

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"I" BENCH, MUMBAI**

**BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.1451/MUM/2023**  
**Assessment Year : 2016-17**

**ITA No.1452/MUM/2023**  
**Assessment Year : 2018-19**

**Bank of India,**

8<sup>th</sup> Floor, Taxation Department,  
Star House, C-5, G-Block,  
Bandra – Kurla Complex,  
Bandra (East)  
Mumbai – 400051  
PAN: AAACB0472C

..... Appellant

v/s

**Assistant Commissioner of Income Tax –  
2(1)(2),**

Aayakar Bhavan, Maharishi Karve Road,  
Mumbai – 400020

..... Respondent

**ITA No.1547/MUM/2023**  
**Assessment Year : 2016-17**

**ITA No.1548/MUM/2023**  
**Assessment Year : 2018-19**

**Assistant Commissioner of Income Tax –  
2(1)(2),**

Aayakar Bhavan, Maharishi Karve Road,  
Mumbai – 400020

..... Appellant

v/s

**Bank of India,**

8<sup>th</sup> Floor, Taxation Department,  
Star House, C-5, G-Block,  
Bandra – Kurla Complex,  
Bandra (East)  
Mumbai – 400051  
PAN: AAACB0472C

..... Respondent

Assessee by : Shri C. Naresh

Revenue by : Shri Satya Pal Kumar, CIT (DR)

Date of Hearing – 11/12/2025

Date of Order – 30/01/2026

**ORDER****PER BENCH :**

The present cross-appeals have been filed by the assessee and the Revenue challenging the separate impugned order of even date 28/02/2023 passed under section 250 of the Income-tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*] for the assessment years 2016-17 and 2018-19.

2. Since both the cross appeals pertain to the same assessee arising out of a similar factual matrix giving rise to similar issues, these cross appeals were heard together as a matter of convenience and are being decided by way of this consolidated order. With the consent of the parties, the cross-appeal for the assessment year 2016-17 is considered as a lead case, and the decision rendered therein shall apply mutatis mutandis to the cross-appeal for the assessment year 2018-19.

***ITA No. 1451/Mum./2023  
Assessee's appeal – A.Y. 2016-17***

3. In the appeal, the assessee has raised the following grounds: -

*"1. On the facts and in the circumstances of the case and in law, the learned Assistant Commissioner of Income-Tax 2(1)(1) ["ACIT\*] has erred in disallowing Rs.57,84,37,239 u/s. 14A of the Income-tax Act, 1961 ("the Act") read with Rule 8D(ii) towards expenditure incurred in relation to income claimed exempt u/s. 10 and the Hon'ble CIT(A) has erred in confirming the said disallowance by restricting it up to Rs.12,94,13,414 u/s. 14A read with Rule 8D(iii). The learned ACIT be directed to delete the disallowance made u/s. 14A read with Rule 8D(iii) of Rs.12,94,13,414 and reduce the total income accordingly.*

1A. Without prejudice to Ground no. 1 above, on the facts and in circumstances of the case and in law, assuming without accepting that the contention of the Appellant Bank is not acceptable, in such case, the learned ACIT be directed to restrict the disallowance u/s. 14A in respect of expenses (other than interest) incurred by the Treasury Division of the Bank to Rs.25,64,566 (being proportionate expenses) and reduce the total income accordingly.

1B. Without prejudice to Ground no. 1 above, on the facts and in circumstances of the case and in law, assuming without accepting that the proportionate disallowance of expenses is not considered a reasonable allowance, then in such case, the learned ACIT be directed to restrict the disallowance u/s. 14A in respect of expenses (other than interest) incurred by the Treasury Division of the Bank to the extent of 1% of exempt income being Rs.57,84,372 and reduce the total income accordingly.

2. On the facts and in the circumstances of the case and in law, the learned ACIT has erred in disallowing claim for amortization of lease premium paid in respect of various leasehold properties of Rs.4,08,67,975 and the Hon'ble CIT(A) has erred in confirming the disallowance made by learned ACIT. The learned ACIT be directed to allow the claim for amortization of lease premium paid in respect of various leasehold properties of RS.4,08,67,975 and reduce the total income accordingly.

2A. Without prejudice to Ground no. 2 above, on the facts and in the circumstances of the case and in law, assuming without accepting that amortization of lease premium of Rs.4,08,67,975 is in the nature of capital expenditure, the learned ACIT be directed to allow depreciation u/s. 32 of the Act on the same and reduce the total income accordingly.

3. On the facts and in the circumstances of the case and in law, the learned ACIT has erred in disallowing the exclusion of profits of branches in countries with whom India has entered into a Double Taxation Avoidance Agreement (DTAA) namely United Kingdom (UK), France, Belgium, Kenya, Japan, USA, Singapore, China, United Arab Emirates (UAE) and South Africa amounting to Rs.1440,17,71,495 u/s. 90 of the Act and the Hon'ble CIT(A) has erred in upholding the decision of the learned ACIT. The learned ACIT be directed to exclude the profits of aforesaid foreign branches amounting to Rs.1440,17,71,495 u/s. 90 of the Act and reduce the total income accordingly.

3A. Without prejudice to the contention that income of foreign branches is to be excluded in computing total be the Income computed as per provisions of income-tax laws of respective countries and not the income computed as per provisions of Income-tax Act, 1961. The Hon'ble CIT(A) has erred in not considering the same. The learned ACIT be directed to consider the same and reduce the total income accordingly.

3B. Without prejudice to Ground no. 3 above, assuming without accepting that the exclusion of profits of the aforesaid foreign branches aggregating to Rs.1440,17,71,495 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 while determining tax liability in India in accordance with Sec. 90 and Sec. 91 of the Act.

4. *On the facts and in the circumstances of the case and in law, the learned ACIT has erred in adding back the provision for country risk amounting to Rs.3,58,00,000 Act and the Hon'ble CIT(A) has erred in confirming the disallowance made by ACIT. The learned ACIT be directed to allow the deduction of claim and reduce the total income accordingly.*

5. *On the facts and in the circumstances of the case and in law, the learned ACIT has erred in disallowing the claim of bad debts written off Rs.2153,71,00,000 and the Hon'ble CIT(A) has erred in confirming the disallowance made by ACIT. The learned ACIT be directed to allow the claim and reduce the total income accordingly.*

6. *On the facts and in the circumstances of the case and in law, the learned ACIT has erred in invoking the provisions of Sec. 115JB of the Act while determining the tax liability and Hon'ble CIT(A) has erred in confirming the same. The learned ACIT be directed not to invoke the provisions of Sec. 115JB of the Act in the case of the Appellant Bank and determine the total income and income-tax thereon under normal provisions of the Act only.*

6A. *Without prejudice to Ground no. 6 above, assuming without accepting that Your Honours is of the opinion that the provisions of Sec.115JB are applicable to the Appellant Bank's case, then 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 in countries with whom India has entered into a DAA namely UK, France, Belgium, Kenya, Japan, USA, Singapore, China, United Arab Emirates (UAE) and South Africa amounting to Rs.170,62,19,837 u/s. 90 of the Act and the Hon'ble CIT(A) has erred in upholding the decision of the learned ACIT without appreciating that the provisions of Sec. 90 override the provisions of Sec. 115JB of the Act. The learned ACIT be directed to exclude the profits of aforesaid foreign branches amounting to Rs.170,62,19,837 while computing Book Profit and reduce the Book Profit accordingly.*

6B. *Without prejudice to Ground no. 6B above, assuming without accepting that the exclusion of profits of the aforesaid foreign branches aggregating to Rs. 170,62,19,837 is not allowed while computing Book Profit u/s. 115JB 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 in accordance with Sec. 90 and Sec.91 of the Act while determining tax liability in India."*

4. Ground No.1, raised in assessee's appeal, pertains to the disallowance of deduction made under section 14A read with Rule 8D of the Income Tax Rules, 1962 ("the Rules").

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is a Public Sector Bank engaged in the business

of banking and other related financial activities. The business and operations of the assessee are governed by the guidelines issued by the Reserve Bank of India ("RBI") from time to time. For the year under consideration, the assessee filed its return of income on 30/11/2016, declaring a total loss of Rs.844,76,92,620 and book loss of Rs.8,106,24,94,032. The return filed by the assessee was selected for scrutiny, and statutory notices under section 143(2) and section 142(1) of the Act were issued and served on the assessee. During the year under consideration, the assessee earned income total amounting to Rs.57,84,37,239, which is exempt under section 10 of the Act. The assessee also incurred an amount of Rs.30,071.84 crore as interest on the borrowed funds as against receipts of Rs.41,796.64 crore under the same head. Since the investment yielding the exempt income was quite sizeable in the case of the assessee, the Assessing Officer ("AO"), vide order dated 14/03/2019 passed under section 143(3) of the Act, held that it is unreasonable to assume that the assessee would not have invested any part of the borrowed capital in tax-free investments. Accordingly, the assessee was asked to explain as to why the provisions of section 14A read with Rule 8D of the Rules be not applied. In response, the assessee submitted that the securities held by it as stock-in-trade and the income arising therefrom are not exempt from tax. Further, dividend/interest income is incidental to holding such securities and hence, disallowance under section 14A of the Act is not warranted. In support of its contention, the assessee, inter-alia, placed reliance upon the decision of the Hon'ble Supreme Court in Maxopp Investment Ltd vs. CIT, reported in [2018] 91 taxmann.com 154 (SC). The AO vide order passed under section 143(3) of the Act disagreed with the

submissions of the assessee and computed a disallowance of Rs.57,84,37,239 under section 14A read with Rule 8D of the Rules.

6. The learned CIT(A), vide impugned order, in principle confirmed the stand of the AO in invoking the provisions of section 14A read with Rule 8D of the Rules. However, granted partial relief to the assessee and deleted the disallowance computed under Rule 8D(ii) of the Rules. Further, the disallowance made under Rule 8D(iii) of the Rules amounting to Rs.12,94,13,414 (being 0.5% of the average investments of Rs. 2588.27 crore) was upheld as the same was listed in the exempted income. Being aggrieved, the assessee is in appeal before us.

7. Having considered the submissions of both sides and perused the material available on record, we find that a similar issue came up for consideration before the Coordinate Bench of the Tribunal in assessee's own case in Bank of India v/s ACIT, in ITA No. 929/Mum/2023, for the assessment year 2012-13. While deciding the issue in favour of the assessee and deleting the disallowance made under section 14A read with Rule 8D of the Rules, the Coordinate Bench of the Tribunal, vide order dated 28/06/2023, observed as follows: –

*"6. We have heard the submissions of rival sides and have examined the orders of authorities below. We have also considered the decisions on which both sides have placed reliance in support of their respective submissions. In ground No.1 of appeal the assessee has assailed disallowance made u/s. 14A r.w.r 8D(2)(iii) of the Act. Both sides have placed heavy reliance on the decision rendered in the case of Maxopp Investment Ltd. vs. CIT(supra). The contention of the Revenue is that the purpose of holding the shares is not relevant. The Hon'ble Apex Court in the said case has rejected the theory of "dominant purpose". Here it would be relevant to refer to the following observations of the Hon'ble Apex Court:*

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

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

40. We note from the facts in the State Bank of Patiala cases that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8D of the Rules and holding that section 14A of the Act would be applicable. In spite of this exercise of apportionment of expenditure carried out by the AO, CIT(A) disallowed the entire deduction of expenditure. That view of the CIT(A) was clearly untenable and rightly set aside by the ITAT. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of the ITAT, though we are not subscribing to the theory of dominant intention applied by the High Court. It is to be kept in mind that in those cases where shares are held as 'stock-in-trade, it becomes a business activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits. The situation here is, therefore, different from the case like Maxopp Investment Ltd. where the assessee would continue to hold those shares as it wants to retain control over the investee company. In that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee. In contrast, where the shares are held as stock-in-trade, this may not be necessarily a situation. The main purpose is to liquidate those shares whenever the share price goes up in order to earn profits. In the result, the appeals filed by the Revenue challenging the judgment of the Punjab and Haryana High Court in State Bank of Patiala also fail, though law in this respect has been clarified hereinabove."

7. The Hon'ble Delhi High Court in the case of PCIT vs. Punjab & Sind Bank (supra) after considering the judgment rendered in the case of Maxopp Investment Ltd. vs. CIT(supra) has upheld the decision of Tribunal in deleting disallowance made u/s. 14A of the Act in respect of exempt income earned on shares held as stock-in-trade. Similar view has been expressed by Hon'ble Delhi High Court in the case of PCIT vs. Punjab National Bank, 140 taxman.com 131

following the judgment rendered in the case of *Maxopp Investment Ltd. vs. CIT(supra)*. The relevant extract of the judgment reads as under:

"19. The Supreme Court in this judgment upheld the decision of the High Court of Punjab and Haryana arising under section 14A of the Act with respect to an assessee bank. It further held that when the shares were held as stock-in-trade and not as investment particularly by banks, the main purpose was to trade in those shares and earn profits there from and therefore section 14A of the Act was not attracted and the expenditure could not be disallowed. The judgment of *Maxopp Investment Ltd. (supra)* has been duly noted by the Tribunal in its impugned order and in our opinion the Tribunal has correctly disallowed the disallowance under rule 8D(2)(iii) of the Rules."

8. Thereafter, in the case of *PCIT vs. PNB Housing Finance Ltd.(supra)* the Hon'ble Delhi High Court again following the decision rendered in the case *Maxopp Investment Ltd. vs. CIT(supra)* and the decision of Hon'ble Apex Court in the case of *South Indian Bank Ltd. (supra)* held that no disallowance u/s. 14A of the Act is warranted where shares are held as stock-in-trade. The relevant extract of the decision rendered by Hon'ble Apex Court reads as under:

"6. With respect to the challenge of the deletion of the disallowance made under section 14A of the Act, this issue is no longer *res integra*. It is an admitted fact that the exempt income was earned by the assessee from the investment held by it as stock-in-trade. This issue has been conclusively determined by the Supreme Court in *Maxopp Investment Ltd. v. CIT [2018] 91 taxmann.com 154/254 Taxman 325/402 ITR 640/[2018]15 SCC 523*. In this matter, the Supreme Court was concerned with a batch of appeals which also included a challenge to the judgment of the Punjab and Haryana High Court *Pr. CIT v. State Bank of Patiala [2017] 78 taxmann.com 3/245 Taxman 273/391 ITR 218* and the facts of the said case are *para materia* to the case in hand. In the case of *State Bank of Patiala, (supra)* the AO restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in rule 8-D and holding that section 14A of the Act would be applicable. The CIT(A) issued a notice of enhancement under section 251 of the Act and disallowed the entire expenditure claimed by the assessee therein instead of restricting the disallowance to the amount which was claimed as exempt income. The ITAT set aside the order of the AO as well as CIT(A). The High Court upheld the order of the ITAT and dismissed the appeal filed by the Revenue. The Supreme Court after deliberating on the object and purpose of section 14A, conclusively held that in cases where shares are held by assessee as stock-in-trade, the dividend earned on the said shares is incidental and would not attract the provisions of section 14A of the Act. In this regard, the following paragraphs of the judgment are apposite:-

"49. We note from the facts in *State Bank of Patiala* case that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in rule 8-D of the Rules and holding that section 14-A of the Act would be applicable. In spite of this exercise of apportionment of expenditure carried out by the AO, CIT(A) disallowed the entire deduction of expenditure. That view of the CIT(A) was clearly untenable and rightly set aside by ITAT. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of ITAT, though we are not subscribing to the theory of dominant intention applied by the High Court.

