आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई [शिविर: मदुरै]

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI [**CAMP: MADURAI**]

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी.जॉर्ज, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA Nos.1340 & 1341/Mds/2013**
निर्धारण वर्ष / Assessment Years : 2003-04 & 2005-06

The Karur Vysya Bank Ltd., Erode Road, Karur – 639 001. PAN : AAACT 3373 J (अपीलार्थी/Appellant)	v.	The Additional Commissioner of Income Tax, Range I, Tiruchirapalli. (प्रत्यर्थी/Respondent)

आयकर अपील सं./**ITA Nos.1496 & 1527/Mds/2013**
निर्धारण वर्ष / Assessment Years : 2003-04 & 2005-06

The Assistant Commissioner of Income Tax, Circle I(1), Trichy. (अपीलार्थी/Appellant)	v.	The Karur Vysya Bank Ltd., Erode Road, Karur – 639 001. (प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by : Shri N. Quadir Hoseyn, Advocate
राजस्व की ओर से /Revenue by : Shri S. Sankaralingam, CIT

सुनवाई की तारीख/Date of Hearing : 16.02.2017
घोषणा की तारीख/Date of Pronouncement : 27.04.2017

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the assessee and Revenue have filed the appeals against the respective orders of the Commissioner of Income Tax

(Appeals), Tiruchirapalli, dated 25.03.2013 and pertain to assessment years 2003-04 and 2005-06. Since common issues arise for consideration in all these appeals, we heard these appeals together and disposing of the same by this common order.

2. The Revenue has filed its appeals in I.T.A. No.1496/Mds/2013 and I.T.A. No.1527/Mds/2013 belatedly by 10 days and 15 days respectively. The Revenue has filed petitions for condonation of delay. We have heard the Ld. Departmental Representative and Ld.counsel for the assessee. We find that there was sufficient cause for not filing these appeals before the stipulated time. Therefore, we condone the delay and admit the appeals.

3. Let's first take the assessee's appeal for assessment year 2003-04 in I.T.A. No.1340/Mds/2013.

4. The first issue arises for consideration is with regard to expenditure incurred by the assessee in issuing right issues.

5. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that the total disallowance was ₹43,44,844/- on account of expenses incurred to increase authorized capital out of which,

₹42,94,844/- pertain to right issue expenses and the balance of ₹50,000/- pertain to listing fees paid to Security Exchange Board of India for listing bonus and right issues. According to the Ld. counsel, this amount of ₹50,000/- was paid to Security Exchange Board of India which is the statutory authority as per the Government stipulation. The Ld.counsel very fairly submitted that expenditure incurred by the assessee for increasing authorized capital to the extent of ₹43,44,844/- has to be disallowed in view of judgment of Apex Court in Brook Bond India Ltd. v. CIT (1997) 225 ITR 798. However, the list fee has to be allowed in view of the judgment of Madras High Court in the assessee's own case in Tax Case Appeal No.2139 of 2008.

6. We have heard Shri S. Sankaralingam, the Ld. Departmental Representative also. As rightly submitted by the Ld.counsel for the assessee, out of total expenditure of ₹43,44,844/-, a sum of ₹42,94,844/- pertains to increasing the authorized capital. Therefore, this amount of ₹42,94,844/- cannot be allowed as expenditure in view of the judgment of Apex Court in Brook Bond India Ltd. (supra). Accordingly, the order of the lower authority is confirmed to the extent of ₹42,94,844/-. However, the balance of

₹50,000/- pertaining to listing fee paid to the Security Exchange Board of India, we have carefully gone through the judgment of Madras High Court in the assessee's own case in T.C. No.2139 of 2008 dated 13.07.2009, a copy of which is available at page 24 of the paper-book. In the case before Madras High Court, the issue arose for consideration is payment of subscription fees paid to Securities Exchange Board of India to carry on the business of merchant banking by the assessee-bank. The Madras High Court found that the bank was carrying on merchant banking business, therefore, requires to pay authorisation fee to SEBI. Accordingly, the High Court found that the expenses incurred by the assessee was only to facilitate the carrying on of existing business of the assessee. Hence, the expenditure is revenue in nature. In the case before us, the payment was made towards listing fee towards bonus and right issues. It is not very clear whether the fee paid by the assessee is for carrying on the merchant banking business. Therefore, this Tribunal is of the considered opinion that the matter needs to be reconsidered by the Assessing Officer and find out whether the listing fee is for carrying on merchant banking business by the assessee or it is for listing of the right issues for increasing the share capital. Accordingly, the orders of the lower authorities

are set side and the disallowance of ₹50,000/- towards listing fee is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter and find out whether the listing fee of ₹50,000/- is for the purpose of carrying on merchant banking business of the assessee or otherwise and thereafter decide the issue in accordance with law after considering the judgment of Madras High Court referred above, after giving a reasonable opportunity to the assessee.

7. The next issue arises for consideration is with regard to disallowance of ₹2,01,63,763/- towards pension and family pension paid directly to the retired employees.

8. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that this issue was considered by this Tribunal in the assessee's own case for the assessment years 2001-02, 2004-05 and 2006-07 in I.T.A. Nos.902, 903, 904 and 907/Mds/2010, etc. dated 17.01.2013. This Tribunal in fact referred back the matter to the file of the Assessing Officer for reconsideration. This Tribunal found that the provisions of Section 37(1) of the Income-tax Act, 1961 (in short 'the Act') was not considered by the lower authorities. Accordingly, the matter was remitted back for reconsideration. The

Ld.counsel submitted that the issue raised for the year under consideration was also similar, therefore, the matter may be remitted back to the file of the Assessing Officer.

