

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA 'B' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member  
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. Nos. 1376, 1377, 1582/KOL/2009  
Assessment Years: 2002-2003, 2003-2004, 2005-2006**

***Deputy Commissioner of Income Tax,.....Appellant  
Circle-6, Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700 069***

**-Vs.-**

***West Bengal Industrial Development Corporation Limited,.....Respondent  
5, Council House Street,  
Kolkata-700 001  
[PAN : AAACW 3043 Q]***

**&**

**1531/KOL/ 2009  
Assessment Year : 2005-2006**

***West Bengal Industrial Development Corporation Limited,.....Appellant  
5, Council House Street,  
Kolkata-700 001  
[PAN : AAACW 3043 Q]***

**-Vs.-**

***Additional Commissioner of Income Tax,.....Respondent  
Range-6, Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700 069***

**&**

**I.T.A. No. 166/KOL/ 2010  
Assessment Year : 2006-2007**

***West Bengal Industrial Development Corporation Limited,.....Appellant  
5, Council House Street,  
Kolkata-700 001  
[PAN : AAACW 3043 Q]***

-Vs.-

**Deputy Commissioner of Income Tax,.....Respondent**  
**Circle-6, Kolkata,**  
**Aayakar Bhawan,**  
**P-7, Chowringhee Square,**  
**Kolkata-700 069**

**Appearances by:**

*Shri Sridhar Bhattacharjee, JCIT, Sr. D.R., for the Department*

*Shri J.P. Khaitan, Senior Counsel & Shri B.R. Dutta, A.R., for the assessee*

Date of concluding the hearing : December 02, 2015

Date of pronouncing the order : December 16, 2015

**O R D E R**

**Per Shri P.M. Jagtap:-**

Out of these five appeals, two appeals being I.T.A. Nos. 1376/KOL/2009 & 1377/KOL/2009 are the appeals filed by the Revenue for assessment years 2002-03 and 2003-04 respectively, while the appeal being I.T.A. No. 166/KOL/2010 is the appeal of the assessee filed for assessment year 2006-07 and the remaining two appeals being ITA Nos. 1582/KOL/2009 (Revenue's appeal) and 1531/KOL/2009 (assessee's appeal) are cross appeals for assessment year 2005-06. Since these appeals involve common issues, the same have been heard together and are being disposed of by a single consolidated order for the sake of convenience.

2. First we take up the appeal of the Revenue for A.Y. 2002-03 being **ITA No. 1376/KOL/2009**, which is directed against the order of the Id. Commissioner of Income Tax (Appeals)-VI, Kolkata dated 27.04.2009.

3. The solitary issue involved in the appeal of the Revenue relates to the deletion by the Id. CIT(Appeals) of the addition of Rs.116.19 lakhs made by the Assessing Officer on account of interest accrued on debentures being non-performing assets.

4. The assessee in the present case is a State Government Undertaking, which is mainly entrusted with the task of providing long-term finance for the industrial development in the State of West Bengal. It was also made responsible for the development of industries in the State. In its return of income filed for the year under consideration, the interest accrued on debentures amounting to Rs.116.19 lakhs was not recognized by the assessee as its income. Since the assessee was following mercantile system of accounting and interest on debentures had automatically accrued during the year under consideration, the amount of Rs.116.19 lakhs was treated by the Assessing Officer as the income of the assessee for the year under consideration and the same was added by him to the total income of the assessee.

5. On appeal, the Id. CIT(Appeals) upheld the said addition made by the Assessing Officer and on further appeal, the Tribunal restored the matter to the file of the Assessing Officer for fresh adjudication. As per the direction of the Tribunal, the Assessing Officer examined the issue again and held that interest on debentures having been automatically accrued, the same was chargeable to tax in the hands of the assessee as per mercantile system of accounting followed by it. Accordingly, the sum of Rs.116.19 lakhs on account of interest accrued on debentures was added by the Assessing Officer to the total income of the assessee vide order dated 23.09.2008 passed under section 143(3) read with section 254 of the Income Tax Act.

