

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH
MUMBAI**

**BEFORE: SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.3779/Mum/2012
(Assessment Year :2003-04)**

&

**ITA No.3780/Mum/2012
(Assessment Year :2004-05)**

State Bank of India Financial Reporting & Taxation Dept., 3 rd Floor, Corporate Centre Madam Cama Road Nariman Point Mumbai – 400 021	Vs.	The Asst. Commissioner of Income Tax Circle- 2(2) Mumbai
PAN/GIR No.AAACS8577K		
(Appellant)	..	(Respondent)

**ITA No.4097/Mum/2012
(Assessment Year :2003-04)**

&

**ITA No.4098/Mum/2012
(Assessment Year :2004-05)**

The Asst. Commissioner of Income Tax Circle- 2(2) Mumbai	Vs.	State Bank of India Financial Reporting & Taxation Dept., 3 rd Floor, Corporate Centre Madam Cama Road Nariman Point Mumbai – 400 021
PAN/GIR No.AAACS8577K		
(Appellant)	..	(Respondent)

Assessee by	Shri Girish Dave, Advocate
Revenue by	Smt Somogyan Pal, CIT DR
Date of Hearing	27/09/2021
Date of Pronouncement	30/09/2021

आदेश / ORDER

PER M. BALAGANESH (A.M):

These cross appeals in ITA Nos. 3779/Mum/2012, 3780/Mum/2012, 4097/Mum/2012 & 4098/Mum/2012 for A.Y.2003-04 & 2004-05 respectively arise out of the order by the Id. Commissioner of Income Tax (Appeals)-5, Mumbai in appeal No.CIT(A)-5/ACIT-2(2)/IT-55/2009-10 & CIT(A)-5/ACIT-2(2)/IT-90/2009-10 dated 01/03/2012 & 20/03/2012 respectively (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/11/2015 & 27/03/2006 respectively by the Id. Asst. Commissioner of Income Tax, Circle 2(2), Mumbai (hereinafter referred to as Id. AO).

ITA No.3779/Mum/2012 (A.Y.2003-04) Assessee Appeal

2. The ground No.1 raised by the assessee is with regard to addition made on account of deferred payment guarantee commission.

2.1. We have heard rival submissions and perused the materials available on record. Both the parties mutually agreed that this issue is already covered by the order of this Tribunal in assessee's own case for

A.Yrs. 2001-02 and 2002-03 vide order dated 12/07/2021. The relevant operative portion of the said order is reproduced hereunder:-

“7. We have heard both the parties and perused the material on record including the case laws relied upon by the parties, The learned Sr. Counsel for the assessee submitted that the Assessing Officer has given effect to the order passed by the Tribunal and has allowed the deduction for the deferred payment guarantee commission of the assessment year 1984- 85 to 1989-90 and 1996-97. However, both the learned Counsels for the parties conceded that that identical issue raised in this ground by the assessee is now settled in favour of the assessee and against the Revenue by the decisions of the Tribunal rendered in assessee's own case in as 2000-01, 1984-85, 1996-97, and 1999-2000. Consistent with the view taken therein, we set aside the impugned order passed by the learned CIT(A) by allowing the ground raised by the assessee. The learned Sr. Counsel for the assessee also brought to our notice that the Assessing Officer has given effect to the order of the Tribunal and has allowed the deduction for deferred payment guarantee commission for the assessment year 1984-85 to 1989-90 and 1996-97. Consequently, the ground raised by the assessee is decided in favour of the assessee and against the Revenue. Ground no.2, is allowed.”

2.2. Respectfully following the same, the ground No.1 raised by the assessee is allowed.

3. The ground No.2 raised by the assessee is with regard to disallowance of depreciation on securities.

3.1. We have heard rival submissions and perused the materials available on record. Both the parties mutually agreed that this issue is already covered against the assessee by the order of this Tribunal in assessee's own case for A.Y.2000-01 vide order dated 06/03/2020 wherein it was held as under:-

“7. Under this issue the assessee has challenged the disallowance of depreciation on matured investments in sum of Rs.15,13,81,119/-. At the very outset, the Ld. Representative of the assessee has argued that this issue has been covered against the assessee in the assessee's own case bearing ITA. No. 4736/M/2010 & 4598/M/2010 dated 31.01.2018 for the A.Y. 1999-2000. The relevant finding has been given in para no. 8 to 10 which is hereby reproduced as under:-

"8. We have considered the contention of the parties and have gone through the orders of authorities below. We have noted that similar ground of appeal has been dismissed by the Tribunal in assessee's own case, with the following order: 38. Additional Ground No. 2 is regarding depreciation on matured securities. The assessee has claimed a sum of Rs. 2,23,86,418/- towards depreciation of investments. The AO disallowed the claim of the assessee and the CIT(A) has confirmed the action of the AO. We have heard the Ld. AR as well as Ld. DR and considered the relevant material on record. The CIT(A) has decided the issue in para 9 as under: "9. The ninth effective ground of appeal is against the disallowance of Rs.2,23,86,418/- being the provision for diminution in the value of securities which had matured and become due for redemption during the year but were not redeemed. It was contended before the A.O. that in some cases, the companies or the State Governments who had issued the relevant securities were not able to pay the amount due on redemption. The appellant treats these securities as non-performing assets and a provision is made at a certain percentage for diminution in their value as in the case of other non-performing assets. There may be some delay on the part of the companies or the State Governments in paying the redemption amount. But, whenever the payment would be made it cannot be expected to be less than the face value. On the date of maturity, the whole of the amount of redemption money becomes due under the mercantile system of accounting followed by the appellant unless a portion of this amount is written off as bad debt. It is a real income and hence has to be taxed as such under the mercantile system followed by the appellant. Reliance in this regard is placed on State Bank of Travancore vs. CIT 158 ITR 102, 155 (SC) which was followed in Western India Oil Distributing Co. Ltd. Vs. CIT 206 ITR 359 (Bom). It was held in this decision that the concept of real income should not be so read as to defeat the provisions of the Act. Extension of the concept of real income to a field so as to negate accrual after the amount had become receivable is contrary to the postulates of the Act, the Supreme Court held (p. 146 of 158 ITR). Moreover, as held in the case of Navin R. Karnani Karnani vs. CIT 185 ITR 408 (Bom), it was not possible to waive any amount of income which had accrued under the mercantile system of accounting on the ground of diminished hope of recovery. Furthermore, any liability de futuro is not an ascertained liability in praesenti and cannot be allowed as deduction under the Income-tax Act as held in the case of Indian Molasses Co. Pvt. Ltd. vs. CIT 37 ITR 66 (SC) and Standard Mills Co. Ltd. Vs. CIT 229 ITR 366(Bom) 366(Bom). Hence, no such ad hoc deduction could be allowed against the amount receivable on redemption of securities which had matured and become due for payment before the close of the accounting year. This ground therefore fails.

