]

On the facts and circumstances of the case and in law, the CIT(A) erred in upholding the comparables taken by the Transfer Pricing Officer [TPO] vide his order dated January 28, 2013 passed under section 92CA(3) of the Act and confirming the adjustment made to the arm's length price in respect of back office support services. He however reduced the margin to 25.11% as against 27.02% taken by the TPO by accepting one comparable given by the Appellant during the course of appellate proceedings thereby confirming the adjustment made to the arm's length price at 1,84,16,207 as against 2,07,44,132 made by the TPO.

2. Expenses apportioned against income exempted under section 10(15), 10(34) and 10(35)-Disallowance u/s. 14A: ₹33,49,50,562 [Para 27, page 15 of the CIT(A) order]

On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the apportionment of expenses at ₹44,89,00,000 as against 11,39,49,438 made by the Appellant to the income exempt under section 10(15), 10(34) and 10(35) of the Act by applying provisions of Rule 8D(2)(iii) of the Income-tax Rules, 1962.

3. Disallowance of Provision for expenses 125,73,03,916 [Paras 40 to 42, pages 21 and 22 of the CIT(A) order]

On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the disallowance of the amount of 125,73,03,916 in respect of provision for expenses created in March 2009 on which no tax was deducted at source on the ground that the same was contingent and unascertained in nature and hence not allowable as a deduction.

4. Disallowance of depreciation in respect of assets purchased on March 31, 2009-₹66,24,000 [Paras 46 to 47, pages 24 to 25 of the CIT(A) order]

On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the disallowance of the Appellant's claim of depreciation on fixed assets capitalised on March 31, 2009 on the ground that no evidence was furnished by the Appellant that the said assets were put to use on March 31, 2009.

GENERAL

5. The Appellant craves leave and reserves its right to vary, amend, alter and/or add to the grounds of appeal and to produce such oral and documentary evidence and file such compilation of documents as may be necessary at the time of hearing of the appeal.

2. The revenue in its appeal has raised following grounds of appeal:

1. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in allowing relief to the assessee to the extent impugned in the grounds enumerated below.

2. On facts and circumstances of the case and in law the Ld CIT(A) erred in directing the AO/TPO to include Maple eSolutions Limited as a comparable while benchmarking the transaction of provision of back office support services ignoring the fact that the financials of the company cannot be relied upon as the company's directors were found to be involved in fraudulent activities and therefore overlooking section 92C(3)(c) of the Income Tax Act stipulating the information or data used in computation of the Arms' Length Price is reliable or correct"

3. On facts and circumstances of the case and in law the Ld CIT(A) erred in directing the AO/TPO to include Maple eSolutions Limited as a comparable while benchmarking the transaction of provision of back office support services ignoring the decision of the jurisdictional Bench of Hon'ble Mumbai ITAT in the case of M/s BP Services Private Limited for the A.Y. 2008-09(2015) Mumbai Trib.in ITA No.6977/Mum/2012 wherein the Hon'ble Tribunal has directed the TPO to exclude Maple eSolutions Ltd from the list of comparables"

4 On facts and circumstances of the case and in law the Ld CIT(A) erred in holding that 'no transfer pricing adjustments was required to be made on account of the comfort letter given by the assessee on behalf of its AE to the Monetary Authority of Singapore" ignoring the facts that the undertaking given by the assessee was unconditional, irrevocable, it made the assessee a primary obligor. it was a risky obligation, and had benefitted the AE for starting of business, and therefore needs to be adequately compensated by the AE."

5 On facts and circumstances of the case and in law the Ld CIT(A) erred in holding that "no transfer pricing adjustments was required to be made on account of the comfort letter given by the assessee on behalf of its AE to the Monetary Authority of Singapore" and thereby overlooking Section 92B(1) by way of ignoring the fact that the unconditional undertaking given by the assessee in the letter of undertaking tantamount to "any service, benefit or facility" to its AE and therefore is an international transaction."

6. On facts and circumstances of the case and in law the Ld CIT(A) erred in holding that "no transfer pricing adjustments was required to be made on account of the comfort letter given by the assessee on behalf of its AE to the Monetary Authority of Singapore" ignoring the risks undertaken by the assessee in issuing the letter of undertaking and thereby overlooking Rule 10B(2)(b) which is an essential factor for comparability of an international transaction.

7 On facts and circumstances of the case and in law the Ld CIT(A) in allowing assessee's appeal on marked to market loss ignoring the fact that on similar issue for A.Y. 2008-09, the Ld CIT(A) had dismissed the appeal.

8. On facts and circumstances of the case and in law the Ld CIT(A) erred in deleting the disallowance under Rule 8D(2)(ii) ignoring the facts brought out in the assessment order that expenses of Rs.532.72 Cr were attributable to earning of exempt income.

9. On facts and circumstances of the case and in law the Ld CIT(A) erred in allowing the depreciation on leased assets without appreciating the fact that the said transaction being a financial lease transaction, the assessee did not satisfy the legal requirement of ownership of the assets for the purpose of Section 32(1) of the 1.T.Act, 1961 and therefore not entitled for claim of depreciation on the leased assets.