9. We have heard Shri S. Sankaralingam, the Ld. Departmental Representative also. The Ld. D.R. very fairly submitted that this Tribunal in the assessee's own case, after considering the decision of Cochin Bench of this Tribunal in The Catholic Syrian Bank Ltd. v. Addl. CIT in I.T.A. No.10/Coch/2009 dated 11.02.2011 and 06.07.2011 remitted back the matter to the file of the Assessing Officer to consider the matter in the light of Section 37(1) of the Act.

10. We have considered the rival submissions on either side and perused the relevant material available on record. the assessee has paid directly to the pension fund of retired employees. The Assessing Officer disallowed the claim of the assessee on the ground that the payment of pension has to be routed through Group Insurance Scheme of LIC as provided in Rule 89 of Income-tax Rules, 1962. In fact, the Association of Public Sector Scheduled Banks approached CBDT in the year 1998 with the request to permit them to maintain their own fund for payment of pension. The request of the public sector scheduled banks was turned down by

the CBDT in August, 2003. Therefore, the CIT(Appeals) rejected the claim of the assessee. Now the assessee claims that the expenditure has to be allowed under Section 37(1) of the Act. In the earlier year, this Tribunal after considering the order of the Cochin Bench remitted back the issue to the file of the Assessing Officer for reconsideration. When the assessee has actually paid funds directly to the pension fund, this Tribunal is of the considered opinion that the claim of the assessee has to be examined under Section 37(1) of the Act as directed by the Tribunal in the earlier year. Accordingly, as directed by this Tribunal in the assessee's own case for assessment year 2001-02, 2004-05 and 2006-07, the claim of the assessee has to be re-examined under Section 37(1) of the Act. Accordingly, the orders of the lower authorities are set aside and the disallowance made by the Assessing Officer towards pension payment is remitted back to the file of the Assessing Officer. the Assessing Officer shall reconsider the issue afresh as directed by the Tribunal for assessment year 2001-02, 2004-05 and 2006-06 in the light of the provisions of Section 37(1) of the Act and thereafter decide the issue in accordance with law, after giving a reasonable opportunity to the assessee.

11. The next issue arises for consideration is disallowance of interest paid at the time of purchase of securities.

12. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that the Assessing Officer disallowed the claim of the assessee on the ground that securities are stock-in-trade by referring to the judgment of Madras High Court in Tamil Nadu Mercantile Bank Ltd. According to the Ld. counsel, the Assessing Officer initially disallowed ₹92,96,31,764/- in the order dated 27.03.2006. By way of rectification order, the Assessing Officer gave relief to the extent of ₹67,97,07,529/-. The issue arises for consideration before this Tribunal only to the balance amount of ₹24,99,24,235/-. According to the Ld. counsel, in the assessee's own case, the Madras High Court in T.C. No.2139 of 2008 by judgment dated 13.07.2009, found that such expenditure is revenue in nature. A copy of the judgment is available at page 24 of the paper-book.

13. On the contrary, Shri S. Sankaralingam, the Ld. Departmental Representative, submitted that the interest paid on purchase of securities is capital outlay. Therefore, the Assessing

Officer by placing reliance on the judgment of Apex Court in Vijaya Bank in 187 ITR 541, disallowed the claim of the assessee.

14. We have considered the rival submissions on either side and perused the relevant material available on record. The payment of interest for purchase of securities was subject matter of discussion by the Madras High Court in the assessee's own case. The Madras High Court found that the expenses incurred or interest paid on purchase of shares was only revenue expenditure and not capital expenditure. The Madras High Court placed its reliance on the judgment of Apex Court in United Commercial Bank v. CIT (1999) 240 ITR 355 and found that interest paid by the assessee will not be capital expenditure. In view of this judgment of Madras High Court, this Tribunal is of the considered opinion that both the authorities are not justified in disallowing the claim of the assessee. accordingly, the orders of the authorities below are set aside and disallowance made by the Assessing Officer as confirmed by the CIT(Appeals) is deleted.

15. The next issue arises for consideration is with regard to loss due to non-delivery of UTI Master Gain 92 and UTI Master Shares.

16. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that the loss suffered by the assessee due to non-deliver of UTI Master Gain 92. The loss was due to non-delivery. The assessee was not in a position to make name transfer in the books of UTI. Loss of stock in transit is a business loss. Therefore, it is an allowable expenditure. The Madras High Court in the assessee's own case allowed the claim of the assessee on identical circumstances. The Ld.counsel further submitted that the Revenue accepted all securities as stock-in-trade in the assessment year 2011-12, therefore, the loss has to be allowed as revenue expenditure.

17. On the contrary, Shri S. Sankaralingam, the Ld. Departmental Representative, submitted that the loss of stock in transit has to be treated as capital expenditure, therefore, the Assessing Officer has rightly disallowed the claim of the assessee.

18. We have considered the rival submissions on either side and perused the relevant material available on record. The loss occurred due to non delivery of UTI Master gain 92 bond. The loss of sale of securities was allowed as business loss in the assessee's own case by the Madras High Court in T.C. No.2139 of 2008. It is

not in dispute that the securities are classified as stock-in-trade. Therefore, the loss in transit has to be allowed as revenue loss. Therefore, this Tribunal is unable to uphold the order of the lower authority. Accordingly, the orders of the authorities below are set aside and the disallowance made by the Assessing Officer is deleted.