6. The addition made by the Assessing Officer on account of interest income allegedly accrued on the debentures was again challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and the Id. CIT(Appeals) deleted the said addition made by the Assessing Officer for the following reasons given in paragraph no. 6 of his impugned order:-

*"By ground of Appeal No.3 the appellant disputes the action of the AO in not allowing a sum of RS.116.19 lakhs being interest on debenture, pertaining to non-performing assets accounted for on cash basis. The learned A. R referred to the appellant's own case for the Assessment Year 1997-98 decided by the Honble ITAT B Bench Kolkata in ITA No.1295/KOL/2001, where identical issue has been held in favour of the appellant. In Para 8, the Honble ITAT while allowing the appellant's ground on this matter has held as below:*

*"However, the Tribunal has decided the similar issue in the assessee's own case in I.T.A No.987/C/2001 by order dated 20<sup>th</sup> September 2002 by following the earlier orders of the Tribunal in I.T.A No.1207/C/1994 vide order dated 18th August, 1996 and also I.T.A No.1368/C/2000 for the asstt. Year 1995-96 vide order dated 5<sup>th</sup> July, 2002 stating that the assessee in its accounting policy had clearly indicated with respect to accounting of interest on advances given to borrowers which was to be taken into consideration on receipt basis and accordingly, the AO. was directed to bring to tax the amount of interest only that amount which had been received during the year. In view of the earlier orders of the Tribunal, we hold that the accrued interest on debenture of Rs.1,22,535/- in respect of non-performing assets to be Charged only on receipt basis."*

*The appellant also referred to the decision of the Honble ITAT in I.T.A No.2498/Kol/2007 (AY-2002-2003). I have gone through the Assessment order and the submissions of the appellant. In the assessment order the AO has not considered the decision of the Honble ITAT in assessee's own case and sustained the earlier addition made by the AO. The appellant also submitted that it was following cash system of accounting from the financial year 1986-87 as per the decision taken by the Board of Directors. The Appellant also relied on the decision of the Honble Supreme Court where they have dismissed the department's special leave petition against the judgement of the Calcutta High Court where by the High court affirmed the order of the Tribunal holding that interest on non-performing assets was not includable in the total income of the assessee on accrual basis, even though the assessee was following the mercantile system of accounting. "CIT-vs- KICM Investment limited: C.C.No.29 of 2009 reported in 310 ITR(St) 4." Going by the facts and decisions of the Honble ITAT, I have no other option but to direct the AO to delete the addition of Rs.116.19 lakhs. This ground of appeal is allowed".*

7. We have heard the arguments of both the sides and also perused the relevant material available on record. As agreed by the Id. Representatives of both the sides, this issue involved in the appeal of the Revenue for A.Y. 2002-03 is squarely covered in favour of the assessee by the orders of the Tribunal in assessee's own case for the earlier years which have been referred to and relied upon by the Id. CIT(Appeals) in his impugned order to give relief to the assessee. Moreover, as submitted by the Id. Counsel for the assessee, it was held by the Hon'ble Supreme Court in the case of Indian Cement Limited -vs- CIT reported in 60 ITR 52 that the debenture is in the nature of loan and therefore, the provisions of section 43D are applicable in case of debenture also. Respectfully following the judicial pronouncements, we uphold the impugned order of the Id. CIT(Appeals) deleting the addition made by the Assessing Officer on account of interest accrued on debentures and dismiss the appeal of the revenue for assessment year 2002-03.

8. As regards the Revenue's appeal for A.Y. 2003-04 being **ITA No. 1377/KOL/2009**, which is directed against the order of Id. CIT(Appeals)-VI, Kolkata dated 27.04.2009, it is observed that the solitary issue involved therein relating to the deletion by the Id. CIT(Appeals) of the addition of Rs.125.52 lakhs made by the Assessing Officer on account of interest accrued on debentures is similar to the one involved in the appeal filed by the Revenue for A.Y. 2002-03, which has already been decided by us in the foregoing portion of this order. Since all the material facts relevant to this issue as involved for A.Y. 2003-04 are similar to the one involved for A.Y. 2002-03, we follow the conclusion drawn in A.Y. 2002-03 and uphold the impugned order of the Id. CIT(Appeals) deleting the addition made by the Assessing Officer on account of interest accrued on debentures. The appeal of the Revenue for A.Y. 2003-04 is accordingly dismissed.

9. Now we take up the **cross appeals for A.Y. 2005-06**, which are directed against the order of the Id. CIT(Appeals)-VI, Kolkata dated 20.06.2009.