50. It is to be kept in mind that in those cases where shares are held as "stock-in-trade", it becomes a business activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits. The situation here is, therefore, different from the case like *Maxopp Investment Ltd.* where the assessee would continue to hold those shares as it wants to

*retain control over the investee company. In that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee. In contrast, where the shares are held as stock-in-trade, this may not be necessarily a situation. The main purpose is to liquidate those shares whenever the share price goes up in order to earn profits. In the result, the appeals filed by the Revenue challenging the judgment of the Punjab and Haryana High Court in State Bank of Patiala also fail, though law in this respect has been clarified hereinabove."*

*7. The judgment of the Punjab and Haryana Court in the case of State Bank of Patiala (supra) was also cited with approval by the Supreme Court in a subsequent judgment South Indian Bank Ltd. v. CIT [2021] 130 taxmann.com 178/283 Taxman 178/438 ITR 1 and held as under:-*

*"25. ...The Punjab and Haryana High Court, in the case of Pr CIT v. State Bank of Patiala [2017] 88 taxmann.com 667/393 ITR 476 (Puni. & Har.) while adverting to the CBDT Circular, concluded correctly that shares and securities held by a bank are stock-in-trade, and all income received on such shares and securities must be considered to be business income. That is why Section 14A would not be attracted to such income."*

*(Emphasis Supplied)*

*7.1 The law settled by the aforesaid judgments of the Supreme Court is squarely applicable facts of the present case as there is no dispute that the exempt income was earned from stock-in-trade."*

*Thus, in light of various decisions rendered by Hon'ble Delhi High Court after considering the judgment rendered in the case of Maxopp Investment Ltd. vs. CIT(supra) deleting disallowance u/s. 14A where shares are held as stock-in-trade, we are of considered view that disallowance u/s. 14A of the Act is unsustainable in the instant case. Thus, the assessee succeeds on ground No.1 of the appeal."*

8. The learned Departmental Representative ("learned DR") could not show any reason to deviate from the aforesaid decision rendered in the assessee's own case, and no change in facts or law was alleged in the relevant assessment year. Therefore, respectfully following the judicial precedent in assessee's own case cited supra, we uphold the plea of the assessee and the disallowance made by the AO under section 14A read with Rule 8D of the Rules is hereby deleted. As a result, Ground No.1, raised in assessee's appeal, is allowed. In view of our aforesaid findings, Grounds No.1A and 1B are rendered academic and, therefore, need no separate adjudication.

9. Ground No.2, raised in assessee's appeal, pertains to the disallowance of the claim for amortisation of the lease premium paid in respect of various leasehold properties of the assessee.

10. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee claimed Rs.4,08,57,975 on account of amortisation of lease premium while computing its total income. During the assessment proceedings, the assessee was asked to furnish the details and justification of the said claim. In response, the assessee submitted that it has made a lump sum payment as premium and ground rent, and such payments are amortised over the respective lease period. The assessee submitted that, accordingly, it has made a claim of deduction of Rs.4,08,67,975 on account of amortisation of lease premium in its return of income. The assessee further submitted that the above expenditure has been incurred to facilitate the carrying on of its banking business and is only revenue expenditure allowable under section 37 of the Act. It was also submitted that if the assessee had made annual payments as lease rents, then the same would be allowable as revenue expenditure, and merely due to the fact that a lump sum payment has been made, which was amortised over the respective lease period, the same does not alter the nature of the expenditure. The AO, vide order passed under section 143(3) of the Act, disagreed with the submissions of the assessee and held that the payment on account of lease premium paid by the assessee in respect of various leasehold lands is capital expenditure. Thus, the AO held that, being in the nature of capital expenditure, the same cannot be allowed as a

deduction from the total income. The AO further noted that a similar disallowance was made by the Tribunal in the assessee's own case in the preceding years. Accordingly, following the approach adopted in preceding years, the amount of Rs.4,08,87,975 was disallowed and added to the total income of the assessee.

11. The learned CIT(A), vide impugned order, following the order passed by the Tribunal in assessee's own case for the assessment year 2015-16, upheld the disallowance on account of amortisation of lease premium paid for leasehold land. Being aggrieved, the assessee is in appeal before us.

12. Having considered the submissions of both sides and perused the material available on record, we find that a similar issue came up for consideration before the Coordinate Bench of the Tribunal in assessee's own case in Bank of India vs. ACIT, in ITA No. 1767/Mum/2019, for the assessment year 2015-16. While deciding this issue against the assessee, vide order dated 11/12/2020, the Coordinate Bench vide aforesaid decision, observed as follows: –

*"45. In the second set of ground of appeal, the assessee-appellant has raised the following grievances:*

*2. On the facts and in the circumstances of the case and in law, the learned ACIT has erred in disallowing amortization of lease premium paid in respect of various lease hold properties aggregating to Rs.4,08,67,975 by treating the same as capital expenditure and the Hon'ble CIT(A) has erred in confirming the disallowance made by the learned ACIT. The learned ACIT be directed to allow amortization of lease premium paid in respect of various lease hold properties aggregating to Rs.4,08,67,975 as revenue expenditure and reduce the total income accordingly.*

*2A. Without prejudice to Ground no. 2 above, on the facts and in the circumstances of the case and in law, assuming without accepting that your Honours is of the opinion that amortization of lease premium paid in respect of various lease hold properties aggregating to Rs.4,08,67,975 is in the nature of*

*capital expenditure, then the learned ACIT be directed to allow depreciation u/s. 32 of the Act on the same and reduce the total income accordingly.*

*46. Learned counsel for the assessee fairly submits that, as on now, the issue is covered, against the assessee, by decisions of the coordinate benches, and he does not, therefore, press the issue any further. Obviously, however, he retains his right to carry the matter further in appeal, if so advised. Learned Departmental Representative does not oppose the submissions of the learned counsel.*

*47. In view of the above, and subject to the rider that this matter not being pressed before us should not be construed as prejudicial to the interests of the assessee for carrying the matter in further appeal before Hon'ble Courts above, these grounds of appeal are dismissed as not pressed."*

13. We find that Ground No.2A, raised in the present appeal before us, was also raised by the assessee in its appeal for the assessment year 2015-16, and the said ground was also dismissed by the Coordinate Bench in its decision cited supra. In the absence of any change in facts or law brought to our notice, respectfully following the aforesaid decision, we do not find any infirmity in the findings of the learned CIT(A) on this issue. Accordingly, Grounds No.2 and 2A, raised in assessee's appeal, are dismissed.

14. Ground No.3, raised in assessee's appeal, pertains to the exclusion of income of foreign branches situated in countries with which India has entered into the Double Taxation Avoidance Agreement.

15. During the hearing, the learned AR fairly agreed that this issue has been decided against the assessee in its own case by the Coordinate Bench of the Tribunal in ITA No. 1767/Mum/2019 cited supra, for the assessment year 2015-16. The relevant findings of the Coordinate Bench vide its order dated 11/12/2020 are reproduced as follows: –

*"7. Learned counsel has shown, in accepting the fact that even though the issue is covered in favour of the assessee by earlier decisions of the coordinate benches, these coordinate bench decisions cease to be binding judicial*

*precedents inasmuch as reasoning adopted therein does not hold good any longer in the light of the decision in the case of Technimont (supra), admirable grace. It is not clear to us whether this approach is to preempt a detailed discussion on merits of the matter, or whether this approach is indeed bonafide stand of the assessee. That does not, however, matter much at this stage, as all the facets of this matter are covered above nevertheless. The basis on which the relief was granted in the earlier years has been examined and that basis being ex facie incorrect and even rendered by inadvertence is glaring in the analysis that has been extensively reproduced above. Learned counsel for the assessee, however, does not give up; he has an even more innovative plea now. He submits that above decision is per incuriam for some other reason, which has not been discussed in any judicial precedent so far, inasmuch as it overlooks the fact that the notification dated 28\* August 2008 was not issued in the context of the business income, and, should accordingly not be applicable so far as business income earned abroad, as in this case, is concerned. We see no substance in this plea either. The notification deals with connotations of the expression "may be taxed", appearing in the tax treaties entered into by India, and there is absolutely no basis whatsoever to support the proposition that the effect of the notification has to be restricted in its application to non-business income only. No such differentiation in treatment of business and non-business income is envisaged in the said notification, nor to do we see any justification for inferring the same. Learned counsel does not have any material whatsoever in support of the proposition canvassed by him, nor does this proposition make any sense on the first principles- inasmuch as once the notification is issued without any such specific restriction for application to business income, we cannot infer a restriction in its application. We, therefore, reject the plea of the assessee, and thus decline to interfere in the matter. We uphold the action of the Assessing Officer in including the profits of the assessee's overseas branches, amounting to Rs1,408.32 crores, in its taxable income in India."*

16. Thus, respectfully following the decision of the Coordinate Bench of the Tribunal rendered in assessee's own case cited supra, the addition made on account of income earned by the foreign branches is upheld. Accordingly, Ground No.3, raised in assessee's appeal, is dismissed.

17. Ground No.3A, raised in assessee's appeal, pertains to the computation of income from foreign branches as per the provisions of the income tax laws of the respective countries and not the Income Tax computed as per the provisions of the Act.

18. On this issue as well, the learned AR fairly agreed that the same has been decided against the assessee by the Coordinate Bench of the Tribunal in DCIT vs. Bank of Baroda, in ITAs No. 1222 and 1221/Mum/2018, for the assessment years 2014-15 and 2015-16. We find that vide aforesaid decision dated 22/05/2019, the Coordinate Bench of the Tribunal observed as follows:-

*"18. Another common issue raised relates to foreign income to be taxed in India.*

*19. On this issue learned Counsel of the assessee fairly conceded that this issue has been decided against the assessee by the ITAT in assessee's own case for A.Y. 2011-12 in ITA no. 4355/Mum/2016 vide para 3 to 5 of the said order.*

*20. Upon careful consideration we find that ITAT in assessee's own case has decided the issue in favour of the Revenue as under:-*

*4. We have considered the submission of Id. representative of the parties and perused the order of authorities below. The Assessing Officer while relying upon the Notification No. 2123(e) dated 28.08.2008 treated the income of foreign branches as taxable in India. The Id. CIT(A) on the basis of decision of Tribunal in assessee's own case for Assessment Year 2005-06 to 2007-08 in ITA No. 2927, 2928, 5735/Mum/2011 dated 25.07.2014 held that as per the Notification, the income which is to be included in the total income is such income of foreign branch that was taxed in the foreign country, the relief of tax will be allowed based on the taxed paid in the foreign country and thereby granted part relief to the assessee. We have noted that similar ground of appeal was raised by Revenue in appeal for AY. 2009-10 and the coordinate bench of the Tribunal in ITA No. 2480/Mum/2015 dated 17.02.2017 passed the following order:*

*24. We have carefully considered the submission and perused the record we find that the ITAT in the aforesaid decision has duly considered the said notification referred by the Ld. Counsel of the assessee. We may carefully refer to the contents of the said notification as under;*

*"In exercise of the powers conferred by sub-section (3) of section 90 of the Income-Tax Act, 1961(43 of 1961), the Central Government hereby notifies that where an agreement entered into by the Central Government with the Government of any country outside India for granting relief to tax, or as the case may be, avoidance of double taxation, 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(43 of 1961), and relief shall be granted in accordance with the method for elimination or avoidance of double taxation provided in such agreement."*

*25. We find that after taking into account the aforesaid notification the Tribunal in the aforesaid order has concluded as under.*

*"In view of the aforesaid findings/conclusion, we hold that the income of the branches of the assessee shall also taxable in India i.e., it would be included*

*in the return of income filed by the assessee in India and whatever taxed have been paid by the Branches in the other contracting States i.e., the source country, credit of such taxes shall be given."*

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.

5. Considering the decision of co-ordinate bench in assessee's own case, the ground of appeal raised by Revenue is allowed mutatis mutandis as per order dated 17.02.2017 for A. Y. 2009-10. In the result, Ground No.2 of appeal of the Revenue is allowed. Since the notification issued by the Government does not differentiate between dividend income and business income, we are unable to agree with the interpretation given by Ld A.R on the notification issued by the Government.

*Accordingly, we set aside the order of learned CIT(A)."*

19. Thus, respectfully following the decision of the Coordinate Bench of the Tribunal rendered in Bank of Baroda (supra), Ground No.3A, raised in assessee's appeal, is dismissed.

20. Ground No.3B, raised in assessee's appeal, pertains to the grant of credit towards foreign taxes.

21. Having considered the submissions of both sides and perused the material available on record, we find that while considering a similar issue, the Coordinate Bench of the Tribunal in assessee's own case for the assessment year 2015-16 cited supra, observed as follows: –

*"8. So far as the tax credit for the taxes paid abroad is concerned, the assessee has not given specific details of the taxes so paid abroad in respect of which tax credit is sought. On a perusal of the material before us, we find that the*

*assessee has claimed a deduction of Rs 46,96,14,034 in connection with the taxes paid abroad which has been granted by the Assessing Officer, though under section 91. It is not clear whether this tax credit is in respect of the income of the overseas branches in question of the assessee, or in respect of some other income. We, therefore, direct that in case the assessee furnishes the requisite details of the taxes paid abroad in respect of the profits of these branches, no tax credit has been claimed in respect of the same so far, and in case the claim so made is admissible in terms of the provisions of the related double taxation avoidance agreement, the Assessing Officer will allow the tax credit, to the extent admissible, for the taxes so paid abroad on incomes of the branches abroad earned in tax jurisdictions with which India has entered into double taxation avoidance agreement. While granting the tax credit, the Assessing Officer will examine the provisions of the respective tax treaty, and compute the admissible tax credit separately for each jurisdiction in accordance with the scheme of related treaty. With these directions, the matter stands restored, for the limited purposes of granting tax credit, in terms of the related double taxation avoidance agreements, if, and to the extent, admissible."*

22. Accordingly, respectfully following the decision of the Coordinate Bench rendered in the assessee's own case in the preceding year, this issue is restored to the file of the AO for *de novo* adjudication in compliance with the directions as rendered by the Tribunal in the preceding year. Accordingly, Ground No. 3B, raised in assessee's appeal, is allowed for statistical purposes.

23. Ground No.4, raised in assessee's appeal, pertains to adding back the provision made towards country risk.

24. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee reversed the provision for country risk amounting to Rs.3.58 crore in the profit and loss account. The assessee claimed that since the provision was not claimed as a deduction in the year of creation of such provision, the reversal of the provision has not been offered to tax. The AO, vide order passed under section 143(3) of the Act, held that the assessee's explanation is not justifiable for

claiming the amount of Rs.3.58 crore as a reduction from the net profit in the computation of income. Accordingly, the AO added the amount of Rs.3.58 crore to the total income of the assessee.