" 39. The findings of the CIT(A) is based the on the various decisions of the Hon'ble Supreme Court as well Jurisdiction High Court. No contrary decisions has been brought before us accordingly we do not find any error or illegality in the impugned order of CIT(A) qua this issue. The same is upheld. 9. Again in appeal for AY 1997-98 & 1998-99, the

Tribunal by following the decision of AY 1996-97 dismissed the identical ground of appeal by passing the following order: 11.Next additional ground pertains to disallowance of depreciation on matured investments Rs.18,35,53,508/-.The AR fairly conceded that the issue is covered against the assessee by the decision of the Tribunal in its own case for assessment year 1996-97 (para 38 & 39) in ITA No.5470/M/2002 which reads as under :- “38. Additional Ground No. 4 is regarding depreciation on matured securities. The assessee has claimed a sum of Rs. 2,23,86,418/- towards depreciation of investments. The AO disallowed the claim of the assessee and the CIT(A) has confirmed the action of the AO. We have heard the Ld. AR as well as Ld. DR and ITA No. 4736 & 4598/M/2010- State Bank of India 10 considered the relevant material on record. The CIT(A) has decided the issue in para 9 as under:

“9.The ninth effective ground of appeal is against the disallowance of Rs.2,23,86,418/- being the provision for diminution in the value of securities which had matured and become due for redemption during the year but were not redeemed. It was contended before the A.O. that in some cases, the companies or the State Governments who had issued the relevant securities were not able to pay the amount due on redemption. The appellant treats these securities as nonperforming assets and a provision is made at a certain percentage for diminution in their value as in the case of other non-performing assets. There may be some delay on the part of the companies or the State Governments in paying the redemption amount. But, whenever the payment would be made it cannot be expected to be less than the face value. On the date of maturity, the whole of the amount of redemption money becomes due under the mercantile system of accounting followed by the appellant unless a portion of this amount is written off as bad debt. It is a real income and hence has to be taxed as such under the mercantile system followed by the appellant. Reliance in this regard is placed on State Bank of Travancore vs. CIT 158 ITR 102, 155 (SC) which was Travancore vs. CIT 158 ITR 102, 155 (SC) followed in Western India Oil Distributing Co. Ltd. Vs. CIT 206 ITR 359 (Bom). ITR 359 (Bom). It was held in this decision that the concept of real income should not be so read as to defeat the provisions of the Act. Extension of the concept of real income to a field so as to negate accrual after the amount had become receivable is contrary to the postulates of the Act, the Supreme Court held (p. 146 of 158 ITR). Moreover, as held in the case of Navin R. avin R. Karnani vs. CIT 185 ITR 408 (Bom) Karnani vs. CIT 185 ITR 408 (Bom) ani vs. CIT 185 ITR 408 (Bom), it was not possible to waive any amount of income which had accrued under the mercantile system of accounting on the ground of diminished hope of recovery. Furthermore, any liability de futuro is not an ascertained liability in praesenti and cannot be allowed as deduction under the Income-tax Act as held in the case of Indian Molasses Co. Pvt. Molasses Co. Pvt.Ltd. vs. CIT 37 ITR 66 (SC) Ltd. vs. CIT 37 ITR 66 (SC) and Standard Mills Ltd. vs. CIT 37 ITR 66 (SC) Standard Mills Co. Ltd. Vs.CIT 229 ITR 366(Bom Co. Ltd. Vs.CIT 229 ITR 366(Bom) CIT 229 ITR 366(Bom). Hence, no such ad hoc deduction could be allowed against the amount receivable on redemption of

securities which had matured and become due for payment before the close of the accounting year. This ground therefore fails.”

39. The findings of the CIT(A) is based on the various decisions of the Hon'ble Supreme Court as well as Jurisdiction High Court. No contrary decisions have been brought before us accordingly we do not find any error or illegality in the impugned order of CIT(A) qua this issue. The same is upheld.” Respectfully following the above additional ground No.4 is decided against the assessee.

10. Thus, respectfully following the decision of Tribunal in assessee's own case for AY 1996-97, 1997-98 & 1998-99 in ITAs No. 5470/Mum/2002 and ITA No. 3823-3824/Mum/2002, this ground of appeal is dismissed.”

8. On appraisal of the above mentioned finding, we find that this issue has already been decided against the assessee by Hon'ble ITAT in the assessee's own case for the A.Y. 1996-97, 1997-98 & 1998-99 bearing ITA.No.5470/M/2002, 3823 & 3824/M/2002. Nothing came into notice that the finding has been changed or varied at this stage. Therefore, by reliance upon the decision of the Hon'ble ITAT in the assessee's own case for the A.Y. 1999-2000 (supra). We decide this issue in favour of the revenue against the assessee.

3.2. Respectfully following the same, the ground No.2 raised by the assessee is dismissed.

4. The ground No.3 raised by the assessee is with regard to disallowance of payment made in respect of scientific research.

4.1. We have heard rival submissions and perused the materials available on record. Both the parties mutually agreed that this issue is already covered by the order of this Tribunal in assessee's own case for A.Yrs. 2001-02 and 2002-03 vide order dated 12/07/2021. The relevant operative portion of the said order is reproduced hereunder:-

“10. Ground no.4, relates to disallowance of ₹ 3,36,420 in respect of payments for scientific research.

11. The learned Sr. Counsel for the assessee submitted before us that this issue is covered by the decision of the Tribunal in assessee's own case for the assessment year 2000-01, 1997-98, 1998-99, 1999-2000 wherein this issue has been decided by the Tribunal against the assessee and in favour of the Revenue. However, he

pointed out that during the year under consideration the payment for scientific research was made out of separate funds created out of taxed profits in each of the earlier years. The amount set apart for the funds has not been claimed as a deduction in the earlier years. He submitted that the amount has been spent by the Bank in the ordinary course of business and hence, is allowable in terms of section 37(1) of the Act.

12. The learned Departmental Representative did not object to the submissions of the learned Sr. Counsel for the assessee.

13. Considered the submissions of the parties and perused the material on record including the case laws relied upon by the parties. Both the parties agreed before us that identical issue in respect of disallowance on account payments for scientific research is decided against the assessee and in favour of the Revenue by the decisions of the Tribunal rendered in assessee's own case in assessment year 2000-01, 1997-98, 1998-99 and 1999-2000. Consistent with the view taken therein, we uphold the order of the learned CIT(A) by dismissing the ground raised by the assessee. Ground no.4, is dismissed."

4.2. Respectfully following the same, the ground No.3 raised by the assessee is dismissed.

5. The ground Nos.4.1 to 4.4 raised by the assessee are with regard to disallowance of expenses u/s.14A of the Act r.w.r. 8D of the Rules.

5.1. We have heard rival submissions and perused the materials available on record. We find that assessee had earned exempt income during the year as under:-

(i) Interest on tax-free bonds u/s.10(15)(iv)(h)	Rs.24,18,93,310/-
ii) Interest on Foreign Currency Loans approved by Central Govt. u/s.10(15)(iv)	Rs.238,40,57,733/-
iii) Interest on long term finance to infrastructure u/s.10(23G)	Rs.134,32,03,850/-
Total	Rs.396,91,54,893/-

5.2. The Id. AO made disallowance of expenses u/s.14A of the Act in the sum of Rs.307,81,30,141/- on proportionate basis as under:-

Particulars	Percentage treated as expenses by Id. AO	Expenses attributable for earning income
Interest on foreign currency loans approved by Central Government	80.81%	192,65,57,054/-
Interest on tax free bonds	72.65%	17,57,35,490/-
Interest on long term loans to infrastructure sector	72.65%	97,58,37,597/-
Total		307,81,30,141/-

5.3. The Id. CIT(A) restricted the disallowance of expenses to Rs.118,32,33,713/- in his order.

5.4. We find that computation mechanism provided in Rule 8D which was introduced from 24/03/2008 could be made applicable only from A.Y.2008-09 and hence, the same cannot be applied for earlier years prior to A.Y.2008-09. The Id. AR fairly submitted that in order to maintain consistent stand, this Tribunal in earlier years in assessee's own case had disallowed 1% of exempt income u/s.14A of the Act as expenses attributable for earning the exempt income. The Id. DR fairly agreed that the said disallowance to be made. Accordingly, we direct the Id. AO to disallow only 1% of exempt income u/s.14A of the Act which would be in line with disallowance made in earlier years. Accordingly, the ground Nos. 4.1 to 4.4 raised by the assessee are partly allowed.