10. Ground No. 1 of the Revenue's appeal for A.Y. 2005-06 and the solitary ground raised in the appeal of the assessee involves a common issue relating to the disallowance made by the Assessing Officer on account of assessee's claim for bad debts written off, which is partly sustained by the Id. CIT(Appeals).

11. In its Profit & Loss Account filed along with the return of income, assessee had debited bad and doubtful debts amounting to Rs.4,52,23,820/- and bad debts written off amounting to Rs.23,17,85,186/-. As noticed by the Assessing Officer, bad debts written off were inclusive of bad debts against loans amounting to Rs.22,50,92,520/-, against the seed capital amounting to Rs.10,20,000/- and against miscellaneous receivable amounting to Rs.56,72,666/-. He held that although the bad debts on account of miscellaneous receivable amounting to Rs.56,72,666/- were allowable as deduction under section 36(2)(i), bad debts on account of seed capital amounting to Rs.10,20,000/- was not allowable as deduction. As regards the balance amount of Rs.22,50,92,520/- written off on account of loans, he found that only a sum of Rs.13,79,04,000/- had been written back in accounts from the provisions made against such loans/ advances and the balance amount of Rs.8,72,88,520/-, for which no provision was made in the earlier year, was debited directly to the Profit & Loss Account. Relying on the provisions of section 36(2)(v) of the Act, he disallowed the claim of the assessee for deduction on account of bad debts written off to the extent of Rs.8,72,88,520/-.

12. The disallowance made by the Assessing Officer on account of bad debts written off to the extent of Rs.8,72,88,520/- was challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and after considering the submissions made by the assessee as well as the material available on record, the Id. CIT(Appeals) decided this issue after recording the following observations/ findings in his impugned order:-

*"I have gone through the submissions made by the A.R and also the order of the Assessing Officer. As I seen from the details the Appellant has debited a sum of Rs.23,17,85,184/- as bad debt in the profit & Loss account which included Rs.22,50,922/- against loan, Rs.10,20,000/- against seed capital and Rs. 5,67,266/- against Miscellaneous receipts. The Appellants submission that a sum of Rs.7,94,42,873/-being provision created and allowed under Section 36(1)(viia) of the act was reduced from such bad debts, refers to the provision of earlier years as seen from the computation of AO in the Assessment order. The A.O at beginning of para 4 observed that the assessee in its profit and loss account debited bad and doubtful debts for Rs.4,52,23,820/- and bad debts written off is Rs.23,17,85,186/-. The relevant fact for discussions is bad debts written off. However, the A.O later observed that Rs.4,52,24,000/- is the provision made during the year. A.O. is directed to verify the nature of this amount. The appellant has written back in accounts and the balance sum of Rs.13,79,04,000/- and not written off as bad debts. The A.O in his discussion at para 4 stated that only a sum of Rs.13,79,04,000/- had been written back in accounts and the balance sum of Rs.8,72,88,520/- was written directly in the profit and loss account. Since no provision has been made earlier for this sum, the amount of Rs.8,72,88,520/- was disallowed by A.O.*

*According to Sec 36(2)(v), the deduction on account of bad debts which are written off as irrecoverable in the accounts of the assessee is allowed, only if the assessee had debited the account created u/s 36(1)(viia) of the Act. According to computation made by A.O, the provision allowed during the year u/s 36(1)(vii) is Rs.73,33,584/-. The carry forward provisions of earlier year as per computation is Rs.7,94,42,873/-.  
Amount qualifying as bad debt*

*Total claim of the assessee  
on account of bad debts.....Rs.23,17,85,186/-*

*Less: Soft loan described as  
Seed capital discussed in a  
Separate ground.....Rs.(-)10,20,000/-*

*-----  
Rs.23,07,65,186/-*

Less: provision u/s 36(1)(viic)  
For year.....Rs.(-)73,33,585/-  
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Rs.22,34,31,602/-

Less: provision u/s 36(1)(viic)  
Carried forward [i.e. credit  
Balance.....Rs.(-)7,94,42,873/-  
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Rs.14,39,88,729/-

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*According to me Rs.14,39,88,729/- is the bad debt which should have been allowed by the A.O It appears there was some confusion regarding bad debts written off by Appellant. A.O. is directed to verify the calculation once again, and if the calculation made above is correct on facts and figures, the same needs to be allowed. The addition is deleted with a direction to A.O to recompute the allowance of bad debts u/s 36(1)(vii)".*

The Id. CIT(Appeals) thus directed the Assessing Officer to allow substantial relief to the assessee on this issue but directed the Assessing Officer to allow such relief after verifying the facts and figures submitted by the assessee before him.