25. During the appellate proceedings before the learned CIT(A), the assessee submitted that this amount of provision as per the RBI guidelines is debited every year in the accounts and added back in the computation of income. However, the actual amount crystallised during the year is claimed in the computation of income. Accordingly, the assessee was asked to submit the working of the actual claim of country risk written off during the year. However, the assessee expressed its inability to provide these details as the matter is old. The learned CIT(A), vide impugned order, found it strange that the net credit of provision of country risk will exactly match with the exact claim of country risk. Since the assessee could not provide the working of crystallised country risk, the addition of Rs.3.58 crore made by the AO was upheld. Being aggrieved, the assessee is in appeal before us.

26. We have considered the submissions of both sides and perused the material available on record. During the hearing, the learned AR submitted that the exact working of the crystallised country risk during the year could not be furnished before the learned CIT (A). It was further submitted that, given another opportunity, the assessee can furnish the details, as the amount of country risk represents crystallised loss out of the amount provided as per the RBI guidelines. Accordingly, in the interest of justice, we deem it appropriate to restore this issue to the file of the AO for *de novo* adjudication with a direction to the assessee to produce the necessary working in respect

of its claim. As a result, Ground No.4, raised in assessee's appeal, is allowed for statistical purposes.

27. Ground No.5, raised in assessee's appeal, pertains to the disallowance of bad debts written off.

28. The brief facts of the case pertaining to this issue, as emanating from the record, are: In the return of income, the assessee claimed Rs.2356.44 crore as bad debt written off is allowable as a deduction under section 36(1)(vii) of the Act. During the assessment proceedings, the assessee submitted that it has written off bad debts relating to all types of advances, including those made by the rural branches, aggregating to Rs.2356.44 crore. The assessee submitted that the same has been claimed as a deduction under section 36(1)(vii) of the Act, while computing profits and gains from business for the year under consideration. By referring to the provisions for bad and doubtful account maintained under section 36(1)(viiia) of the Act, the assessee submitted that the same does not have credit balance as on 01/04/2015, and therefore, no amount is reduced from the bad debts aggregating to Rs.2356.44 crore written off by the assessee while claiming deduction under section 36(1)(vii) of the Act. The AO, vide order passed under section 143(3) of the Act, disagreed with the submissions of the assessee and observed as follows: -

*"15.5 The claim of the assessee bank that the opening balance in PBDD account is negative / debit is not correct in view of the following reasons.*

*1. Provision for bad debt is debited to P&L a/c. It is a provision account (a liability) and hence, is primarily a credit balance account.*

2. The Legislature has allowed for Provision for Doubtful Debts in case of banks considering the peculiar requirements of the banking business. Making provisions is normally an accounting concept whereby any expected loss and expense is to be provided for so that when the same actually occurs, its impact is minimal on the business & profits of the business per se in the year of its actual occurrence. This is actually in line with the Conservative Principles of Accounting. In Accounting Theories, once the loss actually occurs and is ascertained it is first set-off against the provision created in relation to it and only the balance, if any, is accounted for as a loss or expense from the profits of the year of occurrence. Similar is the situation with Provision for Bad and Doubtful Debts and bad debts written off. Thus, even the Accounting Theories support the interpretation that the Bad Debts written off are to be first set-off against the Provision for Doubtful Debts made and allowed in earlier years under Section 36(i) (viia) and only balance, if any, can be claimed as expense in the year of actual write-off of the Bad Debts u/s Section 36(i)(vii).

3. Under Section 36 (1)(viia), bank is allowed 7.5% of the profit and 10% of rural advances as deduction on account for provision for Bad and Doubtful Debt, which is credited to the Provision account.

4. From such credit in PBDD account, actual write-off of bad debts is adjusted by debiting the said account to the extent of credit balance and as per proviso to section 36(1)(vii), excess is allowable as bad debt. Section 36(2)(v) clearly states that the assessee has to debit the bad debt or a part of it to the PBDD account. The excess cannot be debited to the PBDD account, else the outcome will be a debit balance. This will also result in double deduction of same amount.

5. The concept of 36(1) (vii), 36(1)(viia) and 36(2)(v) is basically to regulate allowance on account of NPA and bad debts in case of banks. Since provision is allowed as fixed percentage, the same may turn bad subsequently so the concept is to first adjust bad debts from allowed provision and excess bad debt, if any, only can be allowed u/s 36(1)(vii) so that there is no double deduction.

6. The assessee's accounting is not in conformity with the provision of section 36(1)(vii), 36(1)(viia) and 36(2)(v) because assessee debits even bad debts claimed and allowed u/s 36(1)(vii) over and above the provision for Bad and doubtful debt allowed u/s 36(1)(viia). The amount which has already been allowed as deduction u/s 36(1)(vii) to the assessee is also kept debited, which results in debit balance in provision account, as per assessee's computation. How can the deduction of bad debt claimed u/s 36(1)(vii) be allowed to remain in the PBDD account because once the claim of bad debt in excess of credit balance in PBDD account is made, the same cannot be debited to PBDD account.

7. It is not a simple ledger account but an accounting concept through which provision for NPA allowed u/s 36(1)(viia) is utilized in bad debts claim first and then the bad debt written off over and above that is allowed u/s 36(1)(vii). Here, the assessee has defied the basic concept. The I. T. Act, never envisaged debit balance of PBDD account and therefore there is no mention of debit balance in first proviso to section 36(1)(vii). Any allowance

*under specific provision of income-tax Act are not just accounting entries but in effect allowance of claim.*

8. *As per CBDT Instruction No. 17 of 2008 clarifying first proviso to Section 36(1)(vii), opening credit balance of provision for bad and doubtful debt account is to be considered for reducing bad debts and the excess amount of bad debts written off is to be claimed u/s 36(1)(vii). As per section 36(2)(v) only that part of bad debt is to be debited to the provision account for which there is a credit balance available in the account. The amount exceeding the credit balance is allowed as deduction u/s 36(1)(vii) directly, and it cannot be debited to the PBDD account, which otherwise will result in double deduction effectively. In each case when bad debt written off exceeds credit balance of provision for bad and doubtful debt account, the account will become nil and the excess amount is directly accounted for as loss or expense allowable u/s 36(1)(vii). It cannot remain debited to the provision for bad and doubtful debt account defying the accounting principles. Following this principle, the claim u/s 36(1) (viiia) allowed in the year end will at least still remain as closing balance in PBDD account and the opening credit balance for next year. This is so because closing allowance u/s 36(1)(viiia) is to be utilized only next year. If assessee's logic is accepted, then the bad debt which is already allowed as deduction u/s 36(1)(vii) is again adjusted against the closing allowance u/s 36(1)(viiia) in that year. This methodology of computation followed by assessee results in negative or debit balance in PBDD account which in effect results in double allowance u/s 36(1)(viiia) and 36(1) (vii). Such unintended benefit or double deduction cannot be allowed.*

9. *Since in the case of banks, claim of bad debt is allowed to the extent of section 36(1)(viiia) as provision even before the actual write off, given the peculiarity of the banking business. Therefore the law has prescribed that claim of bad debt write off is allowed in case of banks only if it exceeds the accumulated provision allowed. The adjustment is to be done every year. The assessee is eligible to claim provision for bad and doubtful debt u/s 36(1)(viiia) and excess claim of bad debt u/s 36(1)(vii) over and above provisions already allowed u/s 36(1)(viiia). The use of word 'credit balance' in proviso to section 36(1)(vii) and 'debited' in section 36(2)(v), has been stretched too far by the assessee and its learned advisors, to give an absurd meaning to the provisions itself. The basic concept of allowing any claim only once is negated by assessee's interpretation. A very simple concept of allowing provision u/s 36(1)(viiia), and bad debt over and above such provision as bad debt written off u/s 36(1)(vii), is made complicated by creating debit balance in PBDD account which is never possible as discussed above. Balance in PBDD account can be positive, or at most be Nil, but not debit or negative. This is so because one can use the allowance up to 100% and once it is done, the balance will become zero. Therefore, claiming negative balance by even reducing / debiting amounts claimed in 36(1)(vii) is not correct.*

10. *As mentioned earlier, the claim allowed u/s 36(1)(viiia) in any year cannot be adjusted against the bad debt written off allowed u/s 36(1)(vii) of the same year. Therefore, at least that much credit balance will always be there in the PBDD a/c at the year end, which will be opening balance of PBDD credit balance next year."*

29. Accordingly, the AO held that as per the computation of the assessee, it was claiming double deduction of bad debt written off twice under section 36(1)(vii) as well as section 36(1)(viia) of the Act. Accordingly, the AO computed the bad debt written off under section 36(1)(vii) at Rs.202.73 crore as against Rs.2356.44 crore claimed by the assessee, by observing as follows:

*"15.9 Thus, for AY under consideration, AY 2016-17, the minimum opening balance shall be Rs. 2,926.41 crore which has been claimed as deduction u/s 36(1) (viia) during AY 2015-16. Thus, as clearly stated in proviso to section 36(i)(vii), the amount of bad debt written off in excess of Rs. 2926.41 crore can only be allowed. In this AY the assessee's claim of debt written off amounts to Rs. 2356.44 crore. As per the discussion in the para 14, the loss on sale of ARC by the bank is considered as Bad debt written off and therefore the total bad debt written off for A.Y. 2016-17 is 2356.44 crore + 772.70 Crore totaling to Rs.3129.14 Crore. The total bad debt written of exceeds the opening PBDD by Rs. 3129.14 - 2926.41= Rs.202.73 crore. Hence, the amount of Rs. 202.73 crore is only allowable as bad debt written off u/s 36(1)(vii).*

*15.10 In view of the aforementioned discussion, bad debt written off claim of the assessee to the extent of Rs. 2356.44 - Rs. 202.73 crore= 2153.71 crore is being disallowed and added back to the income of the assessee bank. Penalty proceedings u/s.271(1)(c) are initiated for filing of inaccurate particulars of income."*

30. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue, by observing as follows: -

*"16.5 After considering the assessment order, submissions of the appellant and the relevant provisions of the Act, the adjudication on various issues arising out the drawing of provision account u/s 36(1)(viia) and claim of bad debts u/s 36(1) (vii) is in following para*

*(i) As regards to the utilisation of the credit balance in the provision account u/s 36(1)(viia) is concerned, I concur with the view of AO on this issue, as the instruction is very clear in this regard that the opening balance of the year, and not the provision created at the end of the year, is to be consumed towards the actual bad debts of the year.*

*(ii) The law is very clear that the actual bad debts exceeding the already allowed & created provision from taxable income u/s 36(1) (viia) are only to be allowed u/s36(1)(vii). The methodology of the appellant for drawing the account of provision u/s 36(1) (viia) does not appear to be correct, as the appellant is debiting the whole actual bad debts from the provision account*

*u/s 36(1)(viia), particularly when the bad debts are more than the provision, leading to debit balance in this account. This debit balance had been considered as opening balance in this account in next year, against which the provision created u/s36(1)(viia) of next had been adjusted and the actual bad debts had been claimed u/s36(1)(vii). Thus by this process, the appellant is creating debit balance in this account in the year by debiting the amounts claimed even u/s36(1)(vii) and then again this debit balance representing the amount claimed u/s36(1) (vii) is claimed against provision u/s 36(1)(viia) for next year. I concur with the discussion made by AO in para 15.5 of the assessment order, the redrawn provision account in para15.6 of the assessment order and the conclusion (para 15.9 & 15.10) of the AO on this issue.*

*16.5.1 In these facts & circumstances of the case, I concur, in principle, with the discussion, conclusions and the figure work done by the AO in para 15.3 to 15.10 on this issue. Accordingly, the addition made by the AO on this issue is confirmed subject to the modification in figures of addition on account of decision on the issue of loss on sale of assets to ARC decided above. This ground of appeal is dismissed."*

Being aggrieved, the assessee is in appeal before us.

31. We have considered the submissions of both sides and perused the material available on record. In the present case, the assessee reduced the actual bad debts from the credit balance in the provision made under section 36(1)(viia) and the resultant debit balance in the account made under section 36(1)(viia) was carried forward as the opening balance of the next year. At the same time, the amount of bad debts exceeding the credit balance in the provisions account made under section 36(1)(viia) was claimed under section 36(1)(vii) of the Act. The assessee credited the provision under section 36(1)(viia) of the next year, having a debit opening balance, and again reduced the actual bad debts claimed for the year from this account. Thus, the amount exceeding the provision under section 36(1)(viia) is claimed under section 36(1)(vii) of the Act. As the provision account maintained under section 36(1)(viia) did not have any credit balance as on 01/04/2015, no amount was reduced from the aggregate bad debts amounting to Rs.2356.44

crore claimed during the year under section 36(1)(vii) of the Act. On the other hand, the AO objected to the methodology of preparing the bad debt provision account and the amounts claimed under section 36(1)(viiia) and section 36(1)(vii) of the Act. As per the AO, the methodology of the assessee leads to double deduction of bad debts. Accordingly, the AO recomputed the provision account and recalculated the bad debts allowable to the assessee under section 36(1)(vii) out of the provision credit balance under section 36(1)(viiia) of the Act.

32. Before proceeding further, it is pertinent to note the provisions of the Act, which are relevant for the decision on this issue. Section 36(1)(vii) of the Act provides as under: -

*"(vii) subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year:*

*Provided that in the case of an assessee to which clause (viiia) applies, the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under that clause:"*

33. Thus, as per section 36(1)(vii) of the Act, the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee is allowable as a deduction while computing the income of the assessee under section 28 of the Act. The first proviso to section 36(1)(vii) of the Act restricts the said deduction and provides that the amount of bad debts which is allowable as a deduction shall be the amount which exceeds the credit balance in the provision for bad and doubtful debts account made under clause (viiia) of section 36(1).

34. The provisions of section 36(1)(viia), which are relevant for this case, are reproduced as follows: -

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

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

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

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

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

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

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

35. Thus, as per the provisions of section 36(1)(viia) of the Act, the provision for bad and doubtful debts account shall include an amount not exceeding 7.5% of the total income and an amount not exceeding 10% of the aggregate average advances made by the rural branches of such bank. As

regards the deduction for bad debts, it is also relevant to note the provisions of section 36(2)(v) of the Act, which reads as follows: -

*"(2) In making any deduction for a bad debt or part thereof, the following provisions shall apply—*

*.....*

*(v) where such debt or part of debt relates to advances made by an assessee to which clause (viia) of sub-section (1) applies, no such deduction shall be allowed unless the assessee has debited the amount of such debt or part of debt in that previous year to the provision for bad and doubtful debts account made under that clause."*

36. Therefore, the proviso to section 36(1)(vii) requires maintenance of the provision of bad and doubtful debt account under section 36(1)(viia) of the Act. Further, the deduction in respect of provision for bad and doubtful debt accounts allowable under section 36(1)(viia) of the Act is required to be credited to this account by the bank. Section 36(2)(b) of the Act requires bad debts written off by the bank to be debited to the provision for bad and doubtful debts account under section 36(1)(viia) of the Act. Further, as noted in the foregoing paragraphs, bad debts written off in excess of the opening credit balance in this account shall be allowable as a deduction under section 36(1)(vii) of the Act. Vide Instruction No.17 of 2008, dated 26/11/2008 issued by the CBDT provided the clarity regarding the manner of computation of deduction under section 36(1)(vii) of the Act as follows: -

**"INSTRUCTION NO. 17/2008, DATED 26-11-2008**

*In a recent review of assessment of Banks carried out by C&AG, it has been observed that while computing the income of banks under the head 'Profit and Gains of Business & Profession', deductions of large amounts under different sections are being allowed by the Assessing Officers without proper verification, leading to substantial loss of revenue. It is, therefore, necessary that assessments in the cases of banks are completed with due care and after proper verification. In particular, deductions under the provisions referred to*

below should be allowed only after a thorough examination of the claim on facts and on law as per the provisions of the Income-tax Act, 1961 :

(i) Under section 36(1)(vii) of the Act, deduction on account of bad debts which are written off as irrecoverable in the accounts of the assessee is admissible. However, this should be allowed only if the assessee had debited the amount of such debts to the provision for bad and doubtful debt account under section 36(1)(viia) of the Act, as required by section 36(2)(v) of the Act.

(ii) While considering the claim for bad debts under section 36(1)(vii), the Assessing Officer should allow only such amount of bad debts written off as exceeds the credit balance available in the provision for bad and doubtful debt account created under section 36(1)(viia) of the Act. The credit balance for this purpose will be the opening credit balance i.e., the balance brought forward as on 1st April of the relevant accounting year.

.....”

37. Having perused the provisions of sections 36(1)(vii), 36(1)(viia) and 36(2)(v) of the Act in the light of Instruction No.17 of 2008 issued by the CBDT, we do not find any infirmity in the provision for bad and doubtful debts account under section 36(1)(viia) of the Act, prepared by the assessee in the following manner: -

AY	Opening Balance	Claim u/s. 36(1)(viia)	Bad Debts written off	Closing Balance
1995-96	-	101.16	260.32	(159.16)
1996-97	(159.16)	48.99	296.36	(406.53)
1997-98	(406.53)	-	254.48	(661.00)
1998-99	(661.00)	-	308.75	(969.75)
1999-00	(969.75)	-	295.35	(1,265.10)
2000-01	(1,265.10)	102.87	200.01	(1,362.24)
2001-02	(1,362.24)	222.45	278.87	(1,418.66)
2002-03	(1,418.66)	269.03	552.14	(1,701.78)
2003-04	(1,701.78)	380.98	578.74	(1,899.54)
2004-05	(1,899.54)	375.96	550.03	(2,073.61)
2005-06	(2,073.61)	381.47	346.89	(2,039.03)
2006-07	(2,039.03)	529.71	603.38	(2,112.70)
2007-08	(2,112.70)	786.07	400.81	(1,727.43)
2008-09	(1,727.43)	947.56	585.88	(1,365.76)
2009-10	(1,365.76)	645.17	454.20	(1,174.79)
2010-11	(1,174.79)	1,167.49	936.85	(944.14)
2011-12	(944.14)	1,365.95	989.93	(568.12)
2012-13	(568.12)	1,141.34	3,012.42	(2,439.20)
2013-14	(2,439.20)	2,039.28	4,550.50	(4,950.42)
2014-15	(4,950.42)	2,078.70	3,214.68	(6,086.40)

AY	Opening Balance	Claim u/s. 36(1)(viiia)	Bad Debts written off	Closing Balance
2015-16	(6,086.40)	2,926.41	2,619.63	(5,779.62)
2016-17	(5,779.62)			

38. In this regard, it is pertinent to note the following observations of the Hon'ble Supreme Court in Catholic Syrian Bank Ltd. vs. CIT, reported in (2012) 343 ITR 270 (SC): -

*"17. The provisions of Section 36(1)(vii) would come into play in the grant of deductions, subject to the limitation contained in Section 36(2) of the Act. Any bad debt or part thereof, which is written off as irrecoverable in the accounts of the assessee for the previous year is the deduction which the assessee would be entitled to get, provided he satisfies the requirements of Section 36(2) of the Act. Allowing of deduction of bad debts is controlled by the provisions of Section 36(2). The argument advanced on behalf of the Revenue is that it would amount to allowing a double deduction if the provisions of Sections 36(1)(vii) and 36(1)(viiia) are permitted to operate independently. There is no doubt that a statute is normally not construed to provide for a double benefit unless it is specifically so stipulated or is clear from the scheme of the Act. As far as the question of double benefit is concerned, the Legislature in its wisdom introduced Section 36(2)(v) by the Finance Act, 1985 with effect from 01.04.1985. Section 36(2)(v) concerns itself as a check for claim of any double deduction and has to be read in conjunction with Section 36(1)(viiia) of the Act. It requires the assessee to debit the amount of such debt or part thereof in the previous year to the provision made for that purpose."*

39. Since the provision for bad and doubtful debt account maintained under section 36(1)(viiia) of the Act does not have any credit balance as on 01/04/2015, we agree with the submissions of the assessee in claiming the deduction of the entire bad debt written off as an irrecoverable under section 36(1)(vii) of the Act. Accordingly, the impugned addition made by the AO on this issue is deleted. As a result, Ground No.5, raised in assessee's appeal, is allowed.

40. Ground No.6, raised in assessee's appeal, pertains to the applicability of the provisions of section 115-JB of the Act to the assessee bank.

41. During the hearing, the learned Representatives appearing for the parties fairly agreed that this issue has been decided in favour of the assessee by the Special Bench of the Tribunal. We find that a similar issue came up for consideration before the Special Bench of the Tribunal in Union Bank of India vs. DCIT, in ITA No. 424/Mum/2020, for the assessment year 2015-16. Vide its order dated 06/09/2024, the Special Bench of the Tribunal deciding the issue in favour of the assessee banks, including the assessee in appeal before us, held that clause (b) to sub-section (2) of section 115JB of the Act inserted by Finance Act, 2012, w.e.f. 01/04/2013, i.e., from the assessment year 2013-14 onwards, are not applicable to the banks constituted as corresponding new banks in terms of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and therefore, provisions of section 115-JB of the Act cannot be applied and consequently, tax on book profit (MAT) are not applicable to such banks. Therefore, respectfully following the decision of the Special Bench of the Tribunal (cited supra), Ground No.6, raised in assessee's appeal, is allowed.

42. In view of our finding rendered in respect of Ground No.6, the issue arising in Ground No.6A and 6B, raised in assessee's appeal, are rendered infructuous and therefore, are kept open.

43. In the result, the appeal by the assessee for the assessment year 2016-17 is partially allowed for statistical purposes.

***ITA No. 1547/Mum./2023  
Revenue's appeal – A.Y. 2016-17***

44. In the appeal, the Revenue has raised the following grounds: -

"1. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was right in holding that if there are funds available both interest free and loans fund then presumption would arise that investment is made out of interest free fund for calculation of disallowance w/s.14Arwr8D2(ii) when the issue of mixed fund as pending before larger Bench of Supreme Court. More so when no nexus is established by the assessee to prove that own ie. interest free funds were initiated to make the investment? (Tax Effects: Rs.15,53,98,165/-@ 34.61% of Rs. 44,90,23,825/-)

2. Whether on the facts and in the circumstances of the case and in law: the Ld. CIT(A) was justified in holding that disallowance us. 144 is to be restricted to the exempt income, where as in Finance Act 2022, explanation to Section 14A has been inserted which provides for applicability of the said section even in the absence of exempt income, which being clarificatory in nature has retrospective effect? (Tax Effects: Rs. 1,56,73,70,902/- of Rs. Rs.452,89,26,555/-)

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing deduction of taxes paid abroad from business income even though the provisions of section 40a(i) of the Act are very clear for not granting the amounts covered us 90 or 91 as allowable expenditure?

4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing relief on the issue of broken period interest without appreciating the fact that the assessee cannot follow receipt basis of accounting for some items of income and follow accrual basis of accounting for other items of income?

5. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that broken period interest is a revenue expenditure. ignoring that the issue is decided in favour of Revenue by Apex Court in the case of Vijaya Bank Ltd. (1991) 187/ITR 541 (SC)? (Tax effect: Rs.10,52,11,529 @ 34.61% of Rs. 30.40,09,273)

6. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in deleting the disallowance of premium on HTM securities of Rs 231.78,68,424/- without appreciating the fact that RBI circular dated 12th July 2015 clearly mentions that the prescribed accounting treatment doesn't take into account the applicability of Income Tax Law and the decision of Hon'ble Supreme Court in the case of Southern Technologies Limited u/s JCIT in Civil Appeal Number 1337 of 2003 making it very clear that the RBI guidelines themselves will not decide the taxability of income? (Tax effect: Rs.80,21,67,904/- @ 34.61% of Rs.231,78,68,424/-)

7. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in deleting the disallowance of losses written off of Rs 8,22,59,119/, without appreciating the fact that the same did not fulfill the conditions of deduction of s.36(1)(vii) r.w.s. 36(2)(v) of the Act? (Tax Effect: Rs. 2,71,97,333/- @34.61% Rs. 8,22,59,119/-)

8. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of interest on Perpetual Bonds as Perpetual Bonds cannot be are not borrowed funds as per settled

*legal position in the decision of Hon'ble Punjab & Haryana High Court in the case of Pepsu Road Transport Corps CIT (130 ITR 18 (P&H)? (Tax Effect: Rs. 55.63.92.816/- @ 34.61% of Rs. 160,77,00,000/-)*

*9. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in deleting the addition of Rs.443,40,00,000/- on account of commission received on deferred payment bank guarantee when in fact the commission income has accrued and arisen and further the income is not contingent in nature? (Tax Effect of Rs.1,53,45.18,720/- @34.61% of Rs. 443,40,00,000/-)*

*10. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) was correct in deleting the addition of Rs. 1.95.41.06, 729/- of unrealized interest income on NAs holding that the limit of time for classification of NPAs as per RBI guidelines had to be followed as per section 43D of the Act? (Tax effect: Rs. 67,62,77,257 @ 34.61% of Rs. 195,41,06,729/-)*

*11. Whether on the facts and in the circumstances of the case and in law, the Ld. CITYA) was correct in deleting the disallowance of Rs. 772, 70.00.000/- being loss on sale of financial assets to ARC which is only a notional loss and assessee had not suffered real loss? (Tax effect Rs.2.67,41.60,160/- @ 34.61% of Rs.772,70,00,000/-)*

*12. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) was erred in allowing relief to the assessee relying on the decision of Hon'ble Special Bench of ITAT Delhi in the case of Vireet Investment (P) Ltd.. without appreciating the facts that the issue has not reached to its finality as the Hon'ble Delhi High Court in its decision in the case of Goetz India Ltd., reported in 361 ITR 505 held that while computing Book Profit disallowance as HA is required to be made. However, in its later judgment the Hon'ble Delhi High Court in the case of Bhushan Steel Ltd. (ITA No. 593 & 594/2015) has taken a contrary view? (Tax effect Rs. 10,70,10,889/- @ 18.5% of Rs.57,84,37,239/-)*

*13. Whether on the facts and in the circumstances of the case and in law. the Ld. CIT(A) was erred in directing to exclude the adjustment made by adding the provision for bad and doubtful debts of Rs.11745.47,65,380/- while calculating book profit as 115JB? (Tax effect: Rs.2172,91,31.595/-@18.5% Rs. 11745,47,65,380/-)*

*14. The Ld. CIT (4)'s order is contrary in law and on facts and deserves to be set aside.*

*15. The appellant prays that the order of CIT (A) on the above grounds be set aside and that of the 40 restored. The appellant craves leave to amend or alter any ground or add a new ground that may be necessary at the time of hearing."*

45. Grounds No.1 and 2 raised in Revenue's appeal pertain to the disallowance under section 14A read with Rule 8D of the Rules.

46. While considering the similar disallowance made under section 14A read with Rule 8D of the Rules, we find that in preceding years, similar disallowance was deleted following the decision of the Hon'ble Supreme Court in Maxopp Investment Ltd. (*supra*), as the shares were held by the assessee as stock-in-trade. Therefore, Grounds No.1 and 2 raised in Revenue's appeal are rendered academic and, thus, are dismissed.

47. Ground No.3, raised in Revenue's appeal, pertains to the deduction of taxes paid by the assessee outside India. We find that this issue does not emanate from the order passed by the lower authorities. Therefore, this ground does not require adjudication.

48. Grounds No.4 and 5, raised in Revenue's appeal, pertain to the disallowance of broken period interest.

49. The brief facts of the case pertaining to this issue as emanating from the record are: During the year under consideration, the assessee paid Rs.30,40,09,273 as broken period interest on the purchase of Held to Maturity ("*HTM*") Securities, treating the same as revenue expenditure. Accordingly, during the assessment proceedings, the assessee was asked to furnish an explanation why the broken period interest should be allowed as revenue expenditure. In response, the assessee submitted that the interest on Government Securities is normally credited half-yearly, and when the Government Securities are sold, the purchaser has to pay the seller not only the purchase price of the securities but also the interest accrued on the Government Securities from the last due date of the interest till the date of

purchase of the securities. The assessee submitted that the interest from the last due date till the date of purchase is referred to as a broken period interest. It was also submitted that its clients treat the investment in Government Securities as stock-in-trade. The AO, vide order passed under section 143(3) of the Act, disagreed with the submissions of the assessee and held that the broken period interest paid by the assessee is nothing but part of the price paid for the securities for acquiring the securities and therefore whatever may be the reason that prompted the assessee to purchase the securities, the price paid for them is in the nature of capital outlay only. Accordingly, the AO held that the broken period interest claimed by the assessee is part of the cost price of the securities acquired by it, and therefore, the deduction of Rs. 30,40,09,273 on account of broken period interest was disallowed. The learned CIT(A), vide impugned order, following the decision of the Coordinate Bench of the Tribunal rendered in assessee's own case for the assessment year 2015-16, allowed the ground raised by the assessee on this issue and held that the broken period interest paid by the assessee is revenue expenditure. Being aggrieved, the Revenue is in appeal before us.

50. Having considered the submissions of both sides and perused the material available on record, we find that while deciding the similar issue in favour of the assessee, the Coordinate Bench of the Tribunal in assessee's own case for the assessment year 2015-16 in ACIT vs. Bank of India, in ITA No.2048/Mum/2019, vide order dated 11/12/2020, observed as follows: -

*"56. Learned representatives fairly agree that this issue is covered by several decisions of the coordinate benches in assessee's own case, and that is a fact noted by the learned CIT(A) in the impugned order itself as well. There is no good reason, nor has any reason been pointed to us, to take a different view*

*of the matter. Respectfully following the esteemed views of the coordinate bench, and particularly as no contrary view by a higher judicial forum, we approve the conclusions arrived at by the learned CIT(A) and decline to interfere in the matter.*

*57. Ground no. 1 is thus dismissed.”*

51. We find that the Hon'ble Supreme Court in Bank of Rajasthan vs. CIT, reported in (2024) 469 ITR 280 (SC) held that where an assessee bank purchase government security and paid broken period interest since said securities was treated as stock-in-trade, the broken period interest could not be considered as capital asset and would have to be treated as revenue expenditure.

52. Therefore, in view of the aforesaid findings and respectfully following the decision of the Hon'ble Supreme Court, we do not find any infirmity in the findings of the learned CIT(A) on this issue and the same are upheld. As a result, Grounds No.4 and 5 raised in Revenue's appeal, are dismissed.

53. Ground No.6, raised in Revenue's appeal, pertains to the deletion of the disallowance of the premium of HTM securities.

54. The brief facts of the case pertaining to this issue as emanating from the record are: During the year under consideration, the assessee booked a loss of Rs.231,78,68,424 on account of amortisation of investment held in the HTM category. Accordingly, the assessee was asked to explain why the loss on amortisation should not be disallowed. In response, the assessee submitted that as per section 24 of the Banking Regulation Act, it has been made obligatory that the banking institutions must maintain a certain

percentage of its asset in form of security at any given date. Accordingly, the investment, inter alia, in HTM securities is made in the course of business and constitutes stock-in-trade. In its submission, the assessee also placed reliance upon the decision rendered in its own case by the Tribunal, wherein it was held that the investment in securities constitutes stock-in-trade of the assessee, and therefore, valuation loss on securities should be allowed as a deduction. In this regard, the assessee placed reliance upon various other judicial pronouncements, wherein similar loss was allowed. The AO, vide order passed under section 143(3) of the Act, disagreed with the submission of the assessee and disallowed the loss on account of amortisation on investment held in HTM category, by observing as follows: -

*"7.3 The contention of the assessee is considered but found untenable. In this regard the following details may be considered. As per the circular dated 12-07-2005 of the Reserve Bank of India, the investments in the HTM category should be carried at acquisition cost. In case, the purchase price is higher than the face value, the premium should be amortised over the remaining period of maturity of the security. The loss on revaluation of permanent securities reflected in the bank's P&L A/c. is on account of amortization of the premium paid while purchasing the securities. HTM securities are those which banks intend to hold till maturity. The banks were permitted to hold upto 25% of their securities in the HTM category, in the current year. The Banks were allowed to exceed the limit of 25% subject to meeting the prescribed guidelines. The Banks were also allowed to interchange the investment from one category to another with the prior authorization of the Board of Directors. Thus, it is clear that the securities under the HTM category till they are interchanged from the HTM to other categories, are to be held purely as investment and not as stock-in-trade. These securities are not meant for sale but only for redemption on the date of maturity.*

*7.4 There is no dispute that this amortization in regard to securities held in the HTM category is made as per guidelines of the RBI contained in their Master Circular dated 12.07.2005 which also permit to ignore the difference in case the cost price is less than the face value. However, the question arises under which provision of the Act such amortization can be allowed as deduction. In respect of HTM securities, the assessee follows two different systems which are inconsistent with each other. When the purchase price is less than the face value at which the security is ultimately sold, the difference is booked as profit only in the year of sale. But when the cost price is more than the face value, the loss is not booked in the year of sale but is spread*

*over the period of holding. If the securities are held as investment, there is no question of allowance of any amount till such time as they are sold or redeemed. Even if these securities are held as stock-in-trade, as per RBI's guidelines, the method of valuation of closing stock adopted in respect of securities in HTM category is cost price which is one of the two recognized methods of valuation. Since the cost price is constant, there is no question of deduction of any amount under the commercial principles even if HTM securities are accepted to be stock-in-trade of the assessee. Whatever loss is suffered on sale or redemption of securities, that will constitute the loss of the year in which they are sold or redeemed. In between, no amount can be allowed under the provisions of section 145. By claiming amortization, the assessee seeks to neutralize the effect of valuing the securities in HTM category on cost price which is one of the two recognized methods of valuation of the closing stock.*

*7.5 It cannot be the effect of the RBI guidelines that the total income for the purpose of Income Tax has to be computed in accordance with the enjoinder of these guidelines. These are only meant as guiding factors to determine the commercial profit for various purposes on conservative principles. The total income has to be computed under the mandate of the Income Tax Act and a recognized system of accounting has to be followed u/s. 145 of the Act.*

*7.6 It may be worthwhile to mention that in the DBOD circular dt. 6.9.2001, cited above, it has been clearly mentioned that "It is to be noted that the above accounting treatment does not taken into account taxation implications and hence the banks should comply with the requirements of Income Tax authorities in the manner prescribed by them. The findings given by Hon'ble Supreme Court in a very recent judgment delivered in January, 2010 in the case of M/s. Southern Technologies Ltd. vs. JCIT in Civil Appeal No. 1337/2003 which were referred earlier also in the order, are also very relevant. In this case, the assessee which is an NBFC had created a provision for NPA, which in terms of RBI guidelines was debited to Profit & Loss Account and was claimed in the Income Tax Return.*

*7.7 The Hon'ble Supreme Court has held that the above provision is not allowable. With regard to RBI Guidelines, it has been observed by Hon'ble Supreme Court that;*

*"We need to emphasize that the RBI Guidelines has nothing to do with the accounting treatment or taxability of "Income" under the Income Tax Act. The two i.e. I.T. Act and RBI Guidelines operate in different fields. Ultimately, the nature of transaction has to be examined in each case. The authority has to examine the nature of expense / loss. Such examination and finding thereof will not depend upon presentation of expense/ loss in the financial statement. In our view, the RBI directions and I.T. Act operate in different fields."*

*7.8 The above reference to the specific clause in RBI circular clearly mentions that the prescribed accounting treatment does not take into account the applicability of I.T. law. and decision of Hon'ble Supreme Court makes it very clear that RBI Guidelines themselves will not decide taxability of the income. Therefore, the assessee's arguments that the bank should be allowed full claim of amortization of HTM category as per Instruction No.17 dt. 26.11.2008 is not accepted. Accordingly, the amount of premium amortized in respect of HTM securities of Rs. 231,78,68,424/- is disallowed and added*

*back to the total income. Penalty proceedings u/s.271(1)(c) are initiated for filing of inaccurate particulars of income.*

*Addition: Rs. 231,78,68,424/-"*

55. The learned CIT(A), vide impugned order, following the decision of the Tribunal rendered in assessee's own case for the assessment year 2015-16, deleted the addition made by the AO on this issue and allowed the loss on account of amortisation of investment held in HTM category. Being aggrieved, the Revenue is in appeal before us.

56. Having considered the submissions of both sides and perused the material available on record, we find that the Coordinate Bench of the Tribunal in the assessee's own case for the assessment year 2015-16, vide order dated 11/12/2020 cited *supra*, dismissed a similar ground raised by the Revenue on this issue. Since the learned CIT(A) has followed the decision of the Coordinate Bench of the Tribunal rendered in the assessee's own case in the preceding year, we do not find any infirmity in the same, and, therefore, the impugned order on this issue is upheld. As a result, Ground No.6, raised in Revenue's appeal, is dismissed.

57. Ground No.7, raised in Revenue's appeal, pertains to the deletion of the disallowance of losses written off.

58. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, while examining the computation filed along with the revised return of income, it was observed that the assessee has calculated the loss written off of Rs.8,22,59,119, while arriving at the income from business. Since there was no convincing

explanation regarding the aforesaid aspect of the assessee, the AO vide order passed under section 143(3) of the Act added these losses while computing the business income of the assessee.

59. The learned CIT(A), vide impugned order, took into consideration the decision of its predecessor rendered in assessee's own case for the assessment year 2015-16, wherein following the direction of the learned CIT(A) for the assessment year 2013-14, the learned CIT(A) directed the AO to find out if the provisions have been added back in the earlier years and the write off is debited to the provision account, in which case the write off is to be allowed as deduction. Since the aforesaid findings of the learned CIT(A) for the assessment year 2015-16 were not challenged by the Revenue before the Tribunal, the learned CIT(A) vide impugned order, following a similar approach adopted in the preceding year, issued similar directions to the AO.

60. Having considered the submissions of both sides and perused the material available on record, we find that this issue is recurring in nature, and in preceding years, the learned CIT(A) directed the AO to carry out necessary verification, which directions were also issued in the year under consideration. Undisputedly, these findings in the preceding year were not challenged by the Revenue before the Tribunal. Be that as it may, since the issue requires verification of the aspects highlighted by the learned CIT(A), we do not find any infirmity in the directions so issued, and the same are upheld. Accordingly, Ground No.7, raised in Revenue's appeal, is dismissed.

61. Ground No.8, raised in Revenue's appeal, pertains to the deletion of the disallowance of interest on perpetual bonds.

62. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, the assessee was asked to show cause as to why the perpetual bonds should not be treated as equity and consequently the interest paid on such bonds should be allowed under section 36(1)(iii) of the Act. In response, the assessee submitted that it has issued perpetual debts instruments over the years and as on 31/03/2016, the outstanding balance of perpetual debt is at Rs.1680 crore. It was further submitted that these instruments are classified as borrowing in bank's balance, and interest paid on the above instruments is provided in the books as interest expenses. In this regard, the assessee submitted that the above accounting treatment of the interest and presentation in balance sheet is in tune of the RBI Guidelines and Accounting Standard-16 issued by the ICAI on borrowing cost. The assessee submitted that the interest paid on the perpetual debt is out of distributable profits of previous year or current year and the nature of payments is different from the interest i.e. borrowed for the purpose of business, which is allowable under section 36(1)(iii) of the Act. The AO, vide order, passed under section 143(3) of the Act, disagreed with the submissions of the assessee and held that perpetual bonds are in the nature of debt instruments with no maturity date. Only the issuing company can buy back the bonds from the investors. Therefore, it was held these bonds are perpetual in nature. Since in the case of perpetual bonds, the investor does not have the authority to claim a refund of the amount given, the AO held

that the said amount cannot be held "borrowing" and hence the interest on such bonds is not admissible as a deduction under section 36(1)(iii) of the Act. Accordingly, the AO disallowed the amount of Rs.160,77,00,000 claimed as deduction and added the same to the total income of the assessee.

63. The learned CIT(A), vide impugned order, deleted the addition made by the AO on this issue, by observing as follows: -

*"10.4.1 It is observed that the nature of IPBs had remained same over the period of time from AY 2010-11 to 2016-17. In the case of the appellant the terms & conditions of these bonds are similar to Bonds issued by other banks governed by the RBI rules. The facts of the case of the appellant are identical to facts of the case of ICICI bank cited above. These bonds:*

- carry fixed rate of interest
- can be called by the appellant only after the predefined period (say 10 years) and no right to bond holder to recall, but can trade in the listed stock market for exit
- are shown under the head "borrowings"
- TDS is deducted on the interest paid and interest is debited to P&L account
- the bond holders have no right to participate in management of the bank
- The appellant had submitted that the bonds of Rs. 1,680 Crores outstanding as on 31.03.2016 have been redeemed as under:

Perpetual Bonds – IPDI Series I	400.00	24-07-2017
Perpetual Bonds – IPDI Series II	100.00	25-09-2017
Perpetual Bonds – IPDI Series III	155.00	11-10-2017
Perpetual Bonds – IPDI Series IV	400.00	11-02-2019
Perpetual Bonds – IPDI Series V	325.00	09-12-2019
Perpetual Bonds – IPDI Series VI	300.00	09-09-2020
<b>Total</b>	<b>1,680.00</b>	

*The mere recognition by RBI of these bonds as capital for the purpose of capitalization of bank coupled with other features raised by the AO will not make it in the nature of equity. The nature of these bonds had to be looked in totality. These are borrowed from the market, carry fixed rate of interest and are being redeemed by the appellant from time to time after expiry period, are listed & tradable in debt market, non-participative in profits/voting/shareholder register etc. In such circumstances, these cannot be called to be in the nature of equity which carries right in management, cannot be redeemed normally, may or may not get fixed quantum of dividend return on investment etc. Thus, the characteristics of these IPB instruments are in the nature of Debt and not equity. The above decision of Hon'ble ITAT Mumbai is a later date decision, wherein the relevant case laws had also been considered. In these facts & circumstances of the case, it is held that the interest on IPBs is deductible u/s 36(1)(iii) of the IT Act. Accordingly, this addition of Rs 160,77,00,000/- made by the AO is hereby deleted and this ground of appeal is "allowed".*

Being aggrieved, the Revenue is in appeal before us.

64. Having considered the submissions of both sides and perused the material available on record, we find that the Coordinate Bench of the Tribunal in State Bank of India (successor to State Bank of Bikaner and Jaipur) vs. DCIT, in ITA No.2873/2019, vide order dated 29/09/2022, while allowing the interest paid on perpetual debt under section 36(1)(iii) of the Act observed as follows: -

*"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 Id. 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 Id. 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 interest @11.40% along with redemption after the 10th 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."*

65. The learned DR could not show any reason to deviate from the aforesaid findings rendered by the Coordinate Bench of the Tribunal. Therefore, respectfully following the decision cited supra, we do not find any infirmity in the findings of the learned CIT(A) in allowing deduction under section 36(1)(iii) of the Act in respect of interest earned on perpetual bonds. As a result, Ground No.8, raised in Revenue's appeal, is dismissed.

66. Ground No.9, raised in Revenue's appeal, pertains to the deletion of the addition on account of the commission receipt on the deferred payment bank guarantee.

67. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, the assessee was asked regarding the calculation of deferred payment guarantee commission. In response, the assessee submitted that the deferred payment guarantee is issued at the request of the customers who purchase goods or merchandise from creditors for a payment, which has been deferred or postponed. The assessee submitted that in such circumstances, it undertakes the role of a guarantor in lieu of commission. The assessee further submitted that it has received a guarantee commission. However, the same has not been offered completely in the year under consideration, but it has amortised over a period of guarantee. The AO disagreed with the submissions of the assessee and held

that the commission received is like a fee for issuing the guarantee and is not a contingent receipt or advance, which is returnable at the end of the guarantee period. Thus, the assessee submitted that the amount of commission receipt is an income having accrued at the time of bank issues the guarantee. Accordingly, the commission of Rs.443.40 crore received by the assessee on guarantee issued was added to the total income of the assessee.