6. The ground Nos. 5.1 to 5.4 raised by the assessee are with regard to reduction in the claim of deduction made u/s.80M of the Act.

6.1. We have heard rival submissions and perused the materials available on record. The assessee has received dividend of Rs.194,09,17,456/-. The assessee had distributed dividend of Rs.447,35,40,463/-. The assessee had claimed deduction u/s.80M of the Act to the tune of Rs.194,09,17,456/-. We find that the lower authorities had made the disallowance by applying the estimated percentage to the income as the expenses incurred to earn the dividend income. The law is now well settled that for the purpose of deduction u/s.80M of the Act, only actual expenditure incurred has to be taken into consideration and there cannot be any estimate of expenditure that could be made thereon. Reliance in this regard had been rightly placed on the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Modern Terry Towels Ltd., reported in 43 Taxmann.com 466. We also find that this issue apparently had arose pursuant to the order passed by the Id. Administrative Commissioner of Income Tax u/s.263 of the Act wherein deduction u/s.80M of the Act was sought to be reduced. We find that assessee had preferred an appeal against the said order of the Administrative Commissioner u/s.263 of the Act before this Tribunal. This Tribunal had vide its order dated 14/03/2007 had set aside the order to the extent of restriction of claim of deduction of 80M of the order. Hence, the entire reduction u/s.80M of the Act which was made by the Id. AO pursuant to 263 proceedings becomes infructuous. The Id. AO is directed to give effect accordingly. Hence, the ground Nos.5.1 to 5.4 raised by the assessee are allowed.

7. The ground Nos. 6.1 to 6.2 raised by the assessee are with regard to disallowance of depreciation on leased assets.

7.1. We have heard rival submissions and perused the materials available on record. Both the parties mutually agreed that this issue is already covered by the order of this Tribunal in assessee's own case for A.Yrs. 2001-02 and 2002-03 vide order dated 12/07/2021. The relevant operative portion of the said order is reproduced hereunder:-

20. Ground no. 6, relates to depreciation of ₹ 165,18,13,363, on account of leased assets.

21. Having considered the submissions of the parties and having perused the material on record including the case laws relied upon, we find that the issue for our adjudication has been decided by the Co-ordinate Bench of this Tribunal in assessee's own case against the assessee in assessment year 2008-09, 2000-01, 1996-97, 1997-98, 1998-99 and 1999-2000. The learned Sr. Counsel for the assessee submitted that the assessee has filed appeal against the order passed by the Tribunal, which has been admitted by the Hon'ble Jurisdictional High Court and pending for hearing and yet no orders have been passed on merit. Keeping this in view and consistent with view taken by the Co-ordinate Bench of this Tribunal in assessee's own case, we uphold the order of the learned Commissioner (Appeals) on this issue by dismissing the ground raised by the assessee. Ground no.6, is dismissed.

7.2. Respectfully following the same, the ground Nos. 6.1 and 6.2 raised by the assessee are dismissed.

8. The ground Nos.7.1 & 7.2 raised by the assessee are with regard to disallowance of broken period interest.

8.1. We have heard rival submissions and perused the materials available on record. Both the parties mutually agreed that this issue is already covered by the order of this Tribunal in assessee's own case for A.Yrs. 2001-02 and 2002-03 vide order dated 12/07/2021. The relevant operative portion of the said order is reproduced hereunder:-

"4. Ground no.1, relates to disallowance of ₹ 274,04,19,099, in respect of broken period interest.

5. . Considered the submissions of the parties and perused the material on record including the case laws relied upon by the parties. During the course of hearing, both the leaned Counsels for the parties agreed that the identical issue

raised in this ground by the assessee is now settled in favour of the assessee and against the Revenue by the decisions of the Tribunal rendered in assessee's own case in assessment years 7008-09, 1996-97, 1995-96 and 1991-92. The relevant findings (vide Para-119 / Page-110 & 111) of the Tribunal in State Bank of India v/s DCIT, ITA no. 3644 & 4563/Mum./2016 order dated 3rd February 2020, for the A.Y. 2008-09. Consistent with the view taken therein, we set aside the impugned order passed by the learned CIT(A) by allowing the ground raised by the assessee. We also observe that the appeal filed by the Revenue before the Hon'ble Jurisdictional High Court for the assessment year 1996-97, was also dismissed vide Its order dated 1st August 2016. Thus, ground no.1, is allowed."

8.2. Respectfully following the same, the ground No.7.1. is allowed and ground No.7.2 was stated to be not pressed by the Id. AR as desired relief is obtained.

9. The ground No.8 raised by the assessee is with regard to write off of bad debts u/s.36(1)(vii) of the Act in respect of non-rural advances.

9.1. We have heard rival submissions and perused the materials available on record. We find that both the parties mutually agreed that this issue has already been adjudicated by this Tribunal in assessee's own case for A.Y.2008-09 in ITA No.3644 and 4563/Mum/2016 dated 03/02/2020 for A.Y.2008-09 wherein it was held as under:-

"54. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in disallowing deduction claimed by assessee under section 36(1)(vii) of the Act being the amount of Bad Debts written off (other than in respect of rural advances). For this assessee raised the following ground No. 6: -

"6. Deduction under section 36(1)(vii) of ₹1026,23,30,375/-.

6.1 The learned CIT(A) erred in not allowing deduction of ₹1026,23,30,375 under section 36(1)(vii) being the amount of bad debts written-off (other than in respect of rural advances)

6.2 The learned CIT(A) erred in relying on explanation 2 to section 36(1) as inserted by the Finance Act, 2013 which is applicable from assessment years 2014-15 onwards."