13. Aggrieved by the order of the Id. CIT(Appeals), the assessee and Revenue have raised this issue by taking the following grounds:-

*(Revenue's appeal) [ITA No.1582/KOL/2009]*

*"1. That on the facts and circumstances of the case, the Id. CIT(A) has erred in law as well as on facts in directing to consider Rs.14,39,88,729/- as bad debts written off u/s 36(1)(vii)".*

*(Assessee's appeal) [ITA No.1531/KOL/2009]*

*"1. That on the facts and circumstances of the case, the Id. CIT(A) has erred in law as well as on facts in confirming the order of the Id. Additional Commissioner of Income Tax in reducing the appellant's claim for bad debt by a sum of Rs.73,33,584/- being provision created u/s 36(1)(viia) for the year under consideration".*

14. We have heard the arguments of both the sides and also perused the relevant material available on record. As submitted by the Id. Counsel for the assessee, the provisions of clause (viia) of sub-section 1 of section 36 being applicable of the case of the assessee, his claim for bad debts written off is governed by the provisions of section 36(1)(viii) including proviso thereto as well as section 36(2)(v). In this regard, he invited our attention to the working given by the Assessing Officer on page 8 to point out that the opening balance in the provisions made as per section 36(1)(viia) was Rs.7.94 crores. He also invited our attention to the working given at page no. 4 of the assessment order and submitted that the figure given therein and working made for making disallowance on account of assessee's claim of bad debts written off was not in accordance with the relevant provisions. He contended that the total claim made by the assessee for bad debts written off was more than the opening balance and to that extent deduction was claimed by the assessee under section 36(1)(vii) by writing off the balance amount to the profit & loss account. He has contended that the claim made by the assessee for bad debts written off thus was in accordance with the relevant provisions of the Act and although the Id. CIT(Appeals) rightly accepted the claim of the assessee in principle, he made one mistake by reducing the claim of the assessee for deduction on account of bad debts written off by the provision of Rs.73,33,585/- made by the assessee under section 36(1)(viia) for the year under consideration. He has contended that this aspect of the matter, therefore, is raised by the assessee in its appeal for A.Y. 2005-06. Id. D.R., on the other hand, has not raised any material contention and merely submitted that if the working furnished by the assessee before the Id. CIT(Appeals) in support of its claim for deduction on account of bad debts written off requires verification, the Assessing Officer may be given an opportunity to verify the same.

15. After considering the rival submissions and perusing the relevant material available on record, we find that the relevant provisions of law governing the claim of the assessee for deduction on account of bad debts written off are very clear and as per these provisions, if section 36(1)(viia) is applicable in the case of the assessee, his claim for deduction on account of bad debts written off under section 36(1)(vii) will be governed by the proviso to section 36(1)(vii) and clause 5 of sub-section (2) of section 36. As per the said provisions, deduction on account of any bad debt or part thereof, which is irrecoverable in the accounts of the assessee for the previous year, is allowable as deduction subject to the condition that such deduction 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 accounts made under section 36(1)(viia) and that the assessee has debited the amount of such debts are part of debt in the previous year to such provision. In the present case, the case of the assessee is that the opening credit balance in the provisions made under section 36(1)(viia) was to the extent of Rs.7,94,42,873/- and the bad debt written off in excess of such opening credit balance available was claimed as deduction by debiting the same to the Profit & Loss Account after debiting the amount of such debts to the extent of Rs.7,94,42,873/- to the provision account. Moreover, as rightly claimed by the assessee, the provision of Rs.73,33,584/- made under section 36(1)(viia) for the year under consideration is allowable as deduction separately and the ld. CIT(Appeals), in our opinion, is not justified to reduce the same in the working made by him while allowing the claim of the assessee for deduction on account of bad debts written off to the extent of Rs.14,39,88,729/-. We are, therefore, of the view that the claim of the assessee on account of deduction for bad debts written off as explained by the ld. Counsel for the assessee is allowable as per the relevant provisions of the law. However, as contended by the ld. D.R., in the absence of clear-cut working furnished by the assessee in support either

before the Assessing Officer or before the Id. CIT(Appeals), the relevant facts and figures are required to be verified by the Assessing Officer before allowing the claim of the assessee on this issue. We, therefore, restore this issue to the file of the Assessing Officer for the limited purpose of verifying the relevant facts and figure from record and to allow the claim of the assessee as per the relevant provisions of the law as explained above. Subject to this verification, Ground No. 1 of the Revenue's appeal is dismissed, while the solitary ground raised in the appeal of the assessee for A.Y. 2005-06 is allowed.