68. The learned CIT(A), vide impugned order, following the decision of the Hon'ble Jurisdictional High Court in DIT(IT) vs. BNP Paribas SA, reported in (2013) 32 taxmann.com 276 (Bom), deleted the addition made by the AO on account of guarantee commission, by observing as follows: -

*"12.3.1 Thus, it is observed from the internal guidelines submitted by the appellant that the guarantees in different categories are charged differently either on quarterly basis or on annual basis. In some of the guarantees, the commission in earlier redemptions is also paid back at certain percentage of unexpired period. Further, the appellant had submitted the instances where there had been refund of Guarantee Charges. Thus, it can be said that these amounts received are contingent and not ascertained for unexpired period. The appellant had not considered, the received but not accrued, portion of the commission as income in the year under consideration and treated it as advance receipt for the unexpired period of guarantee. The appellant had consistently followed this method for accounting of these receipts. In view of the above case laws cited on the issue coupled with the fact that the guarantees commission of unexpired period is not an ascertained but contingent liability, the whole of the commission received does not accrue to the appellant in the year of receipt, the addition made by the AO is not sustainable. Accordingly, the addition of Rs. 443,40,00,000/- made by the AO on account of advance guarantee commission is hereby "deleted" and this ground of appeal is "allowed"."*

Being aggrieved, the Revenue is in appeal before us.

69. Having considered the submissions of both sides and perused the material available on record, we find that the Hon'ble Jurisdictional High Court in BNP Paribas SA (*supra*) observed as follows: -

*"4. So far as question (c) is concerned, the issue is whether the commission received by the respondent from its client to provide Guarantee is to be taxed in the year of the agreement (the year of the receipt) to provide the guarantee or to be spread over the period for which the guarantee is provided. In the present facts, CIT(A) has come to a finding of fact that the guarantee which has been issued for a certain period of time are cancelled by the client before the expiry of the tenure of the guarantee, resulting into the respondent- assessee returning to its clients the part of the guarantee commission attributable to the unexpired period of the guarantee. This finding of fact was upheld by the Tribunal while following the decision of the Calcutta High Court in the matter of CIT v. Bank of Tokyo Ltd. [1993] 71 Taxman 85 wherein it has been held that the income earned from deferred guarantee commission did not accrue or arise to an assessee in the year in which the guarantee agreements were entered into but should be spread over the period of the guarantee proportionally. In these circumstances, the decision of the Tribunal in upholding the order of the CIT(A) is a conclusion based on a finding of fact and hence, we do not see any reason to entertain question (c)."*

70. As a learned CIT(A) following the decision of the Hon'ble Jurisdictional High Court has deleted the addition on this issue, we do not find any infirmity in such findings. As a result, Ground No.9, raised in Revenue's appeal, is dismissed.

71. Ground No.10, raised in Revenue's appeal, pertains to the deletion of the addition of unrealised interest income on Non-Performing Assets ("NPA").

72. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee has not recognized an amount of Rs.195.41 crore, which was interest on sticky advances, which remained NPA for a period of more than 90 days but less than six months as its income for the year under consideration. The AO, vide

order, passed under section 143(3) of the Act, made an addition on account of interest on NPA by observing as follows: -

*"12.2 Thus, the provisions of Rule 6EA read with section 43D are very clear that irregularity of the nature referred in Rule 6EA (a)(ii) should be noticed for a period of 6 months or more. The benefit of non-recognition of interest in NPAs can be granted to the assessee as per the provisions of Rule 6EA read with section 43D only when the irregularities exist for a period of 6 months or more.*

*1. On this issue, what has been disputed by the assessee is that the guidelines of Reserve Bank of India prescribed recognition of the assets being NPA when the period of default is 90 days or more and that the provisions of section 43D of the Act which stipulates recognition of income by way of interest in relation to such categories of all bad or doubtful debts having regard to the guidelines issued by the RBI in relation to such debts. The assessee mainly seeks to contend that what would prevail is RBI guidelines in relation to section 43D of the Act and not the Rule 6EA of the Rules. In regard to such contention of the assessee, it is stated that the provisions of section 43D stipulates that "the income by way of interest in relation to such categories of bad or doubtful debts as may be prescribed having regard to the guidelines issued by the Reserve Bank of India in relation to such debts." Therefore, what can be seen from the provisions of section 43D of the Act is that the income by way of interest has to be considered "as may be prescribed" and such stipulation has been prescribed in Rule 6A of I.T. Rules, 1962 for the said purposes. It is to be understood that the rule may be prescribed having regard to the guidelines issued by the Reserve Bank of India and such stipulation in section 43D only warrants the authorities to prescribe the rules in view and in reference to the guidelines issued by the Reserve Bank of India. It therefore has to be understood that while the guidelines issued by the Reserve Bank of India are essential point for recognition, having regard to them and keeping a reference of the same, the rules have to be prescribed, but it would be the rules which have to be followed. Even if for any reason, rules have been prescribed by the Government having regard to the guidelines of RBI which may subsequently have changed, then too, it has to be considered and taken that the rules which are in force are such which have been prescribed having regard to such guidelines and no change in the rules having regard to the guidelines of RBI have been considered necessary. The phrase as appearing in the provisions of section 43D "as may be prescribed" cannot be read in any other manner and certainly cannot be ignored. The contention of the assessee that the mention in section 43D of "having regard to the guidelines issued by the RBI" would warrant necessarily to follow the guidelines superseding the prescribed rules in I.T. Rules, 1962 is therefore, clearly flawed. The Hon'ble Delhi High Court in the case of CIT vs. Vashisth Chay Vyapar Ltd. 330 ITR 440 have clearly mentioned the observation of Hon'ble Apex Court that in so far as the permissible deductions or exclusions under the Acts are concerned, the same are admissible only if such deductions/exclusions satisfy the relevant conditions stipulated there for under the Act. It was also observed by the Hon'ble Court that the prudential norms do not override the provisions of*

*the Act. Such observations were made by the Hon'ble Apex Court in the case of Southern Technologies Ltd. vs. JCIT. The assessee, in their submission, have sought to contend that in their case it is the recognition of income and not the claim of deduction/exclusion. In regard to such contention, it is stated that the case of the assessee would fall under the expression "exclusion of recognizable income under the Act". The assessee has further placed reliance on the decision of Hon'ble Supreme Court in the case of UCO Bank vs. CIT. The said decision is in respect of recognition of income on receipt basis on the sticky loans. The same has no reference to either Rule 6EA or corresponding or related guidelines of RBI in this regard. The assessee has also placed reliance on the decision of Hon'ble Mumbai Tribunal in the case of American Express Bank Ltd. vs. ACIT. In respect of such reliance placed, it is stated that the same is in respect of proviso to section 5 of the Interest Act r.w.s.43D of the Act and the same does not deal with Rule 6EA of the Rules.*

*2. The assessee has further contended that Rule 6EA cannot expand the scope of section 43D. In this regard, it is stated that Rule 6EA has been prescribed so as to apply the provision of section 43D correctly*

*3. In view of the facts and circumstances of the case and discussion hereinabove, interest on NPA not provided amounting to 195,41,06,729 is being added back to the income of the assessee bank. Penalty proceedings u/s.271(1)(c) are initiated for filing of inaccurate particulars of income.*

*Addition: Rs. 195,41,06,729/-."*

73. The learned CIT(A), vide impugned order, following the decisions on this issue rendered by the Tribunal, held that the interest on NPAs classified by the RBI for 90 days for non-payment has to be considered for section 43D of the Act and accordingly, the unrealised interest on such classified NPAs cannot be added to the income of the assessee. Being aggrieved, the Revenue is in appeal before us.

74. Having considered the submissions of both sides and perused the material available on record, we find that while deleting the similar interest pertaining to NPA, the Coordinate Bench of the Tribunal in State Bank of India vs. DCIT, in ITA No.3644 and 4563/Mum/2016, for the assessment year 2008-09, vide order dated 03/02/2020, observed as follows: -

"34. Having considered the submissions of both sides and perused the material available on record, we find that the coordinate bench of the Tribunal in assessee's own case in *State Bank of India (supra)* for the assessment year 2008-09, vide order dated 03/02/2020, while deciding similar issue observed as under: -

"78. We noted that the assessee does not offer to tax, the interest income on NPAs, classified in terms of RBI guidelines, on accrual basis. The same is offered to tax in the year in which the same is received and credited to the profit and loss account in terms of the RBI guidelines. Presently, the period to recognise an advance as a NPA as per RBI guidelines is where interest and/ or instalment of principal remained overdue for 90 days whereas as per Rule 6EA, the same is 180 days. The AO has brought to tax the notional interest on sticky advances having irregularities for the period between 90 days to 180 days on accrual basis, relying on section 43D of the Act and rule 6EA of the Rules. The CIT(A) has upheld the disallowance made by the Assessing Officer following the directions of the DRP for the assessment year 2012-13.

79. The Revenue before the Tribunal has emphasized on the applicability of the criteria prescribed as per rule 6EA and that the interest on NPAs cannot fall under the exception provided in clause (e) of rule 6EA. But, the assessee argued that the action of the lower authorities cannot be sustained due to the following three reasons viz.,

- a. section 43D of the Act would not apply in cases where interest is neither received nor credited to the profit and loss account;
- b. RBI guidelines are the primary criteria for determining whether a debt is bad or doubtful and the rule should be framed having regard to the guidelines;
- c. without prejudice, a deduction should be allowed of such interest as bad debts.

80. In relation to the above, it was argued that the provisions of section 43D of the Act provide that the categories of bad or doubtful debts would be prescribed having regard to the guidelines issued by the RBI in relation to such debts. In other words, the Legislature envisages that the RBI guidelines are the primary criteria for determining whether a debt is bad or doubtful and the categories prescribed in rule 6EA necessarily have to follow the RBI guidelines. Accordingly, rule 6EA operates in a very narrow scope and has to be read in conjunction with RBI guidelines.

81. 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 no-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 non-accrual 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.*

*82. 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."*

*35. The learned DR could not show any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in the relevant assessment year. Therefore, respectfully following the judicial precedents in assessee's own case cited supra, we uphold the plea of the assessee, and the addition made by the AO on this issue is hereby deleted. Thus, ground no.8, raised in assessee's appeal is allowed."*

75. Respectfully following the aforesaid decisions rendered by the Coordinate Bench, we do not find any infirmity in the findings of the learned CIT(A) on this issue and, therefore, the same are upheld. Accordingly, Ground No.10, raised in Revenue's appeal, is dismissed.

76. Ground No.11, raised in Revenue's appeal, pertains to the deletion of the disallowance being a loss on the sale of assets to the Asset Reconstruction Company ("ARC").

77. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee debited an amount of Rs.727.70 crore to its profit and loss account on account of short fall arising on sale of financial assets to ARC. We find that while deciding a

similar issue in favour of the assessee, the Coordinate Bench of the Tribunal in assessee's own case in Bank of India vs. DCIT, in ITA No.2833/Mum/2015, for the assessment year 2009-10, vide order dated 08/11/2017 observed as follows: -

*"13.3. We have heard the rival submissions and perused the material before us. We find the assessee had sold NPA.s to ARCIL, that as per the RBI instructions it did not claim the loss in the profit and loss account, that the claim was made before the Department authorities that it had suffered a loss on sale of NPA.s. that the AO and the FAA held that the assessee had not suffered real loss i.e. it was notional loss only. There is no doubt about selling of assets to ARCIL, that ARRIL is not a fake or bogus entity, that the sale has not been doubted by the AO/FAA, that the entry in the books of accounts have been made as per the instructions of the RBI. In our opinion, following of RBI instruction by a banking company cannot be basis for denying or allowing any claim. It is said that the entries in the books of accounts are not conclusive proof of taxability of any income. What has to be seen is the substance of the transaction. Considering the fact that the assessee had suffered loss while carrying out normal business activity i.e. selling its assets. Therefore, we hold that there was no justification for disallowing the loss suffered in the transaction. Reversing the order of the FAA, we decide Ground no.8 in favour of the assessee."*

78. As the learned CIT(A), while deleting the disallowance made by the AO on account of loss on sale of assets to ARC, followed the decision of the Coordinate Bench of the Tribunal rendered in assessee's own case for the preceding year, we do not find any infirmity in the findings of the learned CIT(A) on this issue. Accordingly, the same are upheld, and Ground No.11, raised in Revenue's appeal, is dismissed.

79. Grounds No.12 and 13, raised in Revenue's appeal, pertain to the computation of book profit under section 115JB of the Act. In view of our findings rendered in respect of Ground No.6 raised in assessee's appeal for the assessment year 2016-17 (*supra*), these grounds are rendered infructuous and therefore are kept open.

80. In the result, the appeal by the Revenue for the assessment year 2016-17 is dismissed.

**ITA No. 1452/Mum./2023**  
**Assessee's appeal – A.Y. 2018-19**

81. In the appeal, the assessee has raised the following grounds: -

"1. (A) On the facts and in the circumstances of the case and in law, the FAC has erred in making disallowance of Rs.32,79,58,949 u/s. 14A of the Income-tax Act, 1961 ("the Act") read with Rule 8D of the Income-tax Rules, 1962 ("the Rules") towards expenditure incurred in relation to income claimed exempt u/s. 10 of the Act and the Hon'ble CIT(A) has erred in confirming the said disallowance u/s. 14A r.w.r 8D by restricting it up to exempt income of Rs. 27,63,18,249. The NFAC be directed to delete disallowance u/s. 14A read with Rule 8D of Rs.32,79,58,949 towards expenditure incurred in relation to income claimed exempt u/s. 10 of the Act and reduce the total income accordingly.

(B) Without prejudice to Ground no. 1(A) above, on the facts and in the circumstances of the case and in law, the Appellant Bank prays that the disallowance u/s. 14A read with Rule 8D towards expenditure incurred in relation to income claimed exempt u/s. 10 of the Act of Rs.32,79,58,949 made by the NFAC and restricted to Rs.27,63,18,249 by the Hon'ble CIT(A) is excessive and unreasonable. The NFAC be directed to restrict disallowance u/s. 14A to 1% of exempt income earned during the year and reduce the total income accordingly.

2. (A) On the facts and in the circumstances of the case and in law, the FAC has erred in disallowing claim for amortization of lease premium paid in respect of various leasehold properties of Rs.4,37,76,998 and the Hon'ble CIT(A) has erred in confirming the disallowance made by NFAC. The NFAC be directed to allow the claim for amortization of lease premium paid in respect of various leasehold properties of Rs.4,37,76,998 and reduce the total income accordingly.

(B) Without prejudice to Ground no.2(A) above, on the facts and in the circumstances of the case and in law, assuming without accepting that amortization of lease premium of Rs.4,37,76,998 is in the nature of capital expenditure, the NFAC be directed to allow depreciation u/s. 32 of the Act on the same and reduce the total income accordingly.

3. (A) On the facts and in the circumstances of the case and in law, the NFAC has erred in disallowing the exclusion of profits of branches in countries with whom India has entered into a Double Taxation Avoidance Agreement (DTAA) namely United Kingdom (UK), Belgium, Kenya, Japan, USA, Singapore, China, UAE and South Africa amounting to Rs.965,85,86,196 u/s. 90 of the Act and the Hon'ble CIT(A) has erred in upholding the decision of the FAC. The NFAC be directed to exclude the profits of the aforesaid foreign branches amounting

to Rs.965,85,86,196 u/s. 90 of the Act and reduce the total income accordingly.

(B) Without prejudice to Ground no.3(A) above, assuming without accepting that the exclusion of profits of the aforesaid foreign branches aggregating to Rs.965,85,86,196 is not allowed and therefore, taxed in India, then the Appellant Bank prays that the income which is to be included in total income will be the Income computed as per provisions of Income-tax laws of respective countries and not the income computed as per provisions of Income-tax Act, 1961.

(C) Without prejudice to Ground no.3(A) above, assuming without accepting that the exclusion of profits of the aforesaid foreign branches aggregating to Rs.965,85,86,196 is not allowed and therefore, taxed in India, then the Appellant Bank prays that credit for taxes paid by the said branches in their respective countries amounting to Rs.255,58,45,663 be allowed as per section 90 of the Act while determining tax liability.

(D) The NFAC has erred in not granting credit u/s. 90 of the Act for taxes withheld on dividend income received from foreign subsidiaries & associate of the Appellant Bank in Uganda, Tanzania and Zambia amounting to Rs.1,28,14,551 while determining tax liability in the Computation Sheet annexed to assessment order u/s. 143(3) r.w.s. 144B dated 28-09-2021. The NFAC be directed to grant credit u/s. 90 for taxes withheld on dividend income received from foreign subsidiaries & associate of the Appellant Bank in Uganda, Tanzania demand accordingly and Zambia amounting to Rs.1,28,14,551 while determining tax liability in India and reduce the income-tax demand accordingly.

(E) The NFAC has erred in not granting credit u/s. 91 of the Act for taxes paid by Hong Kong and Jersey branches and State Taxes paid by Japan branch amounting to Rs.20,16,88,106 while determining tax liability in the Computation Sheet annexed to assessment order u/s. 143(3) r.w.s. 144B dated 28-09-2021. The NFAC be directed to grant credit u/s. 91 for taxes paid by Hong Kong and Jersey branches and State Taxes paid by Japan branch amounting to Rs.20,16,88,106 while determining tax liability in India and reduce the income-tax demand accordingly.

4. On the facts and in the circumstances of the case and in law, the NAC has erred in disallowing bad debts written off amounting to Rs.2620,31,00,000 u/s. 36(1)(vii) of the Act and the Hon'ble CIT(A) has erred in confirming the disallowance made by NFAC without appreciating that the Provision for Bad and Doubtful Debts (PBDD) account maintained u/s. 36(1)(vii) has a debit balance. The NFAC be directed to allow the bad debts written off amounting to Rs.2620,31,00,000 and reduce the total income accordingly.

5. (A) On the facts and in the circumstances of the case and in law, the NFAC has erred in invoking the provisions of Section 115JB of the Act while determining tax liability for AY 2018-19 and the Hon'ble CIT(A) has erred in confirming the same. The Appellant Bank prays that the FAC be directed not to invoke the provisions of Section 115JB of the Act and determine the total income and tax liability thereon in accordance with normal provisions of the Act only.

*Without prejudice to Ground no. 5(A) above, assuming without accepting that the provisions of Section 115JB are applicable to the Appellant Bank for the year under appeal, then on the facts and in the circumstances of the case and in law:*

*(B) The NFAC has erred in disallowing exclusion of book profits of branches in countries with whom India has entered into a DAA namely Kenya, Japan, Singapore, China and South Africa amounting to Rs.270,31,40,630 u/s. 90 of the Act and the Hon'ble CIT(A) has erred in confirming the disallowance made by NFAC without appreciating that the provisions of Sec. 90 override the provisions of Sec. 115JB of the Act. The NFAC be directed to exclude the book profits of the aforesaid foreign branches amounting to Rs.270,31,40,630 while computing Book Profit and reduce the Book Profit accordingly.*

*Without prejudice to above, assuming without accepting that the exclusion of profits of the aforesaid foreign branches aggregating to Rs.270,31,40,630 is not allowed while computing Book Profit u/s.115JB 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 in accordance with Sec. 90 & 91 of the Act while determining tax liability in India."*

82. Ground No.1A, raised in assessee's appeal, pertains to the disallowance of deduction made under section 14A read with Rule 8D of the Rules. Since a similar issue has already been adjudicated in assessee's appeal for the assessment year 2016-17, in the absence of any change in material facts or law, our findings rendered therein shall apply *mutatis mutandis* to this ground. Accordingly, the disallowance made by the AO under section 14A read with Rule 8D of the Rules is hereby deleted, and Ground No.1A, raised in assessee's appeal, is allowed. In view of our aforesaid findings, Ground No.1B is rendered academic and, therefore, needs no separate adjudication.

83. Grounds No.2A and 2B, raised in assessee's appeal, pertain to the disallowance of the claim for amortisation of the lease premium paid in respect of various leasehold properties of the assessee. Since a similar issue has already been adjudicated in assessee's appeal for the assessment year 2016-17, in the absence of any change in material facts or law, our findings

rendered therein shall apply *mutatis mutandis* to this ground. Accordingly, we do not find any infirmity in the findings of the learned CIT(A) on this issue, and the same are upheld. As a result, Grounds No.2A and 2B, raised in assessee's appeal, are dismissed.

84. Ground No.3A, raised in assessee's appeal, pertains to the exclusion of income of foreign branches situated in countries with which India has entered into the Double Taxation Avoidance Agreement. Since a similar issue has already been adjudicated in assessee's appeal for the assessment year 2016-17, in the absence of any change in material facts or law, our findings rendered therein shall apply *mutatis mutandis* to this ground. Accordingly, the addition made on account of income earned by the foreign branches is upheld, and Ground No.3A, raised in the assessee's appeal, is dismissed.

85. Ground No.3B, raised in assessee's appeal, pertains to the computation of income from foreign branches as per the provisions of the income tax laws of the respective countries and not the Income Tax computed as per the provisions of the Act. Since a similar issue has already been adjudicated in assessee's appeal for the assessment year 2016-17, in the absence of any change in material facts or law, our findings rendered therein shall apply *mutatis mutandis* to this ground. As a result, Ground No.3B, raised in assessee's appeal, is dismissed.

86. Grounds No.3C and 3D, raised in assessee's appeal, pertain to the grant of credit towards taxes paid or withheld in foreign countries. Since a similar issue has already been adjudicated in assessee's appeal for the assessment

year 2016-17, in the absence of any change in material facts or law, our findings rendered therein shall apply *mutatis mutandis* to this ground. Accordingly, this issue is restored to the file of the AO for *de novo* adjudication in compliance with the directions as rendered by the Tribunal in assessee's own case, for the assessment year 2015-16, in ITA No. 1767/Mum/2019. As a result, Grounds No. 3C and 3D, raised in assessee's appeal, are allowed for statistical purposes.

87. Ground No. 3E, raised in assessee's appeal, pertains to the grant of credit of taxes paid by foreign branches in countries or territories with whom India does not have any agreement under section 90 of the Act. We restore this issue to the file of the AO for *de novo* adjudication with a direction to grant the credit of tax as per the provisions of section 91 of the Act after necessary verification of the relevant facts as per law. With the above, Ground No.3E, raised in assessee's appeal, is allowed for statistical purposes.

88. Ground No. 4, raised in assessee's appeal, pertains to the disallowance of bad debts written off. Since a similar issue has already been adjudicated in assessee's appeal for the assessment year 2016-17, in the absence of any change in material facts or law, our findings rendered therein shall apply *mutatis mutandis* to this ground. Accordingly, the impugned addition made by the AO on this issue is deleted. As a result, Ground No.4 raised in assessee's appeal is allowed.

89. Ground No. 5A, raised in assessee's appeal, pertains to the applicability of the provisions of section 115-JB of the Act to the assessee bank. Since a

similar issue has already been adjudicated in assessee's appeal for the assessment year 2016-17, in the absence of any change in material facts or law, our findings rendered therein shall apply *mutatis mutandis* to this ground. Accordingly, respectfully following the decision of the Special Bench of the Tribunal in Union Bank of India v. DCIT, in ITA No. 424/Mum/2020, for the assessment year 2015-16, Ground No.5A raised in assessee's appeal is allowed.

90. In view of our finding rendered in respect of Ground No.5A, the issue arising in Ground No.5B and 5C, raised in assessee's appeal, are rendered infructuous and therefore, are kept open.

91. In the result, the appeal by the assessee for the assessment year 2018-19 is partially allowed for statistical purposes.

***ITA No. 1548/Mum./2023  
Revenue's appeal – A.Y. 2018-19***

92. In the appeal, the Revenue has raised the following grounds: -

*"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance w/s 144 rule 8D(ii), being 1% of average investments of Rs. 32,79,58,949/- to the exempt income Rs. 27,63,18,249/-ignoring the clarificatory amendment brought in by Finance Act. 2022? Tax Effect: Rs. 1,78.72.846/- @34.61% of Rs.5.16.40,700/-)*

*2. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has erred in allowing assessee's claim of payment of taxes abroad as deduction against business income even though the provisions of section Oafii) of the Act are very clear in mandating non-allowing of the amounts covered u/s. 90 or 91 as business expenditure? Tax Effect: Rs.95.87,62,147/- @34.61% of Rs.277,03,48,321/-)*

*3. Whether on the facts and circumstances of the case and in law; the Ld. CIT(A) was right in deleting the disallowance of premium on HTM securities of Rs. 3,74,18,00,000/-, without appreciating the fact that RBI circular dated 12th July 2015 clearly mentions that the prescribed accounting treatment doesn't take into account the applicability of Income Tax Law and the decision of Hon'ble Supreme Court in the case of Southern Technologies Limited w/s*

JCIT in Civil Appeal Number 1337 of 2003 making very clear that the RBI guidelines themselves will not decide the taxability of income? (Tax Effect: Rs./29,49,62,144/- @34.61% of Rs.374,18,00,000/-)

4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of interest on Perpetual Bonds as Perpetual Bonds are not borrowed funds as per settled legal position in the decision of Hon'ble Punjab & Haryana High Court in the case of Pepsu Road Transport Corp vS CIT (130 ITR 18 (P&H))? (Tax Effect : Rs.227,39,58,906/- @34.61% of Rs.657,06, 16,348/-)

5. Whether on the facts and circumstances of the case and in law, the Id. CIT (A) erred in deleting the addition made on account of interest on NPA amounting to Rs. 733,98,20, 787/-not recognized by the assessee in its books of accounts on the ground that the same is not in line with the provisions of section 43D of the Act r.w.r. 6EA of the Income Tax Rules, 1962? (Tax Effect : Rs.254.01.65,178/- @34.61% of Rs.733,98,20, 787/-)

6. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of payment of penalty and charges levied by RBI for non-compliance with RBI norms being, Penalty charged under scheme of incentive and penalties on account of counterfeit mutilated shortage. Penalty charged towards delay in reporting. Penalty charged towards forged / fake notes. Penalty for non-supply of coin/fresh notes. Shortage in soiled notes remittances. Shortage detected by RBI on soiled notes remittances etc. treating the same as not falling under Explanation 1 to section 37(1) without appreciating that the payment was penal and punitive and was for infraction of public policy? (Tax Effect: Rs.8,90,11,776/- @34.61% of Rs.25,72,00,000/-)

7. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing relief to the assessee relying on the decision of Hon'ble Special Bench of ITAT Delhi in the case of Vireet Investment (P) Ltd., without appreciating the facts that the issue has not reached to its finality as the Hon'ble Delhi High Court in its decision in the case of Goetz India Ltd., reported in 361 IT 505 held that while computing Book Profit disallowance w/s 14A is required to be made. However, in its later judgment the Hon'ble Delhi High Court in the case of Bhushan Steel Lid. (ITA No. 593 & 594/2015) has taken a contrary view? (Tax Effect: Rs.6,99,91,687/-@ 21.34% of Rs.32,79,58,949/-)

8. Whether on the facts and circumstances of the case and in law, The Ld. CIT(A) erred in directing to exclude the adjustment made by adding the provision for had and doubtful debts of Rs. 72,06,43,97,437/- while calculating book profit u/s 115JB? (Tax Effect: Rs. 1537,96,95,443/- @21.34% of Rs.7206,43,97,437/-)

9. The Ld. CIT (A)'s order is contrary in law and on facts and deserves to be set aside.

10. The appellant prays that the order of CIT (A) on the above grounds be set aside and that of the AO restored. The appellant craves leave to amend or

*alter any ground or add a new ground that may be necessary at the time of hearing.”*

93. Ground No.1, raised in Revenue’s appeal, pertains to the disallowance under section 14A read with Rule 8D of the Rules.

94. While considering the similar disallowance made under section 14A read with Rule 8D of the Rules, we find that in preceding years similar disallowance was deleted following the decision of the Hon’ble Supreme Court in Maxopp Investment Ltd. (*supra*), as the shares were held by the assessee as stock-in-trade. Therefore, Ground No.1, raised in Revenue’s appeal, is rendered academic and, thus, is dismissed.

95. Ground No.2, raised in Revenue’s appeal, pertains to the deduction of taxes paid by the assessee outside India. We find that this issue does not emanate from the order passed by the lower authorities. Therefore, this ground does not require adjudication.

96. Ground No.3, raised in Revenue’s appeal, pertains to the deletion of the disallowance of the premium of HTM securities. Since a similar issue has already been adjudicated in Revenue’s appeal for the assessment year 2016-17, in the absence of any change in material facts or law, our findings rendered therein shall apply *mutatis mutandis* to this ground. Accordingly, the impugned order on this issue is upheld. As a result, Ground No.3, raised in Revenue’s appeal, is dismissed.

97. Ground No.4, raised in Revenue’s appeal, pertains to the deletion of the disallowance of interest on perpetual bonds. Since a similar issue has already

been adjudicated in Revenue's appeal for the assessment year 2016-17, in the absence of any change in material facts or law, our findings rendered therein shall apply *mutatis mutandis* to this ground. Accordingly, the impugned order on this issue is upheld. As a result, Ground No.4, raised in Revenue's appeal, is dismissed.

98. Ground No.5, raised in Revenue's appeal, pertains to the deletion of the addition of unrealised interest income on Non-Performing Assets ("NPA"). Since a similar issue has already been adjudicated in Revenue's appeal for the assessment year 2016-17, in the absence of any change in material facts or law, our findings rendered therein shall apply *mutatis mutandis* to this ground. Accordingly, the impugned order on this issue is upheld. As a result, Ground No.5, raised in Revenue's appeal, is dismissed.

99. Ground No.6, raised in Revenue's appeal, pertains to the deletion of the disallowance of the penalty paid by the assessee for non-compliance with norms/regulations.

100. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, penalty of Rs.25.72 crore was levied on the assessee, for various violations of norms laid down by RBI and other government agencies. The assessee claimed the payment of penalty under section 37(1) of the Act. In support of its aforesaid claim, during the assessment proceedings, the assessee submitted that the penalty was imposed for procedural non-compliance and not for violation of any law for the time being in force. Accordingly, the assessee submitted that the same is

allowable as a deduction under section 37 of the Act. The AO, vide order, passed under section 143(3) of the Act, disagreed with the submissions of the assessee and held that the penalty levied on the assessee is penal in nature and is not due to procedural lapses. Accordingly, the AO disallowed the claim of the assessee and added an amount of Rs.25.72 crore to the total income of the assessee.

101. The learned CIT(A), vide impugned order, following the decision of the Coordinate Bench of the Tribunal in IDBI Bank Ltd. vs. DCIT, ITA No.9934/Mum/2019, held that these penalties are not in the nature of offences, which are prohibited by the law and, therefore, are compensatory in nature. Accordingly, the learned CIT(A) held that the payment is not hit by Explanation-1 to section 37(1) of the Act. Consequently, the addition made by the AO was deleted. Being aggrieved, the Revenue is in appeal before us.

102. We have considered the submissions of both sides and perused the material available on record. In the present case, a penalty of Rs.25.72 crore was levied on the assessee, and the same was claimed as expenditure under section 37(1) of the Act. During the hearing, in response to the query raised, the learned AR filed the following details of the penalty levied on the assessee:

S.No.	Branch of Subsidiary Bank	Penalty levied by Authority	Rs. In Lakhs	Reasons for levy of penalty
1	PT Bank of India Indonesia (Subsidiary)	Bank Indonesia Local Regulator	2.77	Failure to comply with internal regulation of Indonesia exchange regulation, delay in statement submission and Input error in commercial bank daily report
2	Singapore Branch (Foreign Branch)	Monetary Authority of Singapore (MAS) - Local Regulator	2,164.50	Breaches in respect of MAS Notice 626 which lays down internal guidelines towards prevention of Money Laundering by following KYC and other guidelines such as failure to record customer's existing residential address, registered or business address and nationalities, to take reasonable measures to understand the ownership and control structure of the customer, to monitor on an ongoing basis, the business relations with customers, to suspend or terminate the business relations with the customer when the bank is unable to complete Customer due diligence

				<i>measures, to implement appropriate internal policies, procedures and controls to determine if a customer or beneficial owner is a politically exposed person</i>
3	Bank of India - Domestic branches - Penalty levied on Currency Chest	Reserve Bank of India (RBI)	405.22	<i>Penal interest for delayed reporting of currency chest transactions, incorrect reporting of data, discrepancies in processing of specified bank notes, Shortages in soiled note remittances, Counterfeit notes detected in soiled note remittances, Mutilated notes detected in soiled note remittances, Non-compliance with operational guidelines by currency chests detected by RBI officials, Non-compliance of some of the terms of agreement with RBI (for opening and maintaining currency chests) or deficiency in service in providing exchange facilities, as detected by RBI officials</i>
	Total		2,572.49	

103. Therefore, from the perusal of the aforesaid details, it is evident that not only the penalty was imposed on domestic branches of the assessee, but the same was also imposed on the foreign branches of the assessee in Indonesia and Singapore. Before proceeding further, it is relevant to note the provisions of section 37 of the Act, which reads as follows: -

*"37. (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".*

*Explanation 1. For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.*

*Explanation 2. For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.*

(2) [\*\*\*]

*(2B) Notwithstanding anything contained in sub-section (1), no allowance shall be made in respect of expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party."*

104. Thus, under section 37 of the Act, any expenditure, which is not in the nature of expenditure described in section 30 to section 36, and which is not in the nature of capital expenditure or personal expenses, is allowable as a deduction, if the same is laid or expended wholly and exclusively for the purposes of the business. Explanation-1 to section 37 of the Act, further lays down an exception to the aforesaid provision and provides that any expenditure, which is an offence or which is prohibited by law, shall not be deemed to have been incurred for the purpose of business or profession and no deduction in respect of such expenditure shall be allowable. Therefore, under section 37(1) read with Explanation-1 to section, any expenditure which is an offence or which is prohibited by law, is not allowable as a deduction under section 37 of the Act. By way of various judicial pronouncements, it is now well settled that in order to decide whether the damages, penalty or interest paid by the assessee is allowable as a deduction under section 37(1) of the Act, the scheme of the provisions of relevant rules/regulations/statute providing for payment of such damages or penalty or interest needs to be examined, notwithstanding the nomenclature of the impost as given by the statute, to find out whether it is compensatory or penal in nature. It is further well settled that where the examination reveals that a certain impost is purely compensatory in nature, the same shall be allowable as a deduction under section 37(1) of the Act. However, where the impost is found to be penal in nature, the deduction under section 37(1) of the Act is to be denied. In this regard, gainful reference can be made to the decision of the Hon'ble Supreme Court in Prakash Cotton Mills vs. CIT, reported in (1993) 201 ITR 84 (SC). Therefore, in the light of the aforesaid settled principles, we shall now examine

the penalty levied on the assessee's Indian and Foreign branches, during the year under consideration, which has been claimed as a deduction under section 37(1) of the Act.

105. From the details of the penalty as reproduced in the foregoing paragraph, furnished during the hearing, we find that a penalty of Rs.2.77 lakh was levied on the assessee's Indonesian Branch for failure to comply with the internal regulation of the Indonesian Exchange and delay in submission of the report. Further, a penalty of Rs.405.22 lakh was levied on the domestic branches of the assessee for delay in reporting currency chest transactions and for various other requirements as per the RBI guidelines. Upon perusal of the details, it is evident that these penalties were levied for delay in reporting, as per the guidelines of the respective governing authority. Thus, we are of the considered view that the said penalties were merely compensatory in nature, and therefore, are allowable under section 37(1) of the Act.

106. The balance penalty of Rs.21.64 crore was levied on the assessee's Singapore Branch by the Monetary Authority of Singapore ("MAS"), which is a local regulatory authority monitoring the financial institutions in Singapore. In this regard, the learned AR placed on record the order passed by MAS levying the penalty on the Singapore Branch of the assessee, which is reproduced as follows for ready reference: -

*"27 July 2017*

*Bank of India, Singapore Branch  
158 Cecil Street #01-01  
Singapore 069545*

*BY HAND*

Attention: Mr C.G. Chaitanya, Chief Executive Officer

Dear Sir

*BREACHES OF MAS NOTICE 626 ON PREVENTION OF MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM ISSUED PURSUANT TO SECTION 27B OF THE MONETARY AUTHORITY OF SINGAPORE ACT (CAP. 186) ("MAS ACT")*

*OFFER OF COMPOSITION FOR OFFENCE UNDER SECTION 41A OF THE MAS ACT*

*We refer to the regulatory breaches noted in the following reports (collectively the "Reports"):*

- i) the Monetary Authority of Singapore's ("MAS") inspection report on Bank of India, Singapore Branch, as enclosed in MAS' letter to Bank of India, Singapore Branch dated 10 December 2013; and*
- ii) the written reports issued by the independent consultants Deloitte & Touche Financial Advisory Services Pte Ltd's ("DTFSA") dated 4 October 2013 and 30 January 2014.*

*The Reports were finalised only after taking into account Bank of India, Singapore Branch's explanations, acknowledgements and remedial steps.*

*2 Based on the Reports, MAS found Bank of India, Singapore Branch to be in breach of section 27B(2) of the MAS Act by virtue of its contravention of paragraphs 4.3 read with 4.4 (c) and 4.4 (e), 4.8, 4.10 (b), 4.15, 4.16, 4.20 4.21, 4.22, 4.26, 4.29(a), 4.34, 6.2(a), 6.3 read with 6.2(a), 7.1(a), 10.1(c), 10.2(b), 11.2, and 12.2 of MAS Notice 626 on the Prevention of Money Laundering and Countering the Financing of Terrorism (Version of 2 July 2007) ("MAS Notice 626"). The brief particulars of a total of 1,765 offences committed by Bank of India, Singapore Branch are set out in Annex 1.*

*3 The maximum prescribed fine for an offence under section 27B(2) of the MAS Act is a fine of S\$1,000,000 per offence. In the exercise of its power under section 41A of the MAS Act read with regulation 2 of the Monetary Authority of Singapore (Composition of Offences) Regulations 2007, MAS is prepared to compound forty-five (45) offences of the 1,765 offences under section 27B(2) of the MAS Act, as set out in Annex 1, and take no further action for the remaining 1,720 offences, for a total sum of S\$4,500,000, provided Bank of India, Singapore Branch furnishes to MAS within fourteen (14) days of this letter, i.e. by 5pm on 10 August 2017:*

- (a) Bank of India, Singapore Branch's written admission of having committed the said 1,765 offences and its written acceptance of MAS's offer of composition (in the form set out in Annex 2) on Bank of India, Singapore Branch's letterhead; and*
- (b) full payment by Bank of India, Singapore Branch in settlement of the composition sum of \$4,500,000 on or after five (5) business days*

*but no later than ten (10) business days from the date of the Bank of India, Singapore Branch's acceptance letter referred to in paragraph 3(a) via any of the means set out in Annex 2.*

*4 Please note that if MAS's composition offer is not accepted in accordance with paragraph 3 above by 5pm on 10 August 2017, MAS's composition offer shall be taken to have lapsed and prosecution in respect of the said offences may be instituted against Bank of India, Singapore Branch without further notice to Bank of India, Singapore Branch.*

*5 For the avoidance of doubt, please note that MAS may in its sole discretion publish any information pertaining to Bank of India, Singapore Branch's contravention and all other matters relating thereto, at such time and in such form or manner as MAS thinks fit.*

*6 If you have queries on this matter, please contact Wee Jun Wei at (65) 6422 5486 (WEE\_Jun\_Wei@mas.gov.sg).*

*7 Please acknowledge receipt of this letter.*

*Yours faithfully*

*TAN KENG HENG  
EXECUTIVE DIRECTOR  
BANKING DEPARTMENT II"*

107. From the perusal of the said order, as reproduced above, it is evident that the penalty equivalent to Rs.21.64 crore was levied on the assessee's Singapore Branch for breach of MAS Notice 626 on Prevention of Money Laundering and Countering the Financing of Terrorism, issued pursuant to section 27B of the MAS Act. In paragraph 3 of the aforesaid order, it is mentioned that as per section 27B(2) of the MAS Act, a fine of USD 1,000,000 per offence is prescribed. However, in exercise of the powers granted under the MAS Act, 45 offences out of a total of 1765 offences were compounded, and the decision was taken not to take any action against the remaining 1720 offences, if the assessee pays a sum of USD 4,500,000 within 14 days. In paragraph 4, it is further stated that upon non-acceptance of the aforesaid

proposal, a prosecution in respect of the said offences may be instituted against the assessee's Singapore Branch. Along with the aforesaid order, the list of 45 offences, which were compounded by the authority has been enclosed, which includes offences such as failure to record customer's existing residential address; failure to verify identity of the customers using reliable, independent sources; failure to verify the natural persons that act on behalf of the customer; failure to identify and verify the identities of the beneficial owner; failure to establish and verify the identity of the customer if the business relationship exceeds the transaction value of USD 20,000; failure to pay special attention to unusually large transaction that have no apparent or visible economic or lawful purpose; failure to implement the internal policy if business relation of the customer present higher risk for money laundering and terror financing, etc.

108. We find that under the Notice 626 of Prevention of Money Laundering and Countering the Financing of Terrorism, financial institutions operating in Singapore are required to put in place robust controls to detect and deter the flow of illicit funds through Singapore's financial systems. Accordingly, financial institutions are required to identify and know their customers (including beneficial owners), conduct regular account reviews, and monitor and report any suspicious transactions. Various Anti Money Laundering/Countering the Financing of Terrorism requirements for the banks, in the aforesaid Notice 626, are as follows: -

- *Risk assessment and risk mitigation.*
- *Customer due diligence.*
- *Reliance on third parties.*
- *Correspondent banking and wire transfers.*

- *Record keeping.*
- *Suspicious transaction reporting.*
- *Internal policies, compliance, audit and training.*

109. It is pertinent to note that India being a part of Financial Action Task Force, which is a Global Anti Money Laundering and Anti-Terror Financing Body, has taken various measures to combat terrorism financing through a multi-faceted approach of legislative frameworks, such as Unlawful Activities (Prevention) Act, 1967, Prevention of Money Laundering Act, 2002 and Foreign Contribution (Regulation), apart from dedicated intelligence units. It is pertinent to note that Singapore is also an active member of the Financial Action Task Force and has been recognised to have a strong, sophisticated Anti-Money Laundering and Counter-Terror Financing System in place. Therefore, it is evident that the penalty of Rs.21.64 crore was levied on the assessee's Singapore Branch for violation of regulations that have been laid down in Singapore to prevent a serious cause of global concern. Therefore, having regard to the nature of offences committed by the assessee's Singapore Branch, in the light of the order under the provisions of MAS Notice 626 on Prevention of Money Laundering and Countering the Financing of Terrorism, we are of the considered view that the penalty was levied on assessee's Singapore Branch for an offence which is prohibited by law and the same cannot be said to be merely compensatory in nature.

110. Further, from the perusal of the decision of the Coordinate Bench in IDBI Bank Ltd. (*supra*), as placed reliance by the learned CIT(A), it is evident that the penalty in the facts of the case was levied on the said Bank for non-compliance of guidelines on customer services, guidelines in respect of

exchange of bonds and small denomination notes and mutilated notes. Thus, having carefully perused the said decision, we are of the considered view that the nature of non-compliance for which the penalty was levied in the said decision is nowhere similar to the nature of non-compliance for which the penalty is levied on the assessee's Singapore Branch, i.e. for violation of rules/regulations on Prevention of Money Laundering and Countering the Financing of Terrorism. Therefore, the reliance placed on the decision of the Coordinate Bench in IDBI Bank Ltd. (*supra*) by the learned CIT(A) is completely misplaced. Accordingly, we are considered view that the penalty of Rs.21.64 crore levied on the assessee's Singapore Branch falls within the ambit of provisions of Explanation-1 to section 37(1) of the Act and, therefore, cannot be allowed as deduction to the assessee while computing its income chargeable under the head "*profits and gains of business or profession*" and, therefore, the same is sustained. Accordingly, Ground No.6, raised in Revenue's Appeal, is partly allowed.

111. Grounds No.7 and 8, raised in Revenue's appeal, pertain to the computation of book profit under section 115-JB of the Act. In view of our findings rendered in respect of Ground No.5A raised in assessee's appeal for the assessment year 2018-19 (*supra*), this ground is rendered infructuous and, therefore, is kept open.

112. In the result, the appeal by the Revenue for the assessment year 2018-19 is partly allowed.

113. To sum up: -

ITA No. 1451/Mum./2023 Assessee's appeal – A.Y. 2016-17	Partially allowed for statistical purposes
ITA No. 1547/Mum./2023 Revenue's appeal – A.Y. 2016-17	Dismissed
ITA No. 1452/Mum./2023 Assessee's appeal – A.Y. 2018-19	Partially allowed for statistical purposes
ITA No. 1548/Mum./2023 Revenue's appeal – A.Y. 2018-19	Partly allowed

Order pronounced in the open Court on 30/01/2026

**Sd/-**

**VIKRAM SINGH YADAV  
ACCOUNTANT MEMBER**

**Sd/-**

**SANDEEP SINGH KARHAIL  
JUDICIAL MEMBER**

**MUMBAI, DATED: 30/01/2026**

*Prabhat*

Copy of the order forwarded to:

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

By Order

Assistant Registrar  
ITAT, Mumbai