19. The next issue arises for consideration is fees paid by the assessee to the auditors and advocates.

20. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that the Assessing Officer disallowed the fees paid to auditors and advocates for non-production of vouchers. According to the Ld. counsel, the assessee-scheduled bank is having 214 Branches across the country. The statutory audits are conducted every year by well-known Chartered Accountants. The fees were actually paid. According to the Ld. counsel, the concurrent and revenue audit were also done by outside auditors. Some of the Branches which paid fees was shifted to other locations. Therefore, according to the Ld. counsel, the assessee-bank could not produce the vouchers for payment of fees. Even though 60% of vouchers were collected and produced before the Assessing Officer, the

remaining vouchers could not be produced. According to the Ld. counsel, after considering the volume of the business transaction of the assessee and number of Branches spread across the country, the claim of the assessee may be allowed.

21. On the contrary, Shri S. Sankaralingam, the Ld. Departmental Representative, submitted that for the purpose of allowing the claim of the assessee as expenditure, the assessee has to substantiate the payment made to the auditors. Merely because the assessee is having 214 Branches across the country and some of the Branches were shifted to other locations, that cannot be a reason to allow the claim of the assessee without verification. The Ld. D.R. very fairly submitted that if the payment of fees to the auditors and advocates are established by producing necessary material, then the Department may not have any hesitation in allowing the claim of the assessee.

22. We have considered the rival submissions on either side and perused the relevant material available on record. the assessee claims that payments were made to auditors and advocates towards professional fees. The assessee expressed its inability to produce all the vouchers on the ground that it has 214 Branches located at

various parts of the country and some of the Branches were shifted to other locations. This Tribunal is of the considered opinion that for the purpose of claiming expenditure, the assessee has to establish the payments of fees to the auditors and advocates before the Assessing Officer. Merely because the assessee entered into huge volume of transactions and having numerous Branches across the country, that cannot be a reason to allow the claim of the assessee when the payments cannot be substantiated by producing necessary material. Therefore, giving one more opportunity to the assessee for producing necessary material for payment of fees to auditors and advocates would not prejudice the interest of Revenue in any case. Accordingly, the orders of the authorities below are set aside and the disallowance made by the Assessing Officer towards payments made auditors and advocates is remitted back to the file of the Assessing Officer. The Assessing Officer shall also examine whether the fees paid to advocates are recovered from customers or not? The Assessing Officer shall re-examine the issue afresh on the basis of material that may be produced by the assessee and thereafter decide the same in accordance with law, after giving a reasonable opportunity to the assessee.

23. The next issue arises for consideration is addition on account of income received in advance.

24. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that the assessee is following mercantile system of accounting, therefore, the provisions of Section 5(1)(a) of the Act is not applicable to the assessee. According to the Ld. counsel, in certain types of bills purchased and discounted, the interest was received in advance. If the bill was realized before 31st March, the interest amount collected in advance will not be distributed. However, if the actual realization was subsequent to the account closing day, the interest received upto the period of closing date was offered for taxation. The interest related to the period beyond the closing day was debited from interest received account and interest received in advance account was credited. The credit balance in interest received in advance is a liability on 31st March. After 31st March, the balance income received in advance is transferred to income account. According to the Ld. counsel, the Assessing Officer in the original assessment order dated 27.03.2006 had made addition of ₹1,93,59,875/- and in the order dated 28.01.2009, made addition of ₹1,37,02,564/-. The total

addition made was of ₹3,30,62,439/-. Since the assessee was following mercantile system of accounting, according to the Ld. counsel, the interest received in advance was offered in the subsequent year for taxation. In case the addition is confirmed, the income offered by the assessee in the subsequent year has to be deleted.

25. On the contrary, Shri S. Sankaralingam, the Ld. Departmental Representative, submitted that the assessee received income in certain bills in advance. Referring to Section 5(1)(a) of the Act, the Ld. D.R. submitted that the total income of the assessee was inclusive of income from all source, which was received or is deemed to be received in India in such year by the assessee or on behalf of the assessee. In this case, the assessee in fact physically received the income during the year under consideration. Only by way of accounting entry, the assessee declared the same in the subsequent year. There was no liability for repayment of amount at any point of time. Therefore, according to the Ld. D.R., the advance received has to be treated as income of the assessee during the year under consideration.

26. We have considered the rival submissions on either side and perused the relevant material available on record. In certain types of bills purchased and discounted, the assessee in fact received interest in advance. Such a receipt of income/interest on purchase and discount may not be required to be repaid by the assessee at any point of time. In other words, there was no liability for the assessee for payment in the subsequent year or at any point of time. Therefore, as rightly submitted by the Ld. D.R., when the assessee has physically received the amount towards income in advance and there was no liability for repayment, this Tribunal is of the considered opinion that the same has to be treated as income of the assessee. The matter would stand differently in case there was liability for repayment of money received in advance. Since such a liability for repayment of money has not been established by the assessee before this Tribunal, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly, the same is confirmed. Since the amount received in advance is treated as income in the year in which it was received, the Assessing Officer shall exclude such income in case it was offered in the subsequent year as claimed by the assessee.

27. With the above observation, the orders of the lower authorities are confirmed.

28. The next issue arises for consideration is disallowance of unpaid expenses.

29. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that the unpaid expenses are ascertained liability for the services rendered and enjoyed by the assessee. According to the Ld. counsel, the building rent, electricity bills, telephone bills, courier and postage charges, audit fee are due for the month of March, in respect of services enjoyed by the assessee during the year under consideration. The liability to pay is also is also certain and crystalized. Since the assessee is following mercantile system of accounting, according to the Ld. counsel, the expenses relating to particular year, which was debited in the books, has to be allowed. Since the liability has incurred during the year under consideration, according to the Ld. counsel, the same has to be allowed during the year under consideration.