16. As regards Grounds No. 2 to 4 of the Revenue's appeal for A.Y. 2005-06, it is observed that the common issue raised therein relating to the deletion by the Id. CIT(Appeals) of the addition of Rs.32.42 lakhs made by the Assessing Officer on account of interest accrued on debentures is similar to the one involved in the appeal filed by the Revenue for A.Y. 2002-03, which has already been decided by us in the foregoing portion of this order. Since all the material facts relevant to this issue as involved for A.Y. 2005-06 are similar to the one involved for A.Y. 2002-03, we follow the conclusion drawn in A.Y. 2002-03 and uphold the impugned order of the Id. CIT(Appeals) deleting the addition made by the Assessing Officer on account of interest accrued on debentures. The appeal of the Revenue for A.Y. 2005-06 is accordingly dismissed.

17. Now we take up the appeal of the assessee for A.Y. 2006-07 being **ITA No. 166/KOL/2010**, which is directed against the order of the Id. CIT(Appeals)-VI, Kolkata dated 20.11.2009.

18. Ground No. 1 of this appeal relates to the disallowance of Rs.6,27,37,000/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of assessee's claim for deduction of the amount written off as a result of diminution in the value of shares.

19. The claim of the assessee for deduction on account of bad debts was inclusive of an amount of Rs.6,27,37,000/- written off on account of permanent diminution in the value of shares held as investment initially and then claimed to be converted into stock-in-trade. This claim of the assessee was examined by the Assessing Officer during the course of assessment proceedings and the same was held to be not allowable by him for the following reasons given in paragraph no. 1.4 of the assessment order:-

*"1.4. The second category of write offs relate to write off of investments in shares, value of which has been permanently diminished. The assessee claimed that such investment is to be considered as money lent in ordinary course of business, therefore, qualifies for the deductions. The claim is not acceptable. There is a difference between capital lent as loan, where there is a definite clause of recovery of the capital outlaid in the form of repayment by borrower. In case of shares, if as Ltd. Co., there is no scope of recovery of capital outlaid other than in the form dividend or by sell of such shares, which gives rise to capital gain or capital loss. There is a third possibility of buy back of the shares by the company itself which also results capital gain u/s 46A. Therefore, when money is lost due to permanent diminution of value of equity shares, it is not covered u/s 36 of I.T. Act, which is a deduction to be allowed in case of events which has a direct link to income to be computed u/s 28 under Part D of Chapter IV of I.T. Act. The claim of write off of investments is therefore, treated as a loss of capital and thus outside the ambit of sec. 36(1(vii))".*

20. The disallowance made by the Assessing Officer on account of its claim for deduction on account of diminution in the value of shares was challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and the following submissions were made on its behalf before the Id. CIT(Appeals) in support of its case on this issue:-

*"1. During the year under consideration, a sum of Rs.16,10,67,000/- was written off in the accounts out of which a sum of Rs. 85520205 has been allowed leaving the amounts as mentioned above as disallowed. As per the consistent accounting policy followed by the appellant, investments which are not trading assets are carried at cost. However, in view of the resolution adopted by the Board at its*

*meeing on 20 January 2006, investments which were held as trading assets have been converted into stock in trade at cost or market price, whichever is lower. As per its accounting policy, the appellant values stock in trade representing equity shares, preference shares and debentures, held as trading assets, at cost or market price whichever is lower.*

*2. During the year under consideration due to conversion of trading assets as stock in trade, the loss amounting to Rs.1,76,14,000/- occurred which was added back in the computation as was prepared by the appellant. Due to its accounting policy for valuing stock in trade, at cost or market price whichever is lower, a write down amounting to Rs.6,27,37,000/- occurred which was written off in the accounts and included in the said sum of Rs.16,10,67,000/-.*