55. Brief facts are that the assessee has claimed write-off of bad debts in connection with non-rural advances under section 36(1)(vii) of the Act

amounting to Rs. 1026,23,30,375/-by way of note 18 to the revised return of income. The AO did not allow the claim of the assessee on the basis that deduction under section 36(1)(viia) of the Act is available towards rural and non-rural advances and in view of the proviso to section 36(1)(vii) of the Act, the deduction under section 36(1)(vii) of the Act is limited to excess of the amount written off over the credit balance of provision for bad and doubtful debts under section 36(1)(viia) of the Act. The CIT(A) confirmed the disallowance following the order of the CIT(A) for the assessment year 2007-08, wherein the CIT(A) had held that Explanation 2 to section 36(1)(vii) of the Act inserted w.e.f 01.04.2014 which states that the proviso to section 36(1)(vii) of the Act and section 36(2)(v) of the Act relates to all types of advances i.e. rural and non-rural advances, is clarificatory in nature. Accordingly, the CIT(A) held that the assessee cannot be allowed double deduction i.e. one on provision basis and then again on actual write-off basis. The CIT(A) observed as under: -

"14.3 I have considered the appellant's submissions. This is a recurring issue and this issue was considered by CIT(A) in appellant's own case for A.Y. 2007-08 which are reproduced as under:

"3.11.1 This is also a recurring issue and has been decided by the CFI(A) in AY 2002-03 to 2006-07 against the assessee. The decision dated 30.03.2013 of CIT(A) for AY 2006-07 in appeal no IT-241/09-10 is placed on record. As discussed therein, the Finance Act, 2013 has inserted explanation-2 to Sec 36(1) which reads as under the removal of doubts it is hereby clarified that for the purposes of the proviso to clause (vii) of this sub section of clause (v) of sub-section 2 the account referred to therein shall be only one account in r/o provision of bad and doubtful debts under clause (viia) and such account shall relate to all types of advances including advances made by rural branches". This explanation, though inserted w.e.f. 01.04.2014, is "clarificatory" in nature. It states that proviso to clause (vii) and clause(v) of sub-section2 shall relate to all types of advances including advances made by rural branches. The proviso to clause (vii) of Sec.36(1) therefore shall limit the application to both rural advances and non-rural advances. Therefore, there cannot be double deduction i.e. one on provision basis and then again on actual write-off basis separately and independently. The disallowance is accordingly confirmed. This ground of appeal is dismissed."

14.4 In view of the above decision of CIT(A), claim of the appellant is disallowed. This ground of appeal is disallowed."

56. We noted that for the year under consideration the assessee has not claimed any deduction for bad debts written-off. However, it should be allowed deduction in respect of write-offs of non-rural branch advances amounting to Rs. 1026 crore. Before us Revenue has emphasised that deduction under section 36(1)(viia) of the Act is available to both rural and non-rural debts and accordingly, the restriction as per the proviso to section 36(1)(vii) of the Act is also applicable. The learned Counsel argued that as per the provisions of section 36(1)(viia) of the Act, a bank is eligible to avail deduction in respect of provision made for bad and doubtful debts, of an

amount not exceeding 7.5% of total income and of an amount not exceeding 10% of the aggregate average advances made by the rural branches of the bank. Accordingly, the assessee is eligible to claim deduction of an amount lower of the provision made for bad and doubtful debts or the amount calculated as per the prescribed methodology. As per the proviso to section 36(1)(vii) of the Act, deduction under section 36(1)(vii) of the Act is limited to excess of the amount written off over the credit balance in the provision for bad and doubtful debts accounts made under section 36(1)(viia) of the Act. Further, as per section 36(2)(v) of the Act, where a debt made by the assessee to which section 36(1)(viia) of the Act applies, no deduction shall be allowed unless the assessee has debited the amount of such debt to the provision for bad and doubtful debts account made under section 36(1)(viia) of the Act. On a conjoint reading of the aforesaid provisions, it can be inferred that sections 36(1)(viia) and 36(2)(v) of the Act and the first proviso to section 36(1)(vii) of the Act, apply only to rural advances.

57. We noted that, as reliance placed by assessee, this issue is decided in favour of the assessee by the Supreme Court judgment in the case of *The Catholic Syrian Bank Ltd. vs. CIT* [2012] 343 ITR 270 (SC). The Supreme Court was concerned with a case where the assessee had claimed a deduction under section 36(1)(vii) of the Act pertaining to urban advances. The deduction was not allowed to the assessee on the basis that deduction under section 36(1)(vii) of the Act can be allowed only to the extent it is in excess of the provisions created and allowed as a deduction under clause (viia). The Supreme Court held that if the bad debts actually written off in the accounts of the assessee-bank represents only debts arising out of urban advances, allowance thereof is not affected, controlled or limited in any way by the proviso to section 36(1)(vii) of the Act. The relevant extract of the judgement of the Supreme Court is reproduced below:

“41. To conclude, we hold that the provisions of Sections 36(1)(vii) and 36(1)(viia) of the Act are distinct and independent items of deduction and operate in their respective fields. The bad debts written off in debts, other than those for which the provision is made under clause (viia), will be covered under the main part of Section 36(1)(vii), while the proviso will operate in cases under clause (viia) to limit deduction to the extent of difference between the debt or part thereof written off in the previous year and credit balance in the provision for bad and doubtful debts account made under clause (viia). The proviso to Section 36(1)(vii) will relate to cases covered under Section 36(1)(viia) and has to be read with Section 36(2)(v) of the Act. Thus, the proviso would not permit benefit of double deduction, operating with reference to rural loans while under Section 36(1)(vii), the assessee would be entitled to general deduction upon an account having become bad debt and being written off as irrecoverable in the accounts of the assessee for the previous year. This, obviously, would be subject to satisfaction of the requirements contemplated under Section 36(2).”

58. Reliance in this regard is also placed on the following decisions, wherein the aforesaid issue has been decided in favour of the assessee:

- *CIT vs. City Union Bank Ltd. [2007] 291 ITR 144 (Madras)*
- *DCIT vs. Karnataka Bank Ltd. [2012] 349 ITR 705 (SC)*
- *Punjab & Sind Bank vs. ACIT [2008] 23 SOT 103 (Delhi)*

59. Further, it was contended that Explanation 2 to section 36(1)(vii) of the Act inserted w.e.f. 01.04.2014 which states that proviso to section 36(1)(vii) of the Act and section 36(2)(v) of the Act relates to all types of advances i.e. rural and non- rural advances, is Clarificatory in nature. In this regard, reliance is placed on the decision of the Supreme Court in case *CIT vs. Vatika Township (P.) Ltd. [2014] 367 ITR 466 (SC)*, wherein it was held that one established rule for interpretation of legislation is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. In the present case, the legislature stipulated a fixed date i.e. 01.04.2014 while inserting Explanation 2 to section 36(1)(vii) of the Act. In view of the above, we are of the view that assessee is entitled to deduction under section 36(1)(vii) of the Act being the amount of bad debts written off (other than in respect of rural advances). This issue of assessee appeal is allowed.”

9.2. Respectfully following the same, the ground No.8 raised by the assessee is allowed.

10. The ground No.9 raised by the assessee is with regard to claim of deduction for entire provision for bad and doubtful debts u/s.36(1)(viia) of the Act amounting to Rs.2798,97,50,043/-.

10.1. We have heard rival submissions and perused the materials available on record. Both the parties mutually agreed that this issue is already covered by the order of this Tribunal in assessee’s own case for A.Yrs. 2001-02 and 2002-03 vide order dated 12/07/2021. The relevant operative portion of the said order is reproduced hereunder:-

“32. Ground no.10, relates to the disallowance of ₹ 1474,31,07,529, on account of doubtful debts under section 36(1)(viia) of the Act.

33. Considered the submissions and perused the material on record in the light of the decisions relied upon by the learned Sr. Counsel for the assessee. As it appears, the issue for our consideration is identical to the issue decided by the Co-ordinate Bench of this Tribunal rendered in assessee's own case wherein the Tribunal has decided the issue against the assessee and in favour of the Revenue in assessment year 2000-01, 1996-97, 1997-98, 1998-99 and 1999-

2000. The learned Sr. Counsel for the assessee further brought to our notice that the assessee had also filed appeal against the order passed by the Tribunal for the assessment year 1996-97, wherein the Hon'ble Jurisdictional High Court vide its order dated 23rd August 2016, has decided the issue against the assessee. Consistent with the view taken therein as aforesaid, we uphold the order passed by the learned CIT(A) by dismissing the ground raised by the assessee. Ground no, 10, is dismissed."