10 On facts and circumstances of the case and in law the Ld CIT(A) erred in allowing the depreciation on leased assets without appreciating the fact that the leased assets in question were not in possession of the assessee and also not utilized by the assessee for its business purpose."

11 On facts and circumstances of the case and in law the Ld CIT(A) erred in deleting the disallowance towards bad debts ignoring the fact that conditions laid down u/s.36(2)(v) of the Act were not fulfilled by the assessee.

12 On facts and circumstances of the case and in law the Ld CIT(A) erred in directing the AO to allow the claim for expenses on issue and discount of Rupee & Foreign currency bonds amounting to Rs. 28,11, 296/ when appeal against this issue has been filed before the ITAT and the issue has not reached finality.

13 On facts and circumstances of the case and in law the Ld CIT(A) erred in deleting the disallowance of losses of Rs. 201.14 crores on the ground that these losses were incurred in the course of regular banking business, without appreciating that the assessee has not given sufficient proof/evidences during the assessment proceedings nor in the appellant proceedings to prove that these losses have actually been incurred.

14. On facts and circumstances of the case and in law the Ld CIT(A) erred in deleting addition made on account of notional interest being considered to work out annual value of the property, without appreciating that the rent received was much lower than the value at which the property might reasonable be expected to let out.

3. Brief facts of the case as gathered from the orders of lower authorities are that assessee is engaged in the business of banking and related activities. The assessee filed its return of income for A.Y. 2009-10 declaring income of Rs. 5135.83 crore which was subsequently revised to Rs. 5178.64 crore. The case was selected for scrutiny. During assessment, the assessing officer noted that assessee has entered into various international transactions with its associated enterprises (AE). The assessee reported such international transaction in its report furnished in Form 3CEB. Consequently, the reference under section 92CA(3) was made to TPO for computation of arm's length price of such transaction. The TPO after allowing opportunity to the assessee made adjustment of Rs. 2.07 crore towards under-charge mark up of back office support services and of Rs. 50.20 lacs on account of levy of interest rates on issue of comfort letter. The assessing officer also made addition / disallowance under section 14A, depreciation on leased asset, disallowance of bad debt, business expenses disallowance of loss and other expenses, disallowance of depreciation on fixed asset capitalised on 31.03.2009. By making such additions/adjustment, the assessing officer passed a draft assessment order dated 18.02.2013. On service of draft assessment order, the assessee exercised its option to file appeal before Id. CIT(A). The Id. CIT(A) allowed substantial relief to the assessee on various additions and disallowances viz; transfer pricing adjustment, on disallowance under section 14A, on bad debt, business loss.

Further aggrieved both the parties have filed their respective appeals taking various grounds of appeal as recorded above.

4. We have heard the submission of learned authorised representative (Id AR) of the assessee and the learned Commissioner of Income Tax- Department Representative (CIT-DR) for the revenue and have gone through the orders of lower authorities carefully. Ground No. 2 & 3 in revenue's appeal and ground no. 1 in assessee's appeal relates to transfer pricing adjustment with regard to back office support services. Relevant facts are that assessee provided back office support services to its wholly owned subsidiaries, ICICI Bank UK PLC and ICICI Bank Canada. The assessee charged fees for providing such services at cost plus mark up of 10% aggregating Rs. 13.40 crore (Rs. 12.18 crore + 10% Rs. 1.21 crore). The assessee claimed that services were in the nature of back office accountant and processing related activities and technology support services. The details of functions performed, asset utilised and risk assumed by two entities were reported in transfer pricing study report (TPSR). The assessee adopted transaction net margin method (TNMM) as most appropriate method. The assessee selected 6 comparable companies. The TPO rejected 4 such comparable company and included 8 more comparable companies as recorded in para 8 of order of TPO. The TPO ultimately selected 11 following comparable companies and worked out nil margin average at 27.02

Sr. No	Company Name	OP to total cost %
1	Aditya Birla Minacs Worldwide Ltd.	22.69
2	Accentia Technologies Ltd. (Seg)	55.13

3	Acropetal Technologies (Seg)	26.00
4	Coral Hubs Ltd. (formerly Vishal Information Technologies Ltd.)	35.51
5	Cosmic Global Ltd.	43.11
6	Cross domain Solutions Ltd.	29.4
7	Informed Technologies India Ltd.	22.6
8	Infosys BPO Ltd.	24.49
9	Microgenetics Systems Ltd.	7.76
10	Omega Healthcare Services Pvt. Ltd.	15.43
11	Tata Commnications Transformation Services Ltd.	15.11
	Average	27.02

5. The TPO made following adjustments

Sr. No	Particulars	Amount Rs.
A	Operating Cost	12,18,80,915
B	Mark up @ 27.02%	3,29,32,223
C	ALP (A+B)	15,48,13,138
D	Price actually charged	13,40,69,006
E	Adjustment (C-D)	2,07,44,132

6. On appeal before Id. CIT(A), all the comparables selected by TPO was accepted however one of the comparable of assessee was allowed/accepted that is Maple eSolutions Ltd. Thus, further aggrieved the revenue has challenged the acceptance of Maple eSolutions Ltd. and the assessee in its grounds of appeal has challenged the adjustment of other comparables and adjustment upheld to the extent of Rs. 1.84 crore out of total adjustment of Rs. 2.07 crore.