*3. Therefore, it will be apparent that what has been written off in the accounts in not investment but stock in trade by valuing the same at cost or market price whichever was lower. We enclose (Page 9- 11) a statement which was furnished to the assessing officer during the course of the assessment proceedings to provide details of stock in trade written off in the accounts during the year under consideration. Since the appellant is following this policy consistently, it is requested that investments which were converted into stock in trade during the year under consideration and valued at cost or market price whichever is lower should be fully allowed as deduction.*

*4. Without prejudice to the said contention, it is submitted that even otherwise, the said amount of Rs. 6,27,37,000/- should have been allowed by the Assessing Officer as business loss within the ambit of section 28/29 of the Act.*

*5. The main object for which the appellant company was established is to secure and assist in the expeditious and orderly establishment, growth and development of industries in the State of West Bengal. Among its ancillary objects it had the following objectives.*

*"4. To advance loans and participate in the share capital of companies, firms and associations engaged in industries to be established within the state".*

*"6. To procure capital for or to provide machinery, equipments, and other facilities to any company, person or association for the purpose of carrying into effect any objective connected with the industrial development of the state and to subscribe for or underwrite or otherwise, deal with shares, debentures, and securities of any such companies or persons or associations".*

6. We enclose\*(Page 12-19) a copy of the Memorandum of Association (MOA) of the appellant for your kind ready reference.

7. From the MOA, particularly object clauses, you will kindly notice that participation in share capital of companies etc is one of the objectives of the appellant. In other words, investments in the share capital of The companies were made as per the object clauses of the MOA in the ordinary course of the appellant's business. The investments so made were itself one of the businesses of the appellant. Such investments are made to fulfil the appellant's main objective as stated in its MOA. By making such investments, the appellant was assisting the companies etc for their establishment in the State of West Bengal.

8. The loss on account of write off is incidental to the carrying on of the business and has arisen directly from carrying out of a business operation of the appellant. In this connection, please refer to a decision of the Hon'ble Supreme Court in the case of CIT -v- Abdullabhai Abudullakadar 41 ITR 545. A reference may also be made to a decision of the Hon'ble Calcutta High Court in the case of CIT -v- Howrah & Co. Pvt. Ltd, 44 Taxman 409 where it has been held that loss incurred in carrying out of the operation of the business and incidental to that operation has to be allowed while computing the total income. There is a direct and proximate nexus between the business operation and the loss as without such investment or advances the appellant company would not be in a position to fulfil its objectives as defined in the MOA. The amounts were invested or the advances were made wholly and exclusively for the purpose of the appellant's business and there was nothing unusual in the appellant making such investment or advances. Thus, loss incurred in the process could be said to arise out of and as an incident of the business of the appellant. Reference may also be made to a decision of the Hon'ble Supreme Court in the case of CIT-v- Msore Sugar Company Ltd. 46 ITR 649 where advance made by the company was allowed as business loss on the same becoming irrecoverable. It may be stated that assessee is an industrial development corporation whose business consists of inter alia, investment in shares, debentures, etc therefore, such write off should be regarded as a trading loss as the same is closely linked up with the appellant's business. In this connection, a reference may kindly be made to a decision of the Rajasthan High Court in the case of Rajasthan Financial Corporation -v- CIT 65 ITR 112. Further reference may also be made to two decisions of the Andhra Pradesh High Court.

1. Andhra Pradesh State Financial Corporation Ltd - v- CIT 150 ITR 533.
2. State Bank of Hyderabad -v- CIT 151 ITR 703.
3. State Bank of Hyderabad -v- CIT 171 ITR 232”.

21. The above submissions made by the assessee did not find favour to the Id. CIT(Appeals), who proceeded to confirm the disallowance made by the Assessing Officer on this issue for the following reasons given in paragraph no. 4.2 of his impugned order:-