10.2. Respectfully following the same, ground No.9 raised by the assessee is dismissed.

11. The ground No.10 raised by the assessee is with regard to chargeability of interest u/s.234C of the Act.

11.1. We have heard rival submissions and perused the materials available on record. We find that the main grievance of the Id. AR is that interest u/s.234C of the Act should be charged only on the returned income and not on the assessed income. The law is very well settled on this point and accordingly, we hold that interest u/s.234C of the Act should be chargeable only on the returned income and not on the assessed income. Accordingly, the ground No.10 raised by the assessee is allowed.

12. The ground No.11 raised by the assessee is with regard to levy of interest u/s.234D of the Act. We find that this issue is already covered against the assessee in view of the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Indian Oil Corporation reported in 25 taxmann.com 284. Respectfully following the same, the ground No.11 raised by the assessee is dismissed.

13. The ground No.12 raised by the assessee is challenging the action of the lower authorities in taxing the income earned from foreign branches in India.

13.1. We have heard rival submissions and perused the materials available on record. We find that both the parties mutually agreed before us that this issue has already been adjudicated by this Tribunal in assessee's own case for A.Yrs. 2001-02 and 2002-03 vide order dated 12/07/2021. The relevant operative portion of the said order is reproduced hereunder:-

“43. Additional ground no.3, raised by the assessee relates to treatment of income earned from foreign branches i.e., whether or not the income earned is liable to be taxed in India.

44. Considered the rival submissions and perused the material on record in the light of the decisions relied upon by the learned Counsel for the assessee. Before us, both the parties agree that identical issue has been consistently decided by the Tribunal In assessee's own case for the assessment year 1996-97, 1997-98, 1998-99, 1999-2000, 2000-01 and 2008-09, wherein the Tribunal following the order 3rd January 2014, passed in assessee's own case for the assessment year 1996-97 in M.A. no.371/Mum./2014, restored the issue to the file of the Assessing Officer and directed him to decide the controversy afresh by giving an opportunity of being heard to the assessee in accordance with law by following similar guidelines as given by the Tribunal in the aforesaid misc. application. Consistent with the view as aforesaid, we set aside the order passed by the learned Commissioner (Appeals) and restore the issue to the file of the Assessing Officer with similar direction. We order accordingly. Additional ground no.3, raised by the assessee is allowed for statistical purpose.”

13.2. Respectfully following the same, the ground No.12 raised by the assessee is restored to the file of the Id. AO with similar directions contained hereinabove and accordingly allowed for statistical purposes.

14. The ground Nos. 13 & 14 raised by the assessee are general in nature and does not require any specific adjudication.

15. The assessee has raised additional ground No.1 with regard to write off of bad debts u/s.36(1)(vii) of the Act.

15.1. We have heard rival submissions and perused the materials available on record. All the facts necessary for adjudication of the additional ground is already on record and hence the same are hereby admitted. The Id. AR before us stated that this deduction has been claimed by the assessee in respect of write off of bad debts u/s.36(1)(vii) of the Act in light of decision of the Hon'ble Supreme Court in the case of Vijaya Bank vs. CIT reported in 323 ITR 166. We find that similar issue had arose in assessee's own case for A.Y.2001-02 and 2002-03 wherein this Tribunal vide its order dated 12/07/2021 had restored the issue to the file of the Id. AO by observing as under:-

"39. Additional ground no.1, raised by the assessee relates to deduction for write-off of the bad debts under section 36(1)(vii) of the Act as per the judgment of the Hon'ble Supreme Court in Vijaya Bank Ltd, v/s CIT, [2010] 323 ITR 166 (SC).

40. Having considered the rival submissions and having perused the-material on record in the light of the decisions of the Tribunal rendered in assessee's own case as well as the decision of the Hon'ble Supreme Court in Vijaya Bank v/s CIT [2010] 323 ITR 166 (SC) relied upon by the learned Counsel for the assessee, both the parties agree before us that identical issue has been decided by the Tribunal in assessee's own case for the assessment year 1996-97, 1997-98, 1998-99, 1999-2000, 2000-01, 2008-09, wherein the Tribunal has restored the issue to the file of the Assessing Officer adjudication afresh. Consistent with the view taken by the Tribunal in assessee's own case, we set aside the impugned order passed by the learned CIT(A) and restore the issue to the file of the Assessing Officer for deciding the issue afresh after verify the assessee's claim in accordance with law. Thus, additional ground no.1, raised by the assessee is allowed for statistical purposes."

15.2. Respectfully following the same, the additional ground No.1 raised by the assessee is allowed for statistical purposes.

16. The additional ground No.2 raised by the assessee relates to recovery of bad debts written off which according to the assessee should not be liable to tax in terms of Section 41(4) of the Act.

16.1. We have heard rival submissions and perused the materials available on record. All the facts necessary for adjudication of the additional ground is already on record and hence the same are hereby admitted. We find that this issue already was the subject matter of adjudication by this Tribunal in assessee's own case for A.Yrs 2001-02 and 2002-03 vide order dated 12/07/2021 wherein this issue was restored to the file of the Id. AO by observing as under:-

“42. Having heard both the parties, we find that identical issue has been consistently decided by the Tribunal in assessee's own case for the assessment year 1996-97, 1997-98, 1998-99, 1999-2000, 2000-01 and 2008-09, wherein the Tribunal following the order 3rd January 2014, passed in assessee's own case for the assessment year 1996-97 in M.A. no.371/Mum./2014 restored the issue to the file of the Assessing Officer and directed him to decide the controversy afresh by Giving an opportunity of being heard to the assessee in accordance with law by following similar guidelines as given by the Tribunal in the aforesaid misc. application. Consistent with the view as aforesaid, we set aside the order passed by the learned Commissioner (Appeals) and restore the issue to the file of the Assessing Officer with similar direction. We order accordingly. Additional ground no.2, raised by the assessee is allowed for statistical purpose.”

16.2. Respectfully following the same, the additional ground No.2 is restored to the file of the Id. AO and allowed for statistical purposes.

17. The additional ground Nos. 3 & 4 raised by the assessee are general in nature and does not require any specific adjudication.

18. In the result, the appeal of the assessee for A.Y.2003-04 in ITA No.3779/Mum/2012 is partly allowed for statistical purposes.

ITA No.4097/Mum/2012 Revenue Appeal (A.Y.2003-04)

19. The ground No.1 & 8 raised by the Revenue are general in nature and does not require any specific adjudication.

20. The ground No.2 raised by the Revenue is with regard to deletion of disallowance of staff welfare expenses incurred by the assessee for reservation of seats in the schools for the children of the bank officers.