7. The Id. CIT-DR for the revenue submits that Maple eSolutions Ltd. was wrongly accepted by Id. CIT(A). The director of Maple eSolutions Ltd. were involved in a fraud and there are various decisions to support exclusion of such comparables wherein there is allegation of fraud against comparable companies. On retaining / accepting other comparables, the Id. CIT-DR supported the order of TPO and CIT(A).
8. On the other hand, the Id. AR of the assessee submits that she has no objection in retaining comparable no. 1, 9 and 10 selected by TPO, however, for remaining 8 comparable, the Id. AR of the assessee submits that such comparable companies are not comparable with the assessee bank. For Accentia Technology Ltd., Acropetal Technologies, Coral Hubs Ltd., Cosmic Global Ltd., Crossdomain Solution Ltd., and Infosys BPO Ltd., the Id. AR assessee submits all these 8 comparable companies were excluded by Mumbai Tribunal in assessee's own in A.Y. 2007-08 in ITA No. 4248 & 4158/M/2014 dated 09.11.2023 or in A.Y. 2008-09 in ITA No. 4249 & 4159/M/2014 dated 30.04.2025. Copy of decision of Tribunal for both years is placed on record. For Informed Technologies Ltd., the Id. AR submits that this company functioned as a BPO and engaged in collection and analysis of data on financial data base, corporate governance, director / executive compensation and capital market. The functional detail of this company is placed on record at page no. 936 of paper book. This company is not comparable being different functions. For Tata Communication Transformation Services Ltd., the Id. AR submits that this company is providing business

transformation, Telecom BPO and Consultancy Services. It engaged in devising and delivery solution to its customer for network engineering and design. The operation details are available at page no. 961 & 962 of paper book. This company is not comparable. If all these comparables are excluded, the main margin / average would be within arm's length.

9. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities. We find that there is no dispute about this services rendered by assessee to its AE. Further, there is no dispute in most appropriate method for benchmarking the transaction. Before us, the Id. AR of the assessee fairly accepted for inclusion of Aditya Birla Minacs Worldwide Ltd., Microgenetics Systems Ltd. and Omega Healthcare Services Pvt. Ltd. So far as other 8 remaining comparable companies are concerned, we find that out of 8 comparables, 6 comparables namely Accentia Technology Ltd., Acropetal Technologies, Coral Hubs Ltd., Cosmic Global Ltd., Crossdomain Solution Ltd., and Infosys BPO Ltd., were excluded by co-ordinate bench of Tribunal in assessee's own in A.Y. 2007-08 and 2008-09. Therefore, respectfully following the same all 6 comparables are directed to be excluded from final set of comparables. So far as remaining 2 comparables that Informed Technology India Ltd. and Tata Communication Transformation services Ltd., we find that both the comparables are in business of BPO and their area of operations are quite different. Moreover, Informed Technology Ltd. has a low employee cost of 27% to sales. Tata Communication is engineering and design implementation. Thus, in

our view both the companies are not comparable with the assessee company. The TPO / AO is directed to exclude all such 8 such comparables and recompute the adjustment with regard to back office support services. In the result, ground no. 2 & 3 of revenue's appeal is dismissed and ground no. 1 of assessee's appeal is allowed.

10. Ground no. 4, 5 & 6 of revenue's appeal relates to adjustment of letter of comfort. Brief facts of the case related to this issue are that assessee issued an undertaking to the Monetary Authority of Singapore (MAS) on behalf of his subsidiary, ICICI Securities Inc. For the purpose of a capital market services license granted by Singapore Authority. The assessee has undertaken that it shall ensure that ICICI Securities Inc. maintains sound liquidity and a sound financial position at all times and provide adequate funds to make up for any liquidity shortfall in ICICI Securities Inc. The assessee's undertaking was reported in Form 3CEB. It was not considered by assessee as an international transaction as there was no such provision before insertion of Explanation 2 to section 92B(2) which was made by Finance Act, 2012. Accordingly, no ALP was determined. The TPO while considering the various other international transaction treated the letter of comfort as akin to international transaction on the basis of Explanation inserted to section 92B(2). The TPO benchmark this undertaking as a corporate guarantee by applying rate of 1.5% and made addition / adjustment of Rs. 50.02 lacs. However, on appeal the Id. CIT(A) that no additional cost was incurred by assessee to provide a comfort letter on

behalf of AE and liability on account of comfort letter continues to be hypothetical and deleted the addition / adjustment.