*"4.2. I have gone through the submissions of the appellant and also the order of the A.O. The appellant has written off the Investments in shares which were held as trading assets after converting them into stock in trade. It is a fact that the appellant has written off only the investment considering the Memorandum of Association of the appellant. It is not in the regular course of business of the appellant that this stock in trade, valued at cost or market price whichever is lower should be allowed as deduction. As seen from the details submitted by the appellant these are unquoted equity shares fully paid up, which cannot be valued at market price. The value of these shares has permanently diminished. Such investment cannot be considered as money lent in the course of regular business of the appellant. In case of shares of Ltd company there is very little scope of recovery of the capital outlaid other than in the form of dividend or by sale of such shares which gives rise to Capital gain or Capital loss. I agree with the A.O that money lost due to permanent diminution in the value of equity shares, is not covered u/s 36 of I.T Act, which is a deduction to be allowed in case of events which has a direct link to income to be computed u/s 28 under part - D of Chapter - VI of IT Act. The decisions relied on the appellant have no resemblance of facts to the facts of the appellant case. Money does constitute the stock in trade in case of business of bank or Investment Company. In the decisions referred to by the appellant the courts have held that surplus realised on sale of securities was assessable as business income. In appellant's case, it is not sale of Investments, but write off of investments. This cannot be allowed as bad debt or as business loss. The action of the A.O is confirmed.*

#### Debenture Interest

*The appellant had written off a sum of Rs.20,34,035/- being interest receivable on debentures as bad debt which was not allowed by the Assessing Officer on the ground that this income was not recognized in the accounts in the earlier years. We have been requested by our client to state that such debenture interest pertains to the period up to financial year 1985-86 when such debenture interest was being accounted for on accrual basis. Therefore, the write off of the same as bad debt was perfectly justified and the same should have been allowed by the AO as bad debt.*

22. At the time of hearing before us, the Id. Counsel for the assessee has mainly reiterated before us the submissions made by the assessee in support of this issue before the Id. CIT(Appeals). He has also relied on the decision of the Hon'ble Bombay High Court in the case of CIT -vs.- Colgate Palmolive (India) Limited -vs.- CIT reported in 370 ITR 728 in support of the assessee's case on this issue.

23. Ld. D.R., on the other hand, strongly relied on the impugned order of the Id. CIT(Appeals) in support of the assessee's case on this issue and contended that the order of the Id. CIT(Appeals) deciding this issue against the assessee being well reasoned and well founded deserves to be upheld.

24. We have considered the rival submissions and perused the relevant material available on record. It is observed that although the relevant shares held earlier as investment were claimed to be converted by the assessee into stock-in-trade on 20.01.2006, the profit or loss arising on such conversion was not computed by the assessee. In any case, even if there was a loss on such conversion, the same was not allowable to the assessee in the year under consideration as the relevant shares were admittedly not sold by the assessee and the same was allowable only in the year of sale of the said shares to the third party. No doubt, there was diminution in the value of the said shares, which is stated to be a permanent diminution, but the amount of such diminution in the value of shares was written off by the assessee in its books of account prior to the date of conversion, i.e. 20.01.2006 when the shares were admittedly held by the assessee as investment. Having regard to all these facts of the case, we find ourselves in agreement with the authorities below that the loss as a result of diminution in the value of shares held by the assessee as investment at the relevant time is not allowable as deduction, especially when there was no sale of such shares to third party. In the case of CIT -

vs.- Colgate Palmolive (India) Limited reported in 370 ITR 728 cited by the Id. Counsel for the assessee, there was actual sale of shares in the relevant year and, therefore, the claim of the assessee for loss arising on such sale was held to be allowable by the Hon'ble Bombay High Court. The said case cited by the Id. Counsel for the assessee thus is distinguishable on facts and the reliance placed by him thereon to support the case of the assessee on the issue under consideration is clearly misplaced. As such, considering all such facts of the case, we find no infirmity in the impugned order of the Id. CIT(Appeals) confirming the disallowance made by the Assessing Officer on this issue and upholding the same, we dismiss Ground No. 1 of the assessee's appeal.

25. Ground No. 2 involving the issue of disallowance on account of interest receivable on debentures amounting to Rs.6,68,294/- has not been pressed by the Id. Counsel for the assessee at the time of hearing before us. The same is accordingly dismissed as not pressed.

26. The issue involved in Ground No. 3 relates to the disallowance of Rs.1,07,74,993/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of advances against equity shares written off in the year under consideration.

27. In the assessment completed under section 143(3), the claim of the assessee for deduction on account of advances against issue of equity written off amounting to Rs.1,07,74,993/- was disallowed by the Assessing Officer holding that the same was not allowable as deduction under section 36(1)(vii). For coming to this conclusion, he relied on the reasons given by him in paragraph no. 1.4 of the assessment order while disallowing the claim of the assessee for deduction on account of diminution in the value of shares. Before the Id. CIT(Appeals), it was claimed by the assessee that the deduction on this count should be

allowed as business loss under section 28/29 of the Act if not under section 36(1)(viii). This alternative claim of the assessee, however, was not accepted by the Id. CIT(Appeals) on the ground that the assessee could not produce any documents or agreement to substantiate the same.