20.1. We have heard rival submissions and perused the materials available on record. Both the parties mutually agreed that this issue is already covered by the order of this Tribunal in assessee's own case for A.Yrs. 2001-02 and 2002-03 vide order dated 12/07/2021. The relevant operative portion of the said order is reproduced hereunder:-

“47. During the course of hearing, both the parties agree before us that identical issue has been consistently decided in favour of the assessee and against the Revenue by the Tribunal in assessee's own case for the assessment year 1992-93, 1995-96 1996-97, 1999-2000, 2000-01 and 2008-09. The Tribunal in assessee's own case in 'State Bank of India v/s DCIT, ITA no.3644 & 4563/Mum./2016, order dated 3rd February 2020, for the A.Y. 2008-09, has decided this issue in favour of the assessee and against the Revenue. Consistent with the view taken by the Tribunal in assessee's own case as cited supra, we uphold the order of the learned CIT(A) on this issue and decline to interfere in the order as such. While concluding, we place on record that the appeal filed by the Revenue in assessee's own case before the Hon'ble Jurisdictional High Court for the assessment year 1996-97, the said appeal was also dismissed vide its order dated 1st August 2016. Thus, ground no.1, raised by the Revenue is dismissed.”

20.2. Respectfully following the same, the ground No.2 raised by the Revenue is dismissed.

21. The ground No.3 raised by the Revenue is with regard to disallowance of expenses u/s.14A of the Act. This ground has already been adjudicated in detail while addressing the ground No.4 of

assessee's appeal in A.Y.2003-04. The decision rendered thereon would apply with equal force for this ground also.

22. The ground No.4 raised by the revenue is challenging the restriction of deduction u/s.80M of the Act. We find that this ground also had already been adjudicated by us while addressing the ground No.5 of assessee's appeal and the decision rendered thereon would apply with equal force for this ground also.

23. The ground No.5 raised by the Revenue is with regard to broken period interest expenses. We find that this ground also had already been adjudicated by us while addressing the ground No.7 of assessee's appeal and the decision rendered thereon would apply with equal force for this ground also.

24. The ground Nos. 6a and 6b raised by the Revenue are with regard to the loss on revaluation of investments / provision for amortization of premium paid on securities held in 'Held To Maturity' (HTM) category.

24.1. We have heard rival submissions and perused the materials available on record. Both the parties mutually agreed that this issue is already covered by the order of this Tribunal in assessee's own case for A.Yrs. 2001-02 and 2002-03 vide order dated 12/07/2021. The relevant operative portion of the said order is reproduced hereunder:-

"90. Ground no.2, relates to disallowance of deduction of ₹ 19,47,08,383, on account of loss in respect of amortization of securities held in HTM category,

91. Considered the rival submissions and perused the material on record in the light of the decision relied upon by the learned Counsel for the assessee. Both the learned Counsel appearing for the parties conceded before us that identical issue has been consistently decided in favour of the assessee and against the Revenue by the Tribunal in assessee's own case for the assessment year 2008-09, 1995-96, 1996-97, The Hon'ble Jurisdictional High Court had also dismissed the

Revenue's which was filed by the Revenue challenging the order passed by the Tribunal in assessee's own case for the assessment year 1996-97. Consequently, consistent with the view taken by the Tribunal as well the Hon'ble Jurisdictional High Court in assessee's own case as cited supra, we uphold the order of the learned CIT(A) dismissing the ground no.2, raised by the Revenue."

24.2. Respectfully following the same, the ground Nos. 6a & 6b raised by the Revenue are dismissed.

25. The ground No.7 raised by the Revenue is with regard to taxability of interest on securities. Both the parties mutually agreed that this issue is already covered by the order of this Tribunal in assessee's own case for A.Yrs. 2001-02 and 2002-03 vide order dated 12/07/2021. The relevant operative portion of the said order is reproduced hereunder:-

"93. Having considered the submissions of the parties and having perused the material en record in the light of the decision relied upon by the learned Counsel for the assessee, both the learned Counsel appearing for the parties conceded before us that identical issue has been consistently decided In favour of the assessee and against the Revenue by the Tribunal in assessee's own case for the assessment year 1991-92, 1995-96, 1996-97 and 1999-2000. The Hon'ble Jurisdictional High Court had also dismissed the Revenue's which was filed by the Revenue challenging the order passed by the Tribunal in assessee's own case for the assessment year 1996-97. It is also placed on record that identical issue has also been decided by in assessee's own case being ITA no.4656/Mum./2011, for the assessment year 2001-02, vide Para-44 of this order, wherein, the issue has been decided in favour of the assessee and against the Revenue. Consequently, consistent with the view taken by the Tribunal as well the Hon'ble Jurisdictional High Court in assessee's own case as cited supra, we uphold the order of the learned CIT(A) dismissing the ground no.2, raised by the Revenue."

25.1. Respectfully following the same, the ground No.7 raised by the Revenue is dismissed.

26. In the result, appeal of the Revenue for A.Y.2003-04 in ITA No.4097/Mum/2012 is partly allowed.

ITA No.3780/Mum/2012 (A.Y.2004-05) Assessee Appeal.

27. The ground No.1 raised by the assessee for A.Y.2004-05 is similar to ground No.2 raised by the assessee for A.Y.2003-04. Hence, the decision rendered by us for ground No.2 in A.Y.2003-04 shall apply with equal force for A.Y.2004-05 also except with variance in figures.

28. The ground No.2 raised by the assessee for 2004-05 is similar to ground No.3 raised by the assessee for A.Y.2003-04. Hence, the decision rendered by us for ground No.3 for A.Y.2003-04 shall apply with equal force for A.Y.2004-05 also except with variance in figures.

29. The ground No.3 raised by the assessee for 2004-05 is similar to ground No.4 raised by the assessee for A.Y.2003-04. Hence, the decision rendered by us for ground No.4 for A.Y.2003-04 shall apply with equal force for A.Y.2004-05 also except with variance in figures.

30. The ground No.4 raised by the assessee for 2004-05 is similar to ground No.6 raised by the assessee for A.Y.2003-04. Hence, the decision rendered by us for ground No.6 for A.Y.2003-04 shall apply with equal force for A.Y.2004-05 also except with variance in figures.

31. The ground Nos. 5.1 and 5.2 raised by the assessee for 2004-05 are similar to ground Nos. 7.1 & 7.2 raised by the assessee for A.Y.2003-04. Hence, the decision rendered by us for ground Nos. 7.1 & 7.2 for A.Y.2003-04 shall apply with equal force for A.Y.2004-05 also except with variance in figures.

32. The ground No.6 raised by the assessee for 2004-05 is similar to ground No.8 raised by the assessee for A.Y.2003-04. Hence, the decision rendered by us for ground No.8 for A.Y.2003-04 shall apply with equal force for A.Y.2004-05 also except with variance in figures.

33. The ground No.7 raised by the assessee is with regard to depreciation of securities held under "Available For Sale" (AFS) category and "Held For Trading"(HFT) category totaling to Rs.397,56,90,028/-.

33.1. We have heard rival submissions and perused the materials available on record. We find that this issue has already been adjudicated by this Tribunal in assessee's own case for A.Y.2008-09 in ITA No.3644 & 4563/Mum/2016 vide order dated 03/02/2020 wherein it was observed as under:-

60. *"The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in disallowing deduction claimed by assessee on account of reducing depreciation/ taxing appreciation in the value of securities held as Available For Sale(AFS) and Held For Trading(HFT) category. For this assessee has raised the following ground No. 7: -*

"7. Depreciation on securities

The learned CIT(A) erred in upholding the action of the Assessing Officer in reducing deprecation/ taxing appreciation in the value of securities held as Available for Sale (AFS) ad Held for Trading (HFT) category."