30. On the contrary, Shri S. Sankaralingam, the Ld. Departmental Representative, submitted that the assessee has

shown a sum of ₹1,85,49,609.63 under the head "Unpaid Expenses" where provisions made for expenses such as building rent, electricity, telephone, audit fee, postage charges, etc. The actual charges payable would be known on later date on receipt of bills. Therefore, according to the Ld. D.R., the estimation made by the assessee cannot be allowed during the year under consideration. According to the Ld. D.R., the unpaid expenses are only a provision and it is not accrued liability to the assessee, therefore, the same cannot be allowed as expenditure while computing the taxable income.

31. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the assessee was following mercantile system of accounting. Therefore, the accrued liability has to be allowed as expenditure while computing taxable income. The rent for the building, electricity bills, telephone bills, courier and postage charges, audit fee, etc. the services were rendered during the financial year under consideration. Probably, the assessee would not have paid the same during the year under consideration. However, as rightly submitted by the Ld.counsel for the assessee, there is accrued

liability for payment. Since there is a liability for the services enjoyed by the assessee during the year under consideration, the same has to be allowed as expenditure while computing taxable income irrespective of the fact that the payment is actually made or not. In other words, in the mercantile system of accounting, the liability for payment towards services enjoyed by the assessee during the year under consideration is an allowable expenditure. Therefore, both the authorities below are not justified in disallowing the claim of the assessee. Accordingly, the orders of the authorities below are set aside and the addition made by the Assessing Officer is deleted.

32. The next ground of appeal is regarding disallowance of ex-gratia payment.

33. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that the Assessing Officer disallowed a sum of ₹3,12,97,665/- towards ex-gratia amount paid to the employees of the bank. The Board of Directors of the assessee-bank, after analysing the performance of each and every employee, decided to grant incentive. The incentive paid was claimed as ex-gratia payment to the bank employees while computing taxable income.

The Assessing Officer disallowed the claim of the assessee on the ground that the incentive paid to the bank employees deemed to be distribution of profit to the employees. According to the Ld. counsel, in the assessee's own case, this Tribunal for the assessment year 2006-07, allowed the claim of the assessee in M.P. No.205/Mds/2013 dated 10.01.02014, a copy of which is available at page 281 of the paper-book. The Madras High Court in CIT v. Lakshmi Vilas Bank in Tax Case Appeal No.897 of 2013 by judgment dated 16.04.2014, a copy of which is available at page 284 of the paper-book, found that the ex-gratia payment has to be allowed as revenue expenditure. Therefore, according to the Ld. counsel, the CIT(Appeals) is not justified in confirming the disallowance made by the Assessing Officer.

34. On the contrary, Shri S. Sankaralingam, the Ld. Departmental Representative, submitted that the assessee, in fact, distributed profits to the employees, therefore, it is an application of profit, hence, it cannot be allowed as revenue expenditure.

35. We have considered the rival submissions on either side and perused the relevant material available on record. We have carefully gone through the order of this Tribunal in the assessee's

own case for assessment year 2006-07. This Tribunal held that ex-gratia amount paid to the employees amounts to allowable expenditure. In fact, this Tribunal placed its reliance on the judgment of Calcutta High Court in CIT v. National Engineering Industries Ltd. (1994) 208 ITR 1002.

36. We have also carefully gone through the judgment of Madras High Court in Lakshmi Vilas Bank (supra). The Madras High Court found that the ex-gratia payment made to the employees in the form of incentive is a business expenditure. Therefore, it has to be allowed under Section 37 of the Act. In view of this judgment of Madras High Court in Lakshmi Vilas Bank (supra), this Tribunal is of the considered opinion that the ex-gratia payment is in the nature of business expenditure. Therefore, it has to be allowed while computing taxable income. Accordingly, the orders of the lower authorities are set aside and the addition made by the Assessing Officer to the extent of ₹3,12,97,665/- towards ex-gratia payment made to the employees of the bank is deleted.

37. The next ground of appeal is disallowance of expenses for earning the exempted income.

38. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that the investment made in the shares are stock-in-trade of the assessee. Once, the assessee treated the investment in the bonds and shares as stock-in-trade, there cannot be any disallowance in respect of expenditure incurred by the assessee. According to the Ld. counsel, the Assessing Officer disallowed 10% of tax-free income. This Tribunal consistently disallowing 2% of the expenditure wherever expenditure was incurred for investment. In this case, it is nobody's case that the assessee treated shares and securities as investment. In fact, according to the Ld. counsel, the investment made by the assessee has to be classified as stock-in-trade, therefore, there cannot be any disallowance even at 2%.

39. On the contrary, Shri S. Sankaralingam, the Ld. Departmental Representative, submitted that the assessee earned tax-free income to the extent of ₹7,94,20,205/-. According to the Ld. D.R., Section 14A of the Act was introduced by Finance Act, 2002. It is not the case of the assessee that no expenditure was incurred. In the absence of any details of expenditure for making investment in stocks and securities, the Assessing Officer has rightly treated 10% of tax-free income as expenditure.

40. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the assessee is a scheduled bank engaged in the business of merchant banking. Therefore, investment made in shares and securities has to be classified as stock-in-trade. Once the investment was classified as stock-in-trade, this Tribunal is of the considered opinion that the expenditure incurred by the assessee has to be allowed while computing taxable income. The dividend income, which was exempted from taxation, was invested in the business of the assessee. Therefore, merely because the assessee has received dividend income incidentally in business activity that cannot be a reason to disallow any part of expenditure incurred by the assessee. Therefore, this Tribunal is unable to uphold the orders of the authorities below. Accordingly, the orders of the authorities below are set aside and the addition made by the Assessing Officer is deleted.