28. We have heard the arguments of both the sides and also perused the relevant material available on record. The limited contention raised by the Id. Counsel for the assessee on this issue is that the alternative claim of the assessee as made by the assessee on this issue before the Id. CIT(Appeals) to allow the amount in question as loss under section 28/29 of the Act is duly supported by the relevant documentary evidence, but no opportunity was given by the Id. CIT(Appeals) to the assessee to produce the same. He has contended that an opportunity may, therefore, be given to the assessee to support and substantiate its alternative claim by producing the relevant documentary evidence and the matter may be sent back to the Assessing Officer for giving such opportunity. Since the Id. D.R. has also not raised any objection for giving such opportunity to the assessee having regard to the facts and circumstances of the case, we set aside the impugned order of the Id. CIT(Appeals) on this issue and restore the matter to the file of the Assessing Officer for giving the assessee an opportunity to support and substantiate its alternative claim on this issue by producing the relevant documentary evidence. The Assessing Officer shall verify the claim of the assessee in the light of such evidence and decide the issue in accordance with law. Ground No. 3 is accordingly treated as allowed for statistical purpose.

29. As regards the issue involved in Grounds No. 4 & 5 relating to the disallowance made by the Assessing Officer and confirmed by the Id. CIT(Appeals) under section 14A read with Rule 8D, it is observed that the disallowance under section 14A was computed by the Assessing Officer as well as by the Id. CIT(Appeals) by applying Rule 8D, which as rightly

contended by the Id. Counsel for the assessee, is not applicable to the year under consideration. The said Rule is made applicable for A.Y. 2008-09 the disallowance under section 14A for the years prior to AY 2008-09 is required to be worked out on some reasonable basis. In this regard, Id. Counsel for the assessee has fairly submitted that even though the disallowance of 1% of the exempt income has been considered as reasonable by the Tribunal in assessee's own case for the A.Y. 2004-05, the assessee itself having offered such disallowance in the year under consideration during the course of assessment proceedings before the Assessing Officer at 5% of the dividend income, the disallowance under section 14A may be restricted to 5% of dividend income. We, therefore, modify the impugned order of the Id. CIT(Appeals) on this issue and direct the Assessing Officer to restrict the disallowance under section 14A to 5% of the exempt income. Grounds No. 4 & 5 of the assessee's appeal are thus partly allowed.

30. As regards the issue involved in Ground No. 6 relating to the reduction of assessee's claim for bad debts by a sum of Rs.86,23,118/- being provision created under section 36(1)(viiia), it is observed that a similar issue has already been decided by us in favour of the assessee while disposing of the appeal of the assessee for A.Y. 2005-06 in the foregoing portion of the order. Following our conclusion drawn in A.Y. 2005-06, we decide this issue in favour of the assessee and allow Ground No. 6 of the assessee's appeal.

31. The issue involved in Ground no. 7 relating to the levy of interest under section 234B is consequential in nature. The Assessing Officer is accordingly directed to allow consequential relief to the assessee on this issue.

32. In the result, the appeals being ITA Nos. 1376, 1377 & 1582/KOL/2009 filed by the Revenue are dismissed. The appeal being ITA No. 1531/KOL/2009 filed by the assessee is allowed, while the appeal being ITA No. 166/KOL/20110 of the assessee is partly allowed as indicated above.

Order pronounced in the open Court on December 16, 2015.

Sd/-

Sd/-

**(S.S. Viswanethra Ravi)**  
Judicial Member

**(P.M. Jagtap)**  
Accountant Member

*Kolkata, the 16<sup>th</sup> day of December, 2015*

Copies to : (1) *Deputy /Additional Commissioner of Income Tax,  
Circle-6, Kolkata,  
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P-7, Chowringhee Square,  
Kolkata-700 069*

(2) *West Bengal Industrial Development Corporation Limited,  
5, Council House Street,  
Kolkata-700 001*

(3) *Commissioner of Income-tax (Appeals)- VI, Kolkata*

(4) *Commissioner of Income Tax, Kolkata*

(5) *The Departmental Representative*

(6) *Guard File*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**