11. The Id. CIT-DR for the revenue supported the order of TPO and also relied on note no. 6 to the accounts 'letter of comfort' which shows that assessee issued such undertaking to Monetary Authority of Singapore which included contingent liability. To support his submission he relied upon the decision of Mumbai Tribunal in Asian Paints Ltd. (2024) 160 taxmann.com 214 (Mum) and Cyient Ltd. vs DCIT 172 taxmann.com (HYe).
12. On the other hand, the Id. AR of the assessee submits that letter of comfort cannot be compared with the corporate guarantee as no cost was incurred by assessee. In alternative, the Id. AR submits that arm's length price may be reduced to 0.04% as accepted by Tribunal in Asian Paint Ltd. (supra) or 0.53% accepted in case of Cyient Ltd. vs DCIT (supra).
13. We have considered the rival submissions of both the parties and have gone through the orders of lower authority carefully. We find that Id. Representative of both the parties have fairly explained the fact. Considering the decision of Mumbai Tribunal in Asian Paints Ltd. (supra), the AO/TPO is directed to reduce/charge by the rate of 0.04% as per decision in Asian Paint (supra). In the result, ground no. 4, 5 & 6 of revenue's appeal are partly allowed.
14. Ground no. 7 in revenue's appeal relates to Mark to Market loss (MTM) on forex derivatives. Facts relating to this issue is that assessee entered into derivatives transaction in the course of its banking and treasury business in accordance

with the guidelines by Reserve Bank of India (RBI). The assessee acts as a counter party to the corporate to enable them to hedge the risk and also participate in the financial derivatives market as a part of its treasury activities. The assessee deals in derivatives for its own balance sheet management and also for market making purposes, whereby the assessee offers its own derivative products to the customers, enabling them to hedge the risk. The assessee also manages its foreign exchange and interest rate risk to hedge its own borrowings. The details of foreign exchange loss of gains were recorded by assessing officer. The assessing officer in para 7 of assessment order disallowed MTM loss of Rs. 594 crores on currency derivative transactions by taking view that it was notional loss and not allowable. MTM gain of Rs. 1223 crores offered by the assessee was considered by assessing officer and brought to tax. On appeal before Id. CIT(A) MTM loss of Rs. 594 crores was allowed on the basis of decision of Supreme Court in Woodward Governor India P. Limited 312 ITR 252 and Oil and Natural Gas Commission 189 taxmann 292. Thus, revenue have challenged the order of Id. CIT(A).

15. The Id. CIT-DR for the revenue supported the order of assessing officer and would submit that assessing officer has clearly held that it was a notional loss.
16. On the other hand, the Id. AR of the assessee submits that this ground of appeal is covered in favour of assessee by the decision of Tribunal in assessee's own case for A.Y. 2007-08 and 2008-09, copy of which is already placed on record. There is no variation in facts vis-a-vis the year under consideration and

in A.Y. 2007-08 and 2008-09. The assessee suffered such loss in the course of its business and the same is allowable as a business loss.

17. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities. We find that on similar issue in A.Y. 2007-08 and 2008-09, similar disallowance on account of MTM loss was disallowed, however, on appeal before Tribunal the similar loss was allowed on the basis of decision of Hon'ble Supreme Court in CIT vs Woodward Governor India (P) Ltd. (supra). Thus, respectfully following the same we do not find any informative in the order of Id. CIT(A) which we affirmed. No contrary fact or law is brought to our notice to take other view. In the result, ground no. 7 of the appeal of revenue is dismissed.
18. Ground no 8 of revenue's appeal and ground no. 2 of assessee's appeal relates to disallowance under section 14A. Facts relating to this issue are that computation of income, the assessee claimed exempt income of Rs. 1139.49 crores and suo moto disallowance 1% of such exempt income thereby disallowed Rs. 11.39 crores. The assessee claimed that investments were made from interest free funds available with the assessee. The assessing officer in para 8 of assessment order disregarded the suo moto disallowances and recomputed disallowance under section 14A of Rs. 557.21 crores. Suo moto disallowance of Rs. 11.39 crores was reduced. The disallowance made by assessing officer includes Rs. 523.72 crores as interest cost and Rs. 33.49 crores as administrative expenses as per rule 8D(2)(ii) and rule 8D(2)(iii)

respectively. On appeal before Id. CIT(A), the disallowance of interest expenses was deleted on the basis of decision of jurisdictional High Court in Reliance Utilities and Power Lt. 313 ITR 340 by taking view that investments were made from interest available with the assessee-bank. The administrative disallowance of Rs. 33.49 crores was sustained. Thus, both the parties have challenged the action of Id. CIT(A). The revenue has challenged the action of Id. CIT(A) in deleting the interest disallowances of Rs. 523.72 crores. On the other hand, the assessee has challenged the action of Id. CIT(A) in sustaining the disallowance of administrative expenses.