41. The next ground of appeal is with regard to advertisement and publicity.

42. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that the assessee has incurred an expenditure of ₹3,75,69,047/- towards advertisement and publicity. The assessee was able to produce vouchers to the extent of ₹2,45,39,333/-. In fact, the assessee-bank was incorporated in the year 1916. The assessee has now 214 Branches across the country apart from administrative and Divisional Office. The Assessing Officer disallowed the claim of the assessee for want of vouchers.

43. The Ld.counsel further submitted that due to shifting of Branches and voluminous vouchers, the same cannot be collected from various Branches. According to the Ld. counsel, it is common practice to exhibit banners in the places where more people would assemble during the festival time. By placing banners, the bank was able to exhibit and promote the schemes of financial products. Therefore, according to the Ld. counsel, the expenditure incurred by the assessee by exhibiting banners during festival season where large number of people would assemble, is a business expenditure, therefore, the Assessing Officer is not justified in disallowing the claim of the assessee.

44. On the contrary, Shri Sankaralingam, the Ld. Departmental Representative, submitted that merely because there was large voluminous transactions and vouchers, the assessee cannot claim any expenditure without producing vouchers for examination. The assessee may at its discretion display any number of banners at any number of places for promoting its business, however, there should be some evidence for the expenditure incurred. By considering the number of vouchers and volume of transaction, the expenditure claimed by the assessee cannot be allowed.

45. We have considered the rival submissions on either side and perused the relevant material available on record. In fact, the Revenue has no objection for allowing the claim of the assessee towards advertisement and publicity. However, the assessee has to establish the actual expenditure incurred for advertisement and publicity. As rightly submitted by the Ld. D.R., merely because there are volumes of vouchers and Branches are shifted from one place to another, that cannot be the reason to claim exemption without producing vouchers. When the assessee claims expenditure while computing taxable income, it is the responsibility of the assessee-bank, a public limited company in which public has

substantial interest, to produce necessary vouchers before the Assessing Officer for establishing the payment. If the payments are not established, this Tribunal is of the considered opinion that the assessee cannot claim the same as expenditure incurred for the purpose of business. Therefore, the actual payment needs to be verified. Therefore, one more opportunity needs to be given to the assessee for producing necessary vouchers before the Assessing Officer. Accordingly, the orders of the authorities below are set aside and the addition made by the Assessing Officer towards publicity and advertisement expenses are remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh in the light of the material that may be produced by the assessee and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

46. The next issue arises for consideration is depreciation on leased assets.

47. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that the assessee claimed depreciation on 18 assets leased to various persons. In fact, the Assessing Officer allowed depreciation on 16 assets. The dispute was only with regard to two

assets. According to the Ld. counsel, for the assessment year 1999-2000, this Tribunal in the assessee's own case in I.T.A. No.902/Mds/2010, allowed the depreciation.

48. On the contrary, Shri S. Sankaralingam, the Ld. Departmental Representative, submitted that the assessee claimed before the Assessing Officer that depreciation has to be allowed in respect of 18 assets said to be leased out. Even though the Assessing Officer disallowed the claim of the assessee by an order under Section 154 dated 12.06.2013, the CIT(Appeals) allowed depreciation on the leased assets in respect of 16 items to the extent of ₹18,26,230/-. However, in respect of two items, namely, the assets leased to M/s Rajender Steels and M/s Aruna Textiles and Exports Ltd., the depreciation was disallowed. According to the Ld. D.R., it is for the assessee to establish that the assets were owned by the assessee and the same were leased out in the course of its business activity.

49. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, 18 assets were said to be leased out. Out of which, there was no dispute with respect to 16 assets. The claim of depreciation now

only relates to two disputed assets. It is not known the nature of assets leased out by the assessee. It is also not known when the assets were purchased by the assessee. For the purpose of claiming depreciation, first the assessee has to establish that it owned the assets and used in the business of leasing in the course of its business activity. The lease agreement was also not produced by the assessee before this Tribunal. Therefore, this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer. Accordingly, the orders of the authorities below are set aside and the issue regarding disputed two items of asset is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh and bring on record when the assets were purchased by the assessee and whether it was leased out in the course of business activity and thereafter decide the same in accordance with law, after giving a reasonable opportunity to the assessee.

50. The next ground of appeal is with regard to disallowance of tax-free income under Section 80M of the Act.

51. We have heard Ld.counsel for the assessee and Ld. Departmental Representative. It is not in dispute that the

investment made by the assessee in shares and securities has to be classified as stock-in-trade. Once the investment was classified as stock-in-trade, all the expenditure incurred by the assessee has to be allowed without any restriction. Therefore, this Tribunal is unable to uphold the orders of the authorities below. Accordingly, the orders of both the authorities below are set aside and the disallowance made by the Assessing Officer is deleted.

52. The next ground of appeal is disallowance of ₹27,11,945/- towards other expenses.

53. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that some expenses were incurred by the assessee at various Branches. The vouchers were spread across all the Branches and also Administrative Office and Divisional Offices. In fact, the assessee requested for some time for production of vouchers before the Assessing Officer. In the meantime, the addition was made. According to the Ld. counsel, since the vouchers were spread across various Branches of the assessee, the same has to be collected and produced before the Assessing Officer. The bank is having various statutory controls, therefore, according to the Ld. counsel, the expenditure incurred by the

assessee are genuine expenditure, hence, the Assessing Officer is not justified in disallowing the claim of the assessee.

54. On the contrary, Shri S. Sankaralingam, the Ld. Departmental Representative, submitted that in fact, the Assessing Officer requested the assessee to produce all the details and vouchers and supporting material to claim the expenditure. Since no such materials were filed, according to the Ld. D.R., the Assessing Officer disallowed the claim of the assessee and the CIT(Appeals) has rightly confirmed the addition.

55. We have considered the rival submissions on either side and perused the relevant material available on record. The expenses were said to be incurred by the assessee at various Branches. Irrespective of the nature of expenditure, when the assessee claims such expenditure as deduction while computing taxable income, it is for the assessee to produce some material to substantiate the expenditure and the purpose for which it was incurred. In the absence of any material, the assessee cannot blame the Assessing Officer for disallowance. Since the assessee claims that the materials were spread across various Branches, this Tribunal is of the considered opinion that giving one more opportunity to produce

necessary material before the Assessing Officer would not prejudice any cause to the interests of the revenue. Accordingly, the orders of the authorities below are set aside and the disallowance of ₹27,11,945/- is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the issue afresh after considering the material that may be produced by the assessee and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

56. The next issue arises for consideration is disallowance of ₹5,49,911/- towards Pooja expenses.

57. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that the Assessing Officer disallowed ₹5,49,911/- as inadmissible deduction. This Tribunal in the assessee's own case allowed the Pooja expenses as revenue expenditure by order dated 17.01.2013. The Ld.counsel further submitted that the Madras High Court in CIT v. Aruna Sugars Ltd. (132 ITR 718) has also allowed the claim of the assessee.

58. On the contrary, Shri S. Sankaralingam, the Ld. Departmental Representative, submitted that if the assessee

incurred the expenditure in the course of its business activity, it has to be allowed as deduction while computing taxable income. But, the assessee could not produce any material for incurring the expenditure so as to claim the same. A mere claim that the assessee has incurred ₹5,49,911/- as Pooja expenses cannot be allowed unless some material is produced to substantiate the expenditure incurred by the assessee. The Ld. D.R. further submitted that he would not have any objection if the matter is remitted back to the file of the Assessing Officer in case the assessee could produce some material before the Assessing Officer.

59. We have considered the rival submissions on either side and perused the relevant material available on record. As rightly submitted by the Ld. D.R., if the assessee incurred expenditure for Pooja in the course of its normal business activity, the same has to be allowed while computing taxable income. However, the assessee has to produce some material to substantiate the expenditure incurred. The Assessing Officer disallowed the claim of the assessee since no material was produced before him. Therefore, this Tribunal is of the considered opinion that giving one

more opportunity to produce necessary material before the Assessing Officer would not prejudice the interests of the revenue. Accordingly, the orders of both the authorities below are set aside and the disallowance of Pooja expenditure to the extent of ₹5,49,911/- is remitted back to the file of the Assessing Officer. the Assessing Officer shall re-examine the matter afresh in the light of the material that may be produced by the assessee and thereafter decide the same afresh in accordance with law, after giving a reasonable opportunity to the assessee.

60. The next issue arises for consideration is disallowance of ₹4,45,425/- towards presents / gifts.

61. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that the assessee claimed miscellaneous expenditure towards presents. However, the same was disallowed by the Assessing Officer. According to the Ld. counsel, this Tribunal in the assessee's own case allowed similar expenditure in I.T.A. No.930/Mds/2011 for assessment year 2004-05 by an order dated 17.01.2013.

62. On the contrary, Shri S. Sankaralingam, the Ld. Departmental Representative, submitted that the nature of presents/ gifts is not known. It is also not known who were the recipients of presents and gifts. In the absence of any material, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the addition. According to the Ld. D.R., the assessee has to establish that certain expenditure was incurred for offering gifts in the course of its business activity. In the absence of any material, the claim of the assessee cannot be allowed.

63. We have considered the rival submissions on either side and perused the relevant material available on record. According to the Ld. counsel for the assessee, the claim of the assessee was allowed for assessment year 2004-05. These are all factual aspects which have to be examined by bringing material on record for each year. Merely because the claim of the assessee was allowed for assessment year 2004-05 that does not mean that each and every year such claim has to be allowed without verification. The Assessing Officer has to satisfy himself that assessee, in fact, incurred the expenditure in the course of its business activity. Therefore, this Tribunal is of the considered opinion that the

assessee has to produce details of presents / gifts and the purpose for which it was given and the details of recipients. In the absence of such details, this Tribunal is of the considered opinion that the matter needs to re-examined by the Assessing Officer. In other words, giving one more opportunity to the assessee to produce necessary material would not cause any prejudice to the interests of Revenue. Accordingly, the orders of the authorities below are set aside and the disallowance made by the Assessing Officer to the extent of ₹4,45,425/- is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the material that may be filed by the assessee and decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

64. Now coming to Department's appeal in I.T.A. No.1496/Mds/2013, the first issue arises for consideration is rural debt written off by the assessee and claimed deduction under Section 36(1)(vii) of the Act.