61. *Brief facts are that as per assessee from FY year 2004-05 the Bank has been valuing investments in 'Available for Sale' (AFS) and 'Held For Trading' (HFT) in books after netting off classification-wise depreciation and appreciation, computed scrip-wise and providing for net deprecation in each classification while ignoring net appreciation, as required by RBI guidelines. However, for tax purposes, investments in AFS and HFT categories are being valued scrip wise and depreciation, if any, was provided scrip wise while ignoring appreciation. Valuation of investments in AFS and HFT categories has consistently been done scrip-wise for tax purposes in earlier years. Therefore, for tax purposes valuation is done on the basis of lower of cost or market value computed scrip-wise and providing for depreciation in each classification while ignoring any appreciation. The assessee has claimed the deduction by way of notes to the computation of total income. The AO, however, has rejected the claim of the assessee. The CIT(A) also confirmed the action of the AO by observing as under: -*

15.3 I have considered the appellant's submissions. This is a recurring issue and this issue was considered by CIT(A) in appellant's own case for A.Y. 2007-08 which are reproduced as under:

.....

15.4 In view of the above decision of CIT(A), claim of the appellant is disallowed. This ground of appeal is disallowed.

62. Before us it was argued that from the financial year 2004-05, the assessee has been valuing investments in 'Available for Sale' (AFS) and 'Held for Trading' (HFT) in books after netting off classification-wise depreciation and appreciation, computed scrip-wise and providing for net depreciation in each classification while ignoring net appreciation, as required by RBI guidelines. However, for tax purposes, investments in AFS and HFT categories are being consistently valued scrip wise and depreciation, if any, was provided scrip wise while ignoring appreciation. Valuation of investments in AFS and HFT categories has consistently been done scrip-wise for tax purposes in earlier years. The same has also been accepted by the AO upto assessment year 2004-05 i.e. prior to the change in the treatment given in books of account. Therefore, for tax purposes valuation is done on the basis of lower of cost or market value computed scrip-wise and providing for depreciation in each of the scrip, while ignoring any appreciation. The assessee has claimed a deduction on this account vide note 24 to the revised return of income.

63. We noted that revenue rejected the claim of the assessee following the decision of the Mumbai Tribunal in the case of Deutsche Bank AG. The CIT(A) upheld the disallowance made by the AO following the earlier years order of CIT(A) for assessment year 2007-08. The Revenue before the Tribunal has emphasised on the applicability of Mumbai Tribunal's decision in the case of Deutsche Bank AG and that the valuation is as per RBI guidelines. It was contended by the assessee that it is a well settled principle of law that unrealised gains on stock are not to be brought to the tax net. Reliance in this regard is placed on the decision of the Supreme Court in the case of Chainrup Sampatram vs. CIT [1953] 24 ITR 481 (SC), wherein it is held that profit cannot "arise out of the valuation of the closing stock". The relevant extract of the judgement of the Supreme Court is reproduced below:

"While we agree with the conclusion that no part of the profits of the firm in the accounting year can be said to have accrued or arisen at Bikaner, the reasoning by which the learned Judges arrived at that conclusion seems to us, with all respect, to proceed on a misconception. It is wrong to assume that the valuation of the closing stock at market rate has, for its object, the bringing into charge any appreciation in the value of such stock. The true purpose of crediting the value of unsold stock is to balance the cost of those goods entered on the other side of the account at the time of their purchase, so that the cancelling out of the entries relating to the same stock from both sides of the account would leave only the transactions on which there have been actual sales in the course of the year showing the profit or loss actually realised on the year's trading.

..... While anticipated loss is thus taken into account, anticipated profit in the shape of appreciated value of the closing stock is not brought into the account, as no prudent trader would care to show increased profit before its actual realisation. This is the theory underlying the rule that the closing stock is to be valued at cost or market price whichever is lower, and it is now generally accepted as an established rule of commercial practice and accountancy. As profits for income-tax purposes are to be computed in conformity with the ordinary principles of commercial accounting, unless of course, such principles have been superseded or modified by legislative enactments unrealised profits in the shape of appreciated value of goods remaining unsold at the end of an accounting year and carried over to the following year's account in a business that is continuing are not brought into the charge as a matter of practice, though, as already stated, loss due to a fall in price below cost is allowed even if such loss has not been actually realised. Again, it is a misconception to think that any profit "arises out of the valuation of the closing stock" and the sites of its arising or accrual is where the valuation is made. As already stated, valuation of unsold stock at the close of an accounting period is a necessary part of the process of determining the trading results of that period, and can in no sense be regarded as the "source" of such profits."

64. The Supreme Court in the case of *A.L.A. Firm vs. CIT* (1991) (189 ITR 285) (SC) has observed that closing stock cannot be valued at a market value higher than the cost as that will result in taxation of the notional profits which the assessee has not realised. The relevant extract of the judgement of the Supreme Court is reproduced below:

"The valuation of the closing stock at market value invariably will create a problem. For if the market value is higher than cost, the accounts will reflect notional profits not actually realised. On the other hand, if the market value is less, the assessee will get the benefit of a notional loss he has not incurred. Nevertheless, as mentioned earlier, the ordinary principles of commercial accounting permit valuation 'at cost or market price, whichever is the lower'. [para 27]

The proper practice is to value the closing stock at cost. That will eliminate entries relating to the same stock from both sides of the account. To this rule custom recognises only one exemption and that is to value the stock at market value if that is lower. But on no principle can one justify the valuation of the closing stock at a market value higher than cost as that will result in the taxation of notional profits the assessee has not realised. [para 28]"

65. In *Sanjeev Wollen Mills vs. CIT* [2005] 279 ITR 434 (SC), the Supreme Court was concerned with a case where the assessee had valued its finished goods at market value. For assessment year 1992-93, the opening stock was valued at Rs. 90 per kg (market price as on 1.4.1991 was Rs. 98 per kg) and the closing stock at Rs. 130 per kg. For assessment year 1993-94, the opening stock was valued at Rs. 130 per kg and there was no closing stock. The assessee returned a loss of Rs. 54,420 for the second year. The AO held that the profits were artificially inflated in

assessment year 1992-93 to claim higher deduction under section 80HHC of the Act. The Supreme Court held that the profit earned by valuing finished goods is notional imaginary profit which could not be taxed. In view of the above, it is argued that appreciation in value of investments cannot be taken into account. The netting off of appreciation against the depreciation within a classification is therefore contrary to the principle laid down by the Supreme Court in the aforementioned judgements.

66. In context of netting off depreciation against appreciation, the Madras High Court in the case of CIT vs. Chari & Ram [1949] 17 ITR 1 (Madras) has held that there would be no assurance that there would be a market for the entire stock of articles of which the market value is higher and therefore, it would be hazardous to assume that the entire stock could be sold at the prevailing market rate and necessarily bring in a profit. The High Court also held that there is no provision of law or principle according to which the assessee could be compelled to adopt either the average cost for all the items or the market rate for all the items. Further, the Supreme Court in the case of United Commercial Bank vs. CIT [1999] 240 ITR 355 (SC) has held that there is no such question of following two different methods for valuing its stock-in-trade (investments) because bank was required to prepare balance sheet in the prescribed form and it had no option to change it and for the purpose of income-tax, what is taxed is the real income which is to be deduced on the basis of the accounting system regularly maintained by the assessee. In view of the above, it was claimed that the assessee be allowed a deduction in respect of depreciation on each securities, scrip wise, while ignoring the appreciation.