19. The Id. CIT-DR for the revenue supported the order of assessing officer in his appeal as well as in assessee's appeal.
20. On the other hand, the Id. AR of the assessee submits that assessee is a bank, the assessee made investment in tax free security from its interest free fund available with it. No interest expenses can be allocated for making such disallowance. The assessee has total interest free fund of Rs. 71514.09 crores, whereas the investment earning exempt income were only 13068.92 crore. Further, on similar issue the assessee was allowed relief in A.Y. 2003-04 to 2008-09 in accepting the claim of assessee that interest free funds exceeded the value of investment yielding exempt income and there no interest could be disallowed under section 14A. The Id. AR also relied upon the decision of Supreme Court in South India Bank 438 ITR 1 and CIT vs UTI Bank 447 ITR 662 (SC). The Id. AR further submits that so far as grounds of appeal in her

appeal is concerned the revised working of disallowance under section 14A r.w.r. 8D is furnished, details of which are available at page no. 456 of paper book no. 2. As per revised working the disallowance under rule 8D(2)(iii) amounts to Rs. 16.98 crores. The assessee has already disallowed Rs. 11.39 crores so disallowance should be restricted to 5.59 crores. The assessee claim for exclusion of securities held as stock in trade is supported by the judgment of the Apex Court in Maxopp Investment Ltd. vs CIT (2018) 402 ITR 640 (SC) and only those investment which yielded exempt income should be considered for making disallowance as has been held by special bench of Mumbai Tribunal in ACIT vs Vireet Investment P Ltd. (2017) 82 taxmann.com 415.

21. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. So far as grounds of appeal raised by revenue is concerned, we find that it has been consistently held by jurisdictional High Court right from Reliance Utilities and Power Ltd. (supra) and in CIT vs HDFC 366 ITR 505 that when interest free funds available with the assessee are sufficient to meet its investment that yielded tax free income, it can be safely presumed that such investment were from interest free funds available with it. The Id. CIT(A) followed this principle while allowing relief to the assessee. Thus, we do not find any infirmity in his finding, which we affirmed. So far as, grounds of appeal in assessee's appeal is concerned. We find that on similar disallowances in appeal for A.Y. 2008-09 in ITA No. 4249 & 4951/M/2014, in para 11.3, the co-ordinate bench on furnishing fresh

disallowance of rule 8D(2)(iii) restored the matter to assessing officer to consider such suo moto disallowance. Before us the Id. AR of the assessee has furnished the following fresh working of disallowance on account of administrative expenses as per rule 8D(2)(iii).

Particulars	March, 2009
Opening Investment	
Shares (equity and preference)	957.66
Subsidiaries and/or joint ventures	1129.27
Venture funds	1177.23
Tota –a	3264.16
Closing Investment	
Shares (equity and preference)	850.07
Subsidiaries and/or joint ventures	1423.43
Venture funds	1256.07
Tota –b	3529.56
Average Investment (a+b)/2	3396.86
Section 14A disallowances	
c) Administrative expenses (0.5%)	16.98
Total	16.98

22. Thus, considering the decision of co-ordinate bench, we direct the assessing officer to verify the following working of suo moto disallowance and pass the order by following the decision of special bench of Delhi Tribunal in ACIT vs Vireet Investment P Ltd. In the result, the ground no. 8 of revenue's appeal is dismissed and ground no. 2 of assessee's appeal for statistical purpose.

23. Ground no 9 & 10 in revenue's appeal relates to depreciation on leased asset. Brief facts related to decision are that assessee claimed depreciation of Rs. 25.71 crores on assets leased by assessee in past years. The assessing officer disallowed such depreciation on the basis of treatment in earlier assessment years. However, on appeal before Id. CIT(A), it was allowed on the basis of decision of Hon'ble Supreme Court in ICDS vs CIT 350 ITR 266 (SC) and on the basis of decision of Tribunal in assessee's own case for earlier years. The CIT-DR for the revenue supported the order of assessing officer and would submit that revenue may have filed before High Court against such decision in earlier year.
24. On the other hand, the Id. AR of the assessee submits that no new leased transaction was entered during the year. Depreciation has been claimed on the asset leased in the preceding year, which has been allowed by Tribunal in appeal for A.Y. 2003-04 to 2008-09. Copy of decisions of Tribunal in earlier years is placed on record.
25. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully as well as the order of Tribunal on this issue in earlier years. We find that Id. CIT(A) while allowing relief to the assessee followed the order of Hon'ble Supreme Court in ICDS vs CIT (supra). Further, similar relief was allowed in assessee's group case in ICICI Personal Financial Services Ltd., which was later on amalgamated with the assessee. We find that on similar issue the assessee have been consistently allowed relief on similar issue including in appeal for A.Y. 2008-09 wherein order of earlier years

was followed. Thus, we do not find any merit in the grounds of appeal no. 9 & 10 revenue's appeal. In the result, ground no. 9 & 10 of revenue's appeal are dismissed.

26. Ground no. 11 of revenue's appeal relates to disallowance of bad debts written off. The brief facts leading to this ground of appeal are that during the relevant F.Y. the assessee have written off bad debts of Rs. 2451.44 crores in its books of accounts as irrecoverable and claimed bad debts written off Rs. 2020.64 cores, in the following manner:

Particulars	Amount
Gross Bad debts written off during the year	2451,44,58,129/-
Less; Credit balance as on April 1, 2008 Viz. Deduction under section 36(1)(viiia) claimed as per original return for A.Y. 2007-08 filed on September 30, 2008)	430,80,00,960/-
Bad debts claimed under section 36(1)(vii)of the Act	2020,64,57,169/-

27. The bad debts claim of the assessee consists of bad debts written off on retail and corporate portfolio and loss of sale of asset (loans) transferred to asset reconstruction company.

- | | | |
|------|-----------------------------------|----------------------|
| (i) | Corporate bad debts | Rs. 57,28,68,568/- |
| (ii) | Retails bed debts, | |
| | (a) Vehicles/ home/ personal, | Rs. 1025,26,53,614/- |
| | (b) Credit cards– | Rs. 964,36,80,917/- |
| | (c) Loss on sale to ARCs | Rs. 310,03,60,855/- |
| | (d) Others - Lonas on SME and SEG | Rs. 94,48,94,175/- |

28. The assessing officer disallowed entire claim of bed debts by taking view that in earlier years similar claim was disallowed. It was also held that the assessee has not satisfied the condition of section 36(1)(vii) that the assessee failed to prove that the debts have become bad. On appeal before Id CIT(A) entire claim of the assessee was allowed. The Id CIT(A) while allowing relief to the assessee followed the decision of Hon'ble Supreme Court in TRF Limited (230 CTR 14) and Vijaya bank (323 ITR 166-SC) and held that after 01.04.1989, if the debts have been written off as irrecoverable in the accounts of the assessee it will suffice for claiming bed debts. Thus, the revenue has challenged the action of Id CIT(A) before Tribunal.
29. The Id CIT -DR for the revenue submits that fulfilment of requisite conditions is not satisfied for claiming such relief. So he supports the order of assessing officer.
30. On the other hand, the Id AR of the assessee submits that identical grounds of appeal has been decided by Tribunal in favour of assessee in assessee's own case in appeal for AY 2003-04 to 2007-08, copy of all such decisions are already placed on record. The Id AR of the assessee further submits that out of total amount of Rs. 2020.64 Crore, a sum of Rs.310 Crore was loss on account of loss incurred on sale of non-performing asset to ARCs. Such details were furnished to the assessing officer in reply dated 11.02.2013, copy of which is also placed at page No. 462 of PB. Thus, in alternative this amount may be allowed as business

loss. To support such view, the Id AR of the assessee relied on the decision of DBS Bank Vs DCIT (2014) 169 taxmann.com 399).

31. We have considered the rival submissions of the parties and have gone through the order of lower authorities. We find that in appeal for A.Y. 2003-04. On similar issue Mumbai Bench in ITA No. 8420 & 8435 /M/2010 dated 21.07.2023 consider similar issue in detail and allowed relief to the assessee by following the decision of Apex Court in TRF vs CIT (supra) and in Vijaya Bank vs CIT (supra). All the grounds which were made basis for making disallowance by assessing officer was considered and held in favour of assessee. We find that in A.Y. 2004-05 in ITA No. 6217 & 6137/M 2008 dated 03.11.2017 similar disallowance was allowed in favour of assessee. We further find that order of A.Y. 2003-04 & 2004-05 was followed in A.Y. 2006-07 in ITA No. 5792 & 5397/M/2013 dated 25.10.2024. Thus, we find that consistently similar issue has been decided in favour of assessee. Hence, we do not find any infirmity in the order of Id. CIT(A) in allowing relief to the assessee. In the result, this ground of appeal raised by the revenue is also dismissed.
32. Ground No. 12 of revenues appeal relates to disallowance discount expenses on issue of discount of rupee and foreign currency bonds of Rs. 28,11,296/-. Fact leading to the additions are that assessee incurred certain expenses by way of discount and issue expenses on rupee loan, debenture and foreign currency bonds during the period relevant to A.Y. 2002-03. In the assessment for that year, the allowance of such expenses had been restricted on the ground that

they were required to spread over the period of concerned debentures and bond in accordance with decision of Supreme Court in Madras Industrial Development Corporation 225 ITR 802. The addition in A.Y. 2002-03 were upheld by Id. CIT(A) and that appeal at the time of assessment was pending. The assessing officer on the basis of order of his predecessor disallowed such expenses. The Id. CIT(A) on the prayer of assessee that in the event of success in appeal of A.Y. 2002-03, the deduction allowed in this year will be offered to tax. The Id. CIT(A) recorded that in each succeeding year similar directions were given. The Id. CIT(A) further noted that deferred revenue expenses of Rs. 28,11,296/- relating to the period presently under consideration would be a permissible deduction and directed the assessing officer to permit such deduction in the assessment order and the appeal may be treated as allowed. Aggrieved by order of Id. CIT(A) the revenue is in appeal.

33. The Id CIT-DR for the revenue supported the order of assessing officer and prayed to restore the disallowance made in assessment order.
34. On the other hand, the Id AR of the assessee submits that this ground of appeal is covered in her favour. The Id AR of the assessee explained that issue and discount expenses of bonds was claimed in AY 2002-03, which was disallowed by assessing officer in that year on the ground that such expenses should be amortised over the tenure of the bonds. However, on appeal before Tribunal it was allowed in ITA No. 836/Mum/2008 wherein the assessing officer was directed to allow proportionate expenditure on the issue of discount bonds. This

is the 8th year of bonds, following the decision of Tribunal prorated expenses amounting to Rs. 28,11,296/- is allowable in the current year. Similar relief was allowed to the assessee in AY 2007-08 & 2008-09.

35. We have considered the rival submissions of parties and also perused the order of Tribunal on similar issue in earlier years. We find that discount expenses of bonds was claimed in AY 2002-03, which was disallowed by assessing officer in that year on the ground that such expenses should be amortised over the tenure of the bonds. However, on appeal before Tribunal it was allowed in ITA No. 836/Mum/2008 wherein the assessing officer was directed to allow proportionate expenditure on the issue of discount bonds. This is the 8th year of bonds, following the decision of Tribunal prorated expenses is allowable in the current year. As recorded that similar relief was allowed to the assessee in AY 2007-08 & 2008-09. Thus, the assessing officer is directed to follow the order of Tribunal in A.Y. 2007-08 and 2008-09. Resultantly, this ground of appeal is also dismissed.

36. Ground no. 13 of revenues appeal relates to disallowances of business loss. The facts leading to this disallowance are that assessee claimed business loss of Rs. 201.14 crore, which comprises of loss of sale of repossessed asset and other business loss. The break up of such loss is recorded in para 11.1 of assessment order in the following manner:

Sr. No.	Particulars	Amount (Rs.)
1	Loss on sale of repossessed Vehicles asset	2,06,64,72,397/-
2	Loss on discrepant notes	4,42,71,284/-

3	Fraud cases	30,45,489/-
4	Gain on disposal of non-banking assets	(15,81,89,231)
5	Others	5,58,84,796/-
	Total	2,01,14,84,735/-

37. The assessing officer disallowed that all these items were in the nature of bad debts and the assessee has not proved that such losses had actually been incurred and disallowed. The Id. CIT(A) in para 34 & 35 of his order considered this issue and held that such losses had been incurred in the course of regular business. Complete details were provided to the assessing officer. Further, similar losses has been accepted by assessing officer in assessment proceeding for A.Y. 2011-12. Thus, assessing officer was not justified in disallowing such claim and allowed full relief to the assessee. Aggrieved by the order of Id. CIT(A), the revenue is in appeal before Tribunal.
38. The CIT-DR for the revenue supported the order of assessing officer. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A). The Id. AR submits that complete details and bifurcation was provided to the assessing officer. The assessing officer failed to appreciate the fact that such losses were incurred in regular course of banking business.
39. We have considered the rival submissions of both the parties and the order of lower authorities. We find that assessee has incurred aforesaid business loss during the course of banking business. Complete details were provided to the assessing officer. We further find that similar relief was allowed to the assessee

in appeal for A.Y. 2006-07 & 2008-09 and further similar claim of assessee was accepted by assessing officer in A.Y. 2011-12. Thus, following the principle of consistency, the grounds of appeal raised by revenue is dismissed.

40. Ground no. 14 relates to deleting the addition on account of notional interest considered to work out annual value of property. The facts relating are that a commercial property namely Mafatlal Towers was owned by assessee, part of which leased out to JP Morgan on a rent of Rs. 34,53,982/- was received by assessee during the relevant financial year. The assessee after claiming statutory deduction of Municipal Tax and 30% of annual value offered Rs. 15,22,620/- for tax. Such working is recorded in para 13 of assessment order. The assessing officer further recorded that assessee has received security deposit of Rs. 1.00 crore on which the assessing officer calculated notional interest @ 12% per annum thereby, added notional interest to the aggregate rent and recomputed income from house property at Rs. 23,62,620/- thereby added Rs. 8,40,000/- under section 23(1)(a). On appeal before Id. CIT(A), the assessee was allowed relief on the basis of decision of Jurisdictional High Court in Tip Top Typography 368 ITR 330. The Id. CIT-DR for the revenue supported the order of assessing officer.

41. On the other hand, the Id. AR of the assessee submits that this ground of appeal is also covered by the decision of Tribunal in assessee's own case for A.Y. 2003-04, 2004-05, wherein similar relief was allowed in favour of assessee. Further, similar addition was made in A.Y. 2007-08 & 2008-09 by assessing officer and on

appeal before Id. CIT(A), the assessee was allowed relief and no further appeal against the order of Id. CIT(A) was filed before Tribunal.

42. We have considered the submissions of both the parties and perused the order of lower authorities. We find that assessing officer added notional interest on the security deposit and thereby added Rs. 8,40,000/-. The Id. CIT(A) deleted such addition by holding that there is no statutory provision for enhancing rental value. We find that on similar ground of appeal the assessee consistently been allowed relief by Tribunal in A.Y. 2002-03 in ITA No. 836/M/2008 and ITA No. 392/M/2008 dated 07.07.2017, which was followed in A.Y. 2005-06 in ITA No. 3841 & 5276/M/2013 dated 03.11.2017. Thus, we do not find any infirmity in the order of Id. CIT(A) for our interference. In the result, this ground of appeal is also dismissed.

43. Ground no. 3 in assessee's appeal relates to disallowance of provision of expenses. Facts leading to this addition are that assessee made provision as on 31.03.2009, for year and expenses of Rs. 125.73 crore which comprises as a courier expenses, staff welfare, printing and stationery, professional fess, conveyance etc., the provision made in particular period was reversed on 01.04.2009. The expenses for which provision was made were debited to the respective account when payments were made and tax were deducted wherever applicable. The assessing officer disallowed such amount by taking view that provision for year end expenses were created in March, 2009 on which no tax

was deducted at source and that it was contingent and unascertained in nature.

The Id. CIT(A) also upheld that action of assessing officer.

44. The Id. AR of the assessee submits that as per section 145 of Income Tax Act, the income chargeable under the head profit and gain from business and profession is to be computed in accordance with either cash system or mercantile system of accounting regularly followed by the assessee. The assessee is following mercantile system of accounting and makes provision for expenses incurred during the year as has been claimed as at 31st March of relevant financial year. If the liability is arised in the accounting year, deduction should be allowed although the liability may have to be quantified and discharged at future days. It should be capable of being estimated with reasonable certainty though actual quantification may not be possible. If such requirement is satisfied, the liability is not a contingent as has been held by Supreme Court in Bharat Earth Movers 245 ITR 428. On non deduction of tax, the Id. AR submits that exact amount payable was not determinable so no TDS could have been deducted. Similar relief was allowed to the assessee in A.Y. 2008-09 in ITA No. 4249/M/2014.

45. We have considered the rival submissions of both the parties and gone through the orders of lower authorities. We find merit on the submissions of Id. AR of the assessee that the assessee was following mercantile system of accounting regularly and making provision for expenses incurred during the year as has been claimed as at 31st March of relevant financial year. If the liability is arisen in

the accounting year, deduction should be allowed although the liability may have to be quantified and discharged at future days. It should be capable of being estimated with reasonable certainty though actual quantification may not be possible. We further find in assessee's own case for A.Y. 2008-09 (supra), similar relief was allowed to the assessee on the basis of decision of Karnataka High Court in Subex Ltd. vs DCIT in ITA No. 787 of 2017 and held that provision was made at the year end on estimate basis cannot be denied. We find that assessee is in a business of banking and all such provision are integral part of business activities. Thus, following the order of co-ordinate bench in A.Y. 2008-09 and the decision of Karnataka High Court in Subex Ltd. (supra), we direct the assessing officer to delete the entire addition. In the result, ground no. 3 of appeal of assessee is allowed.

46. Ground no. 4 relates to disallowance of depreciation on fixed asset capitalised on 31.03.2009. The assessing officer disallowed depreciation on the ground that assessee has not furnished any evidence that asset was put to use on 31.03.2009. The Id. CIT(A) upheld that action of assessing officer. The Id. AR of the assessee submits that software were purchases before 31.03.2009 and were capitalised on 31.03.2009 after customisation. The necessary invoices are placed on record. In alternative, it was submitted that if depreciation is not allowed in this year, may be allowed in the next assessment year.
47. On the other hand, Id. CIT-DR supported the order of lower authorities. The Id. CIT-DR submits that no evidence was furnished before lower authorities for

claiming depreciation that asset were put to use before the end of relevant financial year.

48. We have considered the submissions of both the parties. We find that lower authorities disallowed depreciation on the ground the required evidence was not furnished about put to use of asset. Considering the fact that assessee has purchased the asset in the year under consideration and claimed that it was put to use before 31.03.2009, therefore, this issue is restored back to the file of assessing officer to verify the fact and to allow relief to the assessee in accordance with law. In the result, this ground of appeal is allowed for statistical purpose.

49. In the result, appeal of revenue as well as appeal of assessee is partly allowed.

Order was pronounced in the open Court on 21/11/2025.

Sd/-

Sd/-

**GIRISH AGRAWAL
ACCOUNTANT MEMBER**

**PAWAN SINGH
JUDICIAL MEMBER**

MUMBAI, Dated: 21/11/2025

Biswajit

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and By order
- (5) Guard file.

Assistant Registrar
ITAT, Mumbai