65. Shri Sankaralingam, the Ld. Departmental Representative, submitted that the assessee claimed ₹1,34,68,784/- as bad debt written off under Section 36(1)(vii) of the Act. The accounts written

off as bad debt and claimed deduction under Section 36(1)(vii) of the Act do not find place in the list of accounts for which the provision has been made under Section 36(1)(viia) of the Act. According to the Ld. D.R., the assessee made claim for deduction both under Section 36(1)(vii) and 36(1)(viia) of the Act. However, the bank cannot claim deduction for a particular debt under both the sections. The Ld. D.R. further submitted that the assessee has also claimed deduction under Section 36(1)(viia) of the Act to the extent of ₹8,94,11,100/-. Referring to Rule 6ABA of Income-tax Rules, 1962, the Ld. D.R. submitted that the amounts of advances made by each rural Branch as outstanding at the end of the last day of each month comprised in the previous year shall be aggregated separately. The Revenue is placing much importance to the word “advances made”. However, the assessee is taking advantage of the word “as outstanding”. According to the Ld. D.R., the amounts of advances made shall be aggregated separately at the last day of each month comprised in the previous year. Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in allowing the claim of the assessee.

66. On the contrary, Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that Rule 6ABA makes it very clear that the amounts of advances made by each rural Branch as outstanding at the end of the last day of each month. Therefore, the Revenue cannot ignore the word "as outstanding" at the end of the last day of each month comprised in the previous year. The CIT(Appeals) after taking into consideration of the provisions of Section 36(1)(vii) and 36(1)(viia) of the Act, found that they are distinct and independent for claim of deduction. The Ld.counsel further submitted that the bad debt actually written off in the books of account represents only the debt arising out of rural advance, therefore, the CIT(Appeals) has rightly allowed the claim of the assessee under Section 36(1)(vii) and 36(1)(viia) of the Act by placing reliance on the judgment of Apex Court in Catholic Syrian Bank Ltd. v. CIT (2012) 343 ITR 270.

67. We have considered the rival submissions on either side and perused the relevant material available on record. The Ld. Departmental Representative is placing his reliance on the word "advances made" in Rule 6ABA of Income-tax Rules, 1962. However, the Ld.counsel for the assessee is placing reliance on the

word "as outstanding" at the end of the last day of each month. This Tribunal is of the considered opinion that Rule 6ABA has to be read harmoniously by taking into consideration the entire language of the rule. Therefore, when the amounts of advances were made by each rural Branch and it was outstanding at the end of last day of each month has to be considered separately. This was actually taken by the CIT(Appeals). As rightly observed by the CIT(Appeals), provisions of Section 36(1)(vii) and 36(1)(viia) of the Act are distinct and independent for claim of deduction and both of them operate in different field. The bad debt written off for which provision was made under 36(1)(vii) of the Act will be covered under main part of Section 36(1)(vii) of the Act. First proviso will operate in cases under clause 36(1)(viia) of the Act to limit the extent of different bad debts or part thereof written off in the previous year and carried forward balance in the provision of bad and doubtful debts made under clause 36(1)(viia) of the Act. Therefore, the proviso, as rightly observed by the CIT(Appeals), would not permit double deduction with reference to rural loans.

68. The CIT(Appeals) by placing reliance on the judgment of Apex Court in Catholic Syrian Bank Ltd. (supra), found that

scheduled banks continue to get the benefit of write off of irrecoverable debts under Section 36(1)(vii) of the Act in order to get benefit of deduction for the provision for bad and doubtful debts under Section 36(1)(viia) of the Act. This Tribunal is of the considered opinion that the CIT(Appeals) has rightly allowed the claim of the assessee by placing reliance on the judgment of Apex Court. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

69. The next issue arises for consideration is investment in HTM category of securities as investment of capital nature.

70. Shri S. Sankaralingam, the Ld. Departmental Representative, submitted that the bank has to maintain the portfolio of securities in three categories, viz. (i) Held to Maturity (HTM); (ii) Available for Sale (AFS); and (iii) Held for Trading (HFT). Therefore, the investment in HTM category of securities has to be treated as investment which is of capital nature. The Ld. D.R. very fairly submitted that the Madras High Court found that investment in securities and shares has to be treated as stock-in-trade, therefore, this issue is covered in favour of assessee.

71. We have heard Shri N. Quadir Hoseyn, the Ld.counsel for the assessee also. According to him, the Madras High Court found that the investment made by the assessee in shares and securities has to be classified as stock-in-trade. The CBDT also instructed its officers to treat all the investments in shares and securities as stock-in-trade.

72. We have considered the submissions on either side and perused the relevant material available on record. There are three categories of securities. Irrespective of nature of securities, as rightly submitted by the Ld. D.R., the Madras High Court held that it has to be classified as stock-in-trade. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

73. The next issue arises for consideration is brokerage paid in respect of HFT and AFS categories of securities.

74. Shri S. Sankaralingam, the Ld. Departmental Representative, very fairly submitted that the brokerage paid for Held for Trading (HFT) and Available for Sale (AFS) has to be allowed in view of judgment of Madras High Court.

75. We have heard Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, also. According to the Ld. counsel, brokerage was paid in the course of acquiring the securities. Irrespective of category of securities, according to the Ld. counsel, the same has to be classified as stock-in-trade, therefore, the expenditure has to be allowed.

76. We have considered the rival submissions on either side and perused the relevant material available on record. As rightly submitted by the Ld. D.R., the issue is covered in favour of the assessee by the judgment of Madras High Court. The brokerage paid by the assessee irrespective of categories of securities has to be allowed as expenditure. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

77. The next issue arises for consideration is unclaimed balances for more than three years.

78. Shri S. Sankaralingam, the Ld. Departmental Representative, submitted that there are unclaimed amounts with the assessee-bank continuously for more than three years. The Revenue has

taken the same as income as per the provisions of Income-tax Act. However, the assessee claims that it cannot be treated as income under the provisions of RBI Act. According to the Ld. D.R., Income-tax Act, being a special enactment will prevail over the provisions of RBI Act, therefore, it has to be treated as income of the assessee.

79. On the contrary, Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that provisions of Section 43D of the Act provides for preparation of statement as per provisions of RBI Act, hence, the assessee prepares the statement as per provisions of RBI Act as provided in Section 43D of the Act. The statement prepared by the assessee in accordance with provisions of Section 43D of the Act, hence the same has to be allowed.

80. We have considered the rival submissions on either side and perused the relevant material available on record. We have also carefully gone through the provisions of Section 43D of the Act. Section 43D of the Act provides for preparation of bad or doubtful debt as per the guidelines issued by Reserve Bank of India. It is not in dispute that bad and doubtful debts are classified as per the guidelines issued by Reserve Bank of India. Since Section 43D of the Act provides for application of guidelines issued by Reserve

Bank of India, this Tribunal is of the considered opinion that the assessee cannot be found fault for preparing the bad and doubtful debts as per the guidelines issued by the Reserve Bank of India. The matter would stand differently in case Section 43D of the Act does not provide for such direction as per Reserve Bank of India guidelines. Since the Income-tax Act, more particularly Section 43D, specifies provision for preparation of bad and doubtful debts as per guidelines issued by Reserve Bank of India, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

81. The next issue arises for consideration is addition made by the Assessing Officer towards office building.

82. Shri S. Sankaralingam, the Ld. Departmental Representative, submitted that the CIT(Appeals) deleted the addition made to the office building on the basis of additional evidence filed by the assessee without calling for remand report. Therefore, according to the Ld. D.R., the matter may be remitted back to the file of the Assessing Officer for reconsideration.

83. On the contrary, Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that there is no addition to the building or construction of any new building. It is an expenditure incurred during

the course of business activity in respect of the building, therefore, it is a revenue expenditure.

84. We have considered the rival submissions on either side and perused the relevant material available on record. The ground of appeal is with reference to addition made to office building. Now, the Ld.counsel for the assessee claims that there was no construction of any new building. Therefore, the exact nature of expenditure has to be verified. Moreover, the CIT(Appeals) allowed the claim of the assessee without affording any opportunity to the Assessing Officer. Therefore, the orders of the authorities below are set aside and the addition made by the Assessing Officer is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine and bring on record the nature of expenditure and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

85. Now let us come to the assessee's appeal for assessment year 2005-06.

86. The first issue arises for consideration is is non-issue of notice under Section 143(2) of the Act.

87. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that the assessee filed return of income on 05.09.2009. The time limit expired for issue of notice under Section 143(2) of the Act on 30.03.2010. In fact, the notice was issued only on 13.10.2010 after expiry of time limit provided under Section 142 of the Act. Therefore, according to the Ld. counsel, the consequential order passed by the Assessing Officer is not valid. On a query from the Bench, when the assessee appeared before the Assessing Officer and participated in the assessment proceedings, can the assessee now raise such a kind of claim before this Tribunal in view of Section 292BB of the Act? The Ld.counsel submitted that he can very well raise the claim before this Tribunal in view of judgment of Madras High Court in CIT v. Gitsons Engineering Co. (2015) 370 ITR 87. Therefore, according to the Ld. counsel, the entire addition made by the Assessing Officer cannot stand in the eye of law.

88. On the contrary, Shri S. Sankaralingam, the Ld. Departmental Representative, submitted that no doubt, notice under Section 143(2) of the Act was not issued within the time frame. However, the assessee has participated without any objection. Moreover, this ground was not raised before the Assessing Officer

or CIT(Appeals) and raised first time before this Tribunal. Therefore, in view of Section 292BB of the Act, the assessee cannot raise this issue before this Tribunal. The Ld. D.R. further submitted that the Madras High Court even though framed a question of law, there was no discussion in the order about Section 292BB of the Act. Therefore, according to the Ld. D.R., the judgment of Madras High Court in Gitsons Engineering Co. (supra) is not applicable to the facts of the case.

89. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that notice under Section 143(2) of the Act was not issued within the time frame. The Madras High Court found that issue of notice under Section 143(2) of the Act within the time limit prescribed is mandatory and it is not a procedural requirement. We have also carefully gone through the provisions of Section 292BB of the Act. A question was framed by the Madras High Court in Gitsons Engineering Co. (supra). The Madras High Court found that a non-service of notice under Section 143(2) of the Act was not an issue before the Assessing Officer. The issue was raised before the Tribunal for the first time. The Madras High Court found that the

legal plea raised by the assessee goes into root of the matter, therefore, the assessee is entitled to raise this issue before the Tribunal. In view of this judgment of Madras High Court, this Tribunal is of the considered opinion that even though non-issue of notice under Section 143(2) of the Act was not raised before the Assessing Officer or CIT(Appeals), this being a legal issue can be raised before this Tribunal. Therefore, by respectfully following the judgment of Madras High Court, this Tribunal is of the considered opinion that the consequential order passed by the Assessing Officer cannot stand in the eye of law. Accordingly, the orders of the authorities below are set aside and the addition made by the Assessing Officer is deleted.

90. In view of above finding, it may not be necessary to adjudicate the appeal of the Revenue in I.T.A. No.1527/Mds/2013.

91. In the result, I.T.A. Nos.1340 & 1496Mds/2013 are partly allowed for statistical purposes. I.T.A. No.1341/Mds/2013 is allowed and I.T.A. No.1527/Mds/2013 is dismissed.

Order pronounced on 27th April, 2017 at Chennai.

sd/-	sd/-
(अब्राहम पी.जॉर्ज)	(एन.आर.एस. गणेशन)
(Abraham P. George)	(N.R.S. Ganesan)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 27th April, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती /Assessee
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT,
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.