67. Further, the assessee claimed that it has consistently been following the method of valuation of lower of cost or market price in respect of securities. Accordingly, the method of valuation followed by the assessee is required to be accepted. Reliance in this regard is placed on the following decisions:

- CIT vs. Bank of Baroda [2003] 262 ITR 334 (Bombay)
- CIT vs. Corpn. Bank Ltd. [1988] 174 ITR 616 (Karnataka)

Further, the issue was not disputed upto financial year 2003-04 and hence, the AO is not justified in taking a different view.

68. The assessee also relied on the judgement of the Bombay High Court in the case of Union Bank of India dated 08.02.2016 in ITA 1977 of 2013. The assessee in this case for the purpose of its books was netting off the depreciation in its securities against appreciation in other securities while for tax purpose, the assessee has been claiming gross depreciation that is without netting of the appreciation in other securities held as a part of investment. The Bombay High Court has dismissed the appeal of the Revenue and has decided the issue in favour of the assessee. It is argued that the facts of the present case are exactly same as in the aforesaid case of Union Bank of India. This issue stands covered by the judgement of the jurisdictional High Court. The facts of the assessee's case and the facts in the decision of the Bombay High Court in the case of Harinagar Sugar Mills Ltd. vs. CIT [1994] 207 ITR 901 (Bombay), relied by the AO are different. In the aforesaid decision, the assessee had changed the method of valuing stock in the

year under consideration, whereas in the assessee's case, there is no change in the method of valuation. Also, in that case, sugar was valued differently by bifurcating the stock into 'levy sugar' and 'free sugar'. The Court's conclusion is based on the fact that there was no justification for bifurcation of sugar between free and levy sugar. The Mumbai Tribunal in the case of DCIT vs. Majestic Holdings And Finvest (P.) Ltd. [2010] 2 ITR(T) 407 (Mumbai) has noted that the reliance of the Departmental Representative on the judgement of the Bombay High Court in the case of Harinagar Sugar Mills Ltd. is misconceived inasmuch as in that case there was nothing to show the bifurcation of the closing stock of sugar into levy sugar and free sugar and hence, the assessee was obligated to value the entire stock at one value. In the assessee's case as well, each scrip is different and therefore requires independent valuation. The CIT DR placed reliance on the decision of the Mumbai Tribunal in the case of JCIT vs. Dena Bank [2012] 20 taxmann.com 278 (Mumbai). In the aforementioned case, the security was purchased in year 1 at Rs. 100 and the market price at the end of the year was Rs. 90. Accordingly, the stock was valued at market price of Rs. 90 being lower than the cost. In year 2, the market price went upto Rs. 95. Accordingly, the stock was valued at market price of Rs. 95 being lower than the cost. However, suppose in year 3, the market value rises to Rs. 120, in such a situation, the stock would be valued at cost i.e Rs. 100, being lower than the market price. The Mumbai Tribunal held that excess of appreciation over the cost price would not be considered for valuing the closing stock. In the present case, we are not concerned with a scenario where in the later year the depreciation provided in earlier years is reduced. Further, the decision of the Mumbai Tribunal in the case of Deutsche Bank A.G vs. DCIT [2003] 86 ITD 431 (Mumbai), relied by the AO is in connection with valuation of foreign exchange forward contracts. In this case the assessee did not account for in the financial statement the anticipated/contingent profits from the contracts to the extent not settled as on the last day of the accounting year whereas any loss on such contracts was provided for by a charge in the profit and loss account on the best estimates. The Department brought to tax the profit on such forward exchange contracts and stated that one method for valuation of the entire stock of securities should be followed. This resulted in a situation of taxing appreciation of stock, which goes against the general and settled principle of non-taxation of notional income, as laid by the Supreme Court in the case of Sanjeev Wollen Mills vs. CIT [2005] 279 ITR 434 (SC) and others discussed supra. Hence, we are of the view that this disallowance of depreciation/ reducing of depreciation on appreciation in the value of securities held as available for sale and held for trading category are allowable. We direct the AO accordingly."

33.2. Respectfully following the same, the ground No.7 raised by the assessee is allowed.

34. The ground No.8 raised by the assessee for A.Y.2004-05 is similar to ground No.9 raised by the assessee for A.Y.2003-04. Hence, the

decision rendered by us for ground No.9 for A.Y.2003-04 shall apply with equal force for A.Y.2004-05 also except with variance in figures.

35. The ground No.9 raised by the assessee for A.Y.2004-05 is similar to ground No.12 raised by the assessee for A.Y.2003-04. Hence, the decision rendered by us for ground No.12 for A.Y.2003-04 shall apply with equal force for A.Y.2004-05 also except with variance in figures.

36. The ground No. 10 & 11 raised by the assessee are general in nature and does not require any specific adjudication.

37. The additional ground Nos. 1 & 2 raised by the assessee for A.Y.2004-05 are similar to additional ground No. 1 & 2 raised by the assessee for A.Y.2003-04 and hence, the decision rendered thereon would apply with equal force for this assessment year also except with variance in figures.

38. In the result, appeal of the assessee for A.Y.2004-05 in ITA No.3780/Mum/2012 is partly allowed for statistical purposes.

ITA No.4098/Mum/2012 (A.Y.2004-05) Revenue Appeal:

39. The ground No.1 and 8 raised by the Revenue are general in nature and does not require any specific adjudication.

40. The ground No.2 raised by the Revenue for A.Y.2004-05 is similar to ground No.2 raised by the Revenue for A.Y.2003-04. Hence, the decision rendered by us for ground No.2 for A.Y.2003-04 shall apply with equal force for A.Y.2004-05 also except with variance in figures.

41. The ground No.3 raised by the Revenue is with regard to disallowance of expenses u/s.14A of the Act which has already been adjudicated in detail while addressing the ground No.3 of assessee's appeal for A.Y.2004-05.

42. The ground No.4 raised by the Revenue for A.Y.2004-05 is similar to ground No.5 raised by the Revenue for A.Y.2003-04. Hence, the decision rendered by us for ground No.5 for A.Y.2003-04 shall apply with equal force for A.Y.2004-05 also except with variance in figures.

43. The ground Nos. 5a & 5b raised by the Revenue for A.Y.2004-05 are similar to ground Nos. 6a & 6b raised by the Revenue for A.Y.2003-04. Hence, the decision rendered by us for ground Nos. 6a & 6b for A.Y.2003-04 shall apply with equal force for A.Y.2004-05 also except with variance in figures.

44. The ground No.6 raised by the Revenue for A.Y.2004-05 is similar to ground No.7 raised by the Revenue for A.Y.2003-04. Hence, the decision rendered by us for ground No.7 for A.Y.2003-04 shall apply with equal force for A.Y.2004-05 also except with variance in figures.

45. In the result, appeal of the Revenue in ITA No.4098/Mum/2012 for A.Y.2004-05 is partly allowed.

46. TO SUM UP:

Appeal By	ITA No.	A.Y.	Result
Assessee	3779/Mum/2012	2003-04	Partly allowed for statistical purposes
Revenue	4097/Mum/2012	2003-04	Partly allowed
Assessee	3780/Mum/2012	2004-05	Partly allowed for statistical purposes
Revenue	4098/Mum/2012	2004-05	Partly allowed

Order pronounced on 30/09/2021 by way of proper mentioning in
the notice board.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 30/09/2021
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai