IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'B', CHANDIGARH

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.861/Chd/2017
(Assessment Year : 2011-12)

The State Bank of India, (Successor of State Bank of Patiala) The Mall, Patiala. PAN: AACCS0143D	Vs.	The A.C.I.T., Circle Patiala,

&

ITA No.787/Chd/2017
(Assessment Year : 2011-12)

The A.C.I.T., Circle Patiala,	Vs.	The State Bank of India, The Mall, Patiala. PAN: AACCS0143D

ITA No.482/Chd/2017
(Assessment Year : 2012-13)

The A.C.I.T., Circle Patiala,	Vs.	The State Bank of India, The Mall, Patiala. PAN: AACCS0143D

ITA No.510/Chd/2017
(Assessment Year : 2013-14)

The State Bank of India, (Successor of State Bank of Patiala) The Mall, Patiala. PAN: AACCS0143D	Vs.	The A.C.I.T., Circle Patiala,

&

ITA No.483/Chd/2017
(Assessment Year : 2013-14)

The A.C.I.T., Circle Patiala,	Vs.	The State Bank of India, The Mall, Patiala. PAN: AACCS0143D

ITA No.538/Chd/2017
(Assessment Year : 2014-15)

The State Bank of India, (Successor of State Bank of Patiala) The Mall, Patiala. PAN: AACCS0143D	Vs.	The A.C.I.T., Circle Patiala,

&

ITA No.721/Chd/2017
(Assessment Year : 2014-15)

The A.C.I.T., Circle Patiala,	Vs.	The State Bank of India, The Mall, Patiala. PAN: AACCS0143D

&

ITA No.1259/Chd/2017

(Assessment Year : 2015-16)

The State Bank of India, (Successor of State Bank of Patiala) The Mall, Patiala. PAN: AACCS0143D (Appellant)	Vs.	The A.C.I.T., Circle Patiala, Respondent)

Assessee by : Shri C. Naresh, CA
Department by: Shri Alok Kumar,CIT DR

Date of hearing : 15.11.2017
Date of Pronouncement : 09.02.2018

ORDER

PER ANNAPURNA GUPTA, A.M.:

The captioned appeals relate to the same assessee and are cross appeals filed by the assessee and revenue against orders passed by the Commissioner of Income Tax (Appeals),Patiala,(hereinafter referred to as 'CIT(A)') pertaining to assessment year 2011-12, 2013-14 & 2014-15, while the assessee has filed appeal against orders passed by the CIT(A), Patiala, for A.Y.2012-13 & 2015-16.

It was common ground between both the parties that the issue involved in all the appeals was common ,therefore they were all heard together and are being disposed off by way of a common, consolidated order for the sake of

convenience. We shall first be dealing with the cross appeals relating to A.Y 2011-12.

ITA No.861/Chd/2017: Assessee's appeal for A.Y.2011-12

2. Ground No.1 raised by the assessee reads as under:

> *"1. The Ld. CIT(A) failed to appreciate that for creation of reserve u/s 36(1)(viii) no time limit was prescribed in the Act, when the same was created before the completion of assessment, the deduction u/s 36(1)(viii) should have been granted by the AO."*

3. In the above ground the assessee has challenged the action of the Ld.CIT(Appeals) in upholding disallowance of deduction claimed by the assessee u/s 36(1)(viii) of the Income Tax Act, 1961 (in short 'the Act') amounting to Rs.120 crores. The assessee bank had claimed deduction of Rs.120 crores on account of a special reserve created for the impugned assessment year, under the provisions of section 36(1)(viii) of the Act. The same was denied by the Assessing Officer since he found that the special reserve was not created before finalization of the books of the assessee for the impugned year. The Assessing Officer found that the assessee had created the special reserve only in financial year 2012-13 relevant to assessment year 2013-14. He, therefore, held that the assessee was not entitled to claim deduction u/s 36(1)(viii) of the Act.

4. The Ld.CIT(Appeals) upheld the disallowance, holding that the assessee was duty bound to create and maintain the special reserve out of the profits of the eligible business during the relevant financial year itself and

having not done so he held that the Assessing Officer had rightly denied the said claim of the assessee. The Ld.CIT(Appeals) distinguished all the case laws relied upon by the assessee in support of its contention that it was not imperative to create reserve for the impugned year itself before claiming the said deduction.

5. During the course of hearing before us, the Ld. counsel for assessee pointed out that identical issue had been dealt with by the Delhi Bench of the I.T.A.T. in the case of Power Finance Corporation Limited Vs. JCIT (2008) 16 DTR 519(Del) which was followed by the Mumbai Bench of the I.T.A.T. in the case of Bank of Baroda Vs. Addl.CIT in ITA No.4619/M/2012 dated 4.11.2015. Copies of the order were placed before us. The Ld. counsel for assessee pointed out therefrom that it was held by the Tribunal in the said cases that the reserve created in subsequent years, however, before finalization of grant of deduction is required to be considered while allowing the assessee's claim of deduction made u/s 36(1)(viii) of the Act

6. The Ld. DR, on the other hand, relied upon the order of the Ld.CIT(Appeals) and pointed out therefrom that the Ld.CIT(Appeals) had distinguished the aforesaid case law relied upon by the assessee before it by pointing out that the said decision pertained to assessment year prior to assessment year 1998-99 and further that as per the amended provisions the pre-condition for claiming deduction u/s 36(1)(viii) is the creation and maintenance

of the reserve, which the assessee had failed to do in the present case. The Ld. DR further drew our attention to the case laws relied upon by the Ld.CIT(Appeals) while upholding the order of the Assessing Officer in support of its finding that the creation of reserve is a pre-condition for claiming deduction u/s 36(1)(viii) of the Act as under:

1) CIT Vs. Tamil Nadu Industrial Investment Corporation Ltd., 240 ITR 573 (Mad)

2) Kerala Financial Corporation Vs. CIT 129 Taxmann 365(Ker)

7. We have heard the contentions of both the parties. We have also gone through the orders of the authorities below and case laws cited before us and also the documents which were brought to our notice during the course of hearing.

8. The issue before us pertains to allowance of deduction on account of creation of a special reserve as per the provisions of section 36(1)(viii) of the Act which though not created in the books of account in the relevant previous year and created later in the A.Y. 2013-14, but before the assessment for the impugned year was completed.

9. We find merit in the contention of the Ld. counsel for assessee that the issue is squarely covered by the decision of the Coordinate Benches in the case of Power Finance Corporation Limited (supra) and Bank of Baroda (supra). On perusing the order of the Delhi Bench of the I.T.A.T. in the case of Power Finance Corporation Limited (supra) we

find that the issue before it was identical to the impugned case whether the creation of special reserve at the time of finalization of accounts is imperative for the purpose of claiming deduction on account of the same as per the provision of section 36(1)(viii) of the Act. As per the facts of the said case the assessee had created special reserve of Rs.76.72 crores during the year under consideration but had claimed deduction 36(1)(viii) of the Act on account of higher amount of Rs.130.47 crores on the basis that the reserve of the balance amount of Rs.53.27 crores had been created in the succeeding year. The tax authorities restricted the claim to the extent of reserve created during the year only denying the balance for the reason that the same was not created by the assessee in the books of account for the impugned year but was created in the subsequent year. The I.T.A.T. held that as per the plain reading of section 36(1)(viii) no time limit is indicated for the creation of special reserve for claiming deduction u/s 36(1)(viii) of the Act. The I.T.A.T. held that, therefore, there was no force in the contention of the Revenue that section does not permit deduction in cases where the reserve is created in subsequent years. The I.T.A.T. held that the words used in section “before making any deduction under this clause carried to such reserve account” meant that the creation of the reserve should be considered at the time of considering the claim of deduction made by the assessee and not before making any deduction. The I.T.A.T. drew support for its findings

from the decision of he Delhi High Court in the case of CIT Vs. Orient Express Co. Pvt. Ltd. Vs. IAC (1985) 14 ITD 506 (Delhi), the decision of the Special Bench of the ITAT Chandigarh Bench in the case of M/s Punjab State Industrial Corporation Ltd. Vs. DCIT, 102 ITD 1 (Chd)(SB) and the decision of the Hon'ble Apex Court in the case of Karimjee Pvt. Ltd vs DCIT (2005) 193 CTR (SC) 55. The I.T.A.T., therefore, held that the assessee is entitled to deduction u/s 36(1)(viii) of the Act though the reserve is created in the subsequent year provided the same is created before the claim of the assessee is considered and also provided that the same is made out of the profits for the concerned year and not out of the profits of the subsequent year. The relevant findings of the I.T.A.T. in this regard at paras 20 to 25 are as under:

> *" **20**. A plain reading of s. 36(1)(viii) does not indicate any time-limit for creation of special reserve for claiming deduction under s. 36(1)(viii) of the Act, hence, the contention of learned Departmental Representative for the Revenue that this provision does not permit the deduction in case the special reserve is created in subsequent year, has no force as it does not find support from the plain language of s. 36(1)(viii) of the Act. Perhaps, the words "..... (before making any deduction under this clause) carried to such reserve account" prompt such inference by the learned Departmental Representative for the Revenue but to our mind answer to such inference drawn by the learned Departmental Representative for the Revenue is that before making any deduction does not mean before making any claim but means at the time of considering such deduction claimed by the assessee.*
>
> ***21.** Hon'ble jurisdictional High Court of **Delhi** while interpreting similar wordings in the context of s. 32A of the Act in the case of CIT vs. Orient Express Co. (P) Ltd. (supra) while dealing with creation of reserve required under s. 32A of the Act at p. 896 held that section prescribes no point of time by which the reserve should be created and in this regard accepted that a reserve created after the closure of the accounts of the year qualifies by observing as under :*

"The second question which is raised only in ITC Nos. 44 and 45 of 1986 is whether the assessee is disentitled to the investment allowance scheme because no requisite reserve has been created by the assessee company before the close of books of the relevant previous year. On this, the finding is that the requisite 'reserve' has been created by holding a second annual general meeting of the members of the company and that the accounts had been duly amended so as to provide for the reserve before the assessment was completed. In view of the fact that the section prescribes no point of time by which the reserve should be created and in view of the various decisions also referred to by the Tribunal, we think, no question of law arises in regard to this aspect. We, therefore, decline to refer this question."

The observation made by the Hon'ble ***Delhi*** *High Court in this regard is thus clearly applicable to the instant case under consideration also.*

22. *We further find that the Special Bench of Tribunal (Chandigarh) in the case of Punjab State Industrial Development Corporation Ltd. (supra) also clearly held that in case of claim under s. 36(1)(viii) of the Act further reserve could be created after closure of the account and AO should offer an opportunity to the assessee to do the same for claiming the deduction under s. 36(1)(viii) of the Act.*

23. *Similar view as taken by the apex Court in the case of Karimjee (P) Ltd. (supra) wherein while dealing with deduction under s. 80HHC of the Act, their Lordships observed that creation of reserve after closure of the accounts was construed as complying with the requirement of granting deduction under s. 80HHC of the Act and in this case the timing of creation of reserve was while the matter was being dealt with by the apex Court.*

24. *Respectfully following the case law (supra) as discussed hereinabove, we hold that a reserve created in subsequent years, however, before finalization of grant of deduction, is required to be considered while allowing assessee's claim of deduction made under s. 36(1)(viii) of the Act.*

25. *We further observe that for and from asst. yr. 1996-97, a financial corporation engaged in providing long-term finance for development of infrastructure facility in India has also become eligible assessee and for computing deduction under s. 36(1)(viii) of the Act in the hands of all eligible assessees, only the income derived from the business of providing long-term finance specified in s. 36(1)(viii) of the Act has to be taken into account and an amount not exceeding 40 per cent of the profits from such business is to be carried to such reserve account. This makes out a condition that the amount so transferred to such reserve account should be from such eligible business of providing long-term financing.*

> *In view thereof, we hold that the increase in reserve created on 31st March, 1998 i.e., in subsequent year/years is allowable subject to the same being from the profits of eligible business of the assessee of the asst. yr. 1997-98 and not of asst. yr. 1998-99."*

10. The aforesaid decision of the Delhi Bench of the I.T.A.T. was followed by the Mumbai Bench of the I.T.A.T. in the case of Bank of Baroda (supra) wherein the issue was identical, the assessee having claimed deduction u/s 36(1)(viii) of the Act, though the special reserve for the purpose of the said claim had not been made during the impugned year but had been made in the subsequent year.

11. It is clear therefore that for claiming deduction u/s 36(1)(viii) of the Act on account of creation of special reserve, what is essential is that the same should be created out of the profits of the year only though not necessarily in the books for the impugned year and that the same can be created in the books of the subsequent year also. What is essential is the creation out of the profits of the impugned year, the point of time of creation being before the consideration of the claim of deduction and not before claiming the deduction as such.

12. Applying the aforesaid provision to the facts of the present case we find that the claim of the assessee amounts to Rs.120 crores for deduction u/s 36(1)(viii) of the Act. The said reserve had been created in financial year 2012-13,i.e before the completion of the assessment for the impugned year vide order passed u/s 143(3) dt.31-03-2014 was . As per the audited annual report of the

assessee of the said year placed before us, it is seen from the Profit & Loss Account for the year ending 31.3.2013, that an amount of Rs.120 crores was transferred from the general reserve out of the profit for the financial year 2010-11 relating to assessment year 2011-12, which is the impugned assessment year, for creating the special reserve u/s 36(1)(viii) of the Act for the assessment year 2011-12. Thus the assessee has duly demonstrated the creation of reserve out of the profits for the impugned assessment year only and also it is not denied that the same had been created before the finalization of the assessment for the impugned assessment year, meaning thereby while considering the claim of the assessee for deduction u/s 36(1)(viii) of the Act. In view of the above, since the assessee has fulfilled the requirement of section 36(1)(viii) of the Act as interpreted by two decisions of the Tribunal as cited above, we hold that the assessee is entitled to deduction u/s 36(1)(viii) of the Act to the extent of reserve created amounting to Rs.120 crores.

13. The reliance placed by the Ld. DR on the decision of the Hon'ble Madras High Court in the case of Tamil Nadu Industrial Investment Corporation Ltd. (supra), we find is of no help to the Revenue. In fact, we find that the ratio laid down in the said decision helps the assessee since the Hon'ble High Court held that for the purpose of claiming deduction u/s 36(1)(viii) of the Act, the creation of reserve out of the profits of the impugned year was

imperative. In the case before the Hon'ble High Court the assessee had created reserve out of profits of earlier years which the Hon'ble High Court held would not entitle the assessee to claim deduction u/s 36(1)(viii) of, since the essential condition for claiming the said deduction was creation of reserve out of the profits of the impugned year itself. Since the same has been demonstrated in the present case, the decision of the Hon'ble Madras High Court in the case of Tamil Nadu Industrial Investment Corporation Ltd. (supra), in fact, we find helps the assessee's case. As for the decision relied upon by the assessee of the Hon'ble Kerala High Court in the case of Kerala Financial Corporation (supra), we fail to understand how the said decision is of any assistance to the Revenue since no decision was rendered by the Hon'ble High Court vis-à-vis the issue of point of time of creation of reserve and the only issue before it was whether after creation of reserve, writing off bad debts from the same would tantamount to not "maintaining" the reserve which was required u/s 36(1)(viii) of the Act. The decision of the Hon'ble Kerala High Court is, therefore, clearly distinguishable and we hold, therefore, does not apply to the facts and circumstances of the present case at all. As for the contention of the Ld. DR that the case laws relied upon by the assessee are for the period prior to assessment year 1998-99 and as per amended provisions of section 36(1)(viii) thereafter, the creation of reserve is essential pre-requisite, we find is mis-placed.

The creation of reserve was always a condition both in pre-amended and post-amended section. What was added only to the words of the section after the amendment carried out in 1998 was the words "maintained". Therefore, even the decision rendered prior to the amendment brought about to section in 1998, applies to the issue at hand since the amendment had no impact on the condition of creation of reserve.

14. In view of the above, we hold that the assessee is entitled to claim deduction on account of creation of special reserve of Rs.120 crores u/s 36(1)(viii) of the Act since the said reserve has been created out of the profits of the impugned year before the claim was considered for the purpose of deduction. The ground of appeal No.1 raised by the assessee, therefore, stands allowed.

15. Ground No.2 raised by the assessee read as under:

> *"2. The Ld. CIT(A) failed to appreciate that when income is increased consequent on additions in the assessment order, deduction u/s 36(1)(viia) shall be increased to that extent in conformity with the provisions of the said section."*

16. Briefly stated, the only plea of the assessee vis-à-vis this ground is that the assessee ought to have been allowed deduction u/s 36(1)(viia) of the Act on account of provision for any bad and doubtful debt on the income enhanced during assessment proceedings. The Ld.CIT(Appeals) rejected this plea of the assessee by stating that the additions made by the Assessing Officer

represented concealed income of the assessee and, therefore, the same was not eligible for any deduction.

17. We are in agreement with the Ld.CIT(Appeals) in this regard, that the assessee is not entitled to claim any deduction on account of the enhancement made to the income of the assessee during assessment proceedings by virtue of various additions/disallowances made during assessment proceedings and the reason for the same is that as per the provisions of section 36(1)(viia) of the Act, deduction is allowed in respect of any provision for bad and doubtful debt made by the assessee. For better understanding Section 36(1)(viia) is reproduced as under:

> ***"Section 36(1)(viia) in The Income- Tax Act, 1995***
>
> *(viia) in respect of any provision for bad and doubtful debts made by-*
>
> *(a) a scheduled bank[not being [1]] a bank incorporated by or under the laws of a country outside India] or a nonscheduled bank, an amount not exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VIA) and an amount not exceeding [2] ten] per cent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner;"*

Clearly, no such provision has been made in the books of account of the assessee with respect to the additions/disallowances made. Therefore as per the plain reading of the section itself, the assessee is not entitled to claim any deduction on the enhanced income.

In view of the above, ground No.2 raised by the assessee stands dismissed.

18. The appeal of the assessee, therefore, stands partly allowed.

ITA No.787/Chd/2017: Revenue's appeal for A.Y 2011-12

19. Ground No.1 raised by the Revenue reads as under:

> *"1. Whether in the facts and circumstances of the case, the Ld.CIT(A), Patiala is legally correct in deleting the addition of Rs.16,95,42,082/- made on account of apportionment of expenses against exempted income u/s 14A of the Income Tax Act, 1961 read with rule 8D of the Income Tax Rules, 1962."*

20. Briefly stated, the Assessing Officer during assessment proceedings found that the assessee had shown the following incomes as exempt in its return of income:

1)	Dividend income exempt u/s 10 (34) & (35)	Rs.4,38,91,510/-
2)	Net interest income exempt u/s 10(15)(iv)(h)	Rs.1,95,64,795/-
	Total :	Rs.6,34,56,305/-

21. The Assessing Officer, therefore, disallowed expenses as per the provisions of section 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 computing the same at Rs.17 crores, and after reducing the expenses suo moto disallowed by the assessee amounting to Rs.4,57,918/-, made disallowance of the balance amounting to Rs. 16.95 crores.

22. During appellate proceedings before the Ld.CIT(A), the assessee pointed out that identical issue had been dealt with by the I.T.A.T. in the case of the assessee for

assessment year 2010-11 wherein disallowance made u/s 14A was deleted holding that the securities were held as stock-in-trade and thus no disallowance u/s 14A of the Act could be made. The Ld.CIT(Appeals), finding merit in assessee's contentions ,deleted the disallowance so made by following the judgment of the I.T.A.T. in assessee's own case for assessment year 2010-11.

23. Before us, the Ld. counsel for assessee relied upon the order of the Ld.CIT(Appeals) and further pointed out that identical disallowance made in assessment year 2008-09 had been deleted by the I.T.A.T., which order had been upheld by the Hon'ble Punjab & Haryana High Court dismissing the appeal filed by the Revenue against the said order vide its decision in ITA No.244 of 2016 (O &M) dated 30.1.2017. The Ld. counsel for assessee drew our attention to the issue which was adjudicated upon by the Hon'ble High Court as mentioned at para 2 of the order as to whether the provisions of section 14A would apply where exempt income such as dividend or interest has earned from securities held by the assessee as a stock-in-trade. The Ld. counsel for assessee thereafter drew our attention to the findings of he Hon'ble High Court at para 26 & 27 of the order wherein it was categorically held that since the securities constituted stock-in-trade of the assessee, the income arising therefrom was the business income of the assessee which is not exempt from tax and the expenditure incurred in relation thereto, therefore, did

not fall within the ambit of section 14A of the Act. The relevant findings of the Hon'ble High Court are as under:

> *"We have held that the securities in question constituted the assessee's stock-in-trade and the income that arises on account of the purchase and sale of the securities is its business income and is brought to tax as such. That income is not exempt from tax and, therefore, the expenditure incurred in relation thereto does not fall within the ambit of section 14A.*
>
> *Now, the dividend and interest are income. The question then is whether the assessee can be said to have incurred any expenditure at all or any part of the said expenditure in respect of the exempt income viz. dividend and interest that arose out of the securities that constituted the assessee's stock-in-trade. The answer must be in the negative. The purpose of the purchase of the said securities was not to earn income arising therefrom, namely dividend and interest, but to earn profits from trading in i.e. purchasing and selling the same. It is axiomatic, therefore, that the entire expenditure including administrative costs was incurred for the purchase and sale of the stock-in-trade and, therefore, towards earning the business income from the trading activity of purchasing and selling the securities. Irrespective of whether the securities yielded any income arising therefrom, such as, dividend or interest, no expenditure was incurred in relation to the same."*

24. The Ld. counsel for assessee further pointed out from para 27 of the order that the Hon'ble High Court agreed that the judgment of the Hon'ble Karnataka High Court in the case of CCIT Ltd. Vs. JCIT, Udupi, 250 CTR 291 (Karnataka), wherein it was held that when the assessee had not retained shares with the intention to earn dividend income and the dividend income earned was incidental to the business of sale of shares, it could not be said that the expenditure incurred in acquiring the shares had to be apportioned to the extent of dividend income and thus be disallowed:

> *"27. The securities were the assessee's stock-in-trade. Mr. Bansal, as noted earlier, submitted that the assessee did not*

hold the securities to earn dividend or interest, but traded in them and the dividend or interest accruing thereon was only a by-product thereof or an incidental benefit arising therefrom and would not, therefore, be subject to the provisions of section 14A. Mr.Bansal's reliance on a judgment of the Karnataka High Court in CCI Ltd. vs. Joint Commissioner of Income-tax, Udupi Range, [2012] 250 CTR 291 (Karnataka) is well founded. Paragraph-5 thereof reads as follows:-

"5. When no expenditure is incurred by the assessee in earning the dividend income, no notional expenditure could be deducted from the said income. It is not the case of the assessee retaining any shares so as to have the benefit of dividend. 63% of the shares, which were purchased, are sold and the income derived therefrom is offered to tax as business income. The remaining 37% of the shares are retained. It has remained unsold with the assessee. It is those unsold shares have yielded dividend, for which, the assessee has not incurred any expenditure at all. Though the dividend income is exempted from payment of tax, if any expenditure is incurred in earning the said income, the said expenditure also cannot be deducted.

But in this case, when the assessee has not retained shares with the intention of earning dividend income and the dividend income is incidental to his business of sale of shares, which remained unsold by the assessee, it cannot be said that the expenditure incurred in acquiring the shares has to be apportioned to the extent of dividend income and that should be disallowed from deductions. In that view of matter, the approach of the authorities is not in conformity with the statutory provisions contained under the Act. Therefore, the impugned orders are not sustainable and require to be set aside. Accordingly, we pass the following: ...." (emphasis supplied) We are, in respectful agreement with the judgment and, in particular, the observations emphasised by us. The Division Bench held that when the assessee has not retained shares with the intention of earning dividend income and that the dividend income is incidental to the business of sale of shares it cannot be said that the expenditure incurred in acquiring the shares has to be apportioned to the extent of dividend income and that should be disallowed from deduction."

25. The Ld. counsel for assessee, therefore, stated that the issue having been decided by the Hon'ble High Court in favour of the assessee the order of the Ld.CIT(Appeals) ought to be upheld.

26. The Ld. DR fairly agreed with the above contentions of the Ld. counsel for assessee.

27. In view of the above, we find no merit in the ground raised by the Revenue since the Hon'ble High Court has already decided the issue of disallowance of expenses u/s 14A read with Rule 8D in the case of the assessee in assessment year 2008-09 in favour of the assessee on the premise that investments in shares were stock-in-trade of the assessee, in which case no disallowance u/s 14A was warranted. The Ld. DR did not point out any distinguishing facts in the present case as compared to the facts in the case of the assessee for assessment year 2008-09. In view of the same, therefore, we hold that the issue is squarely covered by the decision of the Hon'ble Punjab & Haryana High Court in the case of the assessee itself and, therefore, the Ld.CIT(Appeals) has rightly deleted the disallowance of expenses made u/s 14A amounting to Rs.16.95 crores. Ground of appeal No.1 raised by the Revenue, therefore, stands dismissed.

28. Ground No.2 raised by the Revenue reads as under:

> *"2. Whether in the facts and circumstances of the case, the Ld.CIT(A), Patiala is legally correct in deleting the addition of Rs.2,15,55,642/- made on account of disallowance of excess depreciation on ATM."*

29. Briefly stated, the Assessing Officer had allowed depreciation on ATMs, treating them as plant & machinery, @ 15% instead of 60% as claimed by the assessee. The Ld.CIT(Appeals) deleted the disallowance made of the excess depreciation claimed by the assessee

following the order of the I.T.A.T. in the case of the assessee in assessment year 2010-11.

30. Before us, Ld. counsel for the assessee pointed out that identical disallowance made in assessment years 2008-09, 2009-10 and 2010-11 had all along been deleted by the I.T.A.T.

31. The Ld. DR fairly admitted to the above fact as pointed out by the Ld. counsel for assessee and was further unable to point out any distinguishing facts in the present case before us.

32. In view of the same, therefore, we hold hat the issue of depreciation on ATMs @ 60% is squarely covered by the order of the I.T.A.T. in the case of the assessee in preceding years, following which the Ld.CIT(Appeals) has rightly deleted the disallowance made of excess depreciation.

Ground No.2 raised by the Revenue, therefore, stands dismissed.

33. Ground No.3 raised by the Revenue is as under:\

> *"3. Whether in the facts and circumstances of the case, the Ld.CIT(A), Patiala is legally correct in adjudicating that the provisions of Section 115JB of the Income Tax Act, 1961 are not applicable to the case of the assessee for the year under consideration."*

34. The above ground is against the action of the Ld.CIT(Appeals) in deleting the addition made to the book profits of the assessee for the purpose of calculating the

tax payable as per the provisions of section 115JB of the Income Tax Act, 1961, of the disallowance of expenses made u/s 14A of the Act. The Ld.CIT(Appeals) deleted the addition of the expenses disallowed u/s 14A, relying upon the decision of the I.T.A.T., Calcutta Bench in the case of UCO Bank Vs. DCIT, Circle-6, Calcutta dated 27.11.2015 wherein it was held that the provisions of section 115JB are not applicable in the case of banks such as the assessee.

35. Before us, the Ld. counsel for assessee relied upon the order of the Ld.CIT(Appeals) and further relied upon the decision of the Mumbai Bench of the I.T.A.T. in the case of Bank of India Vs. Addl.CIT in ITA No.1498/Mum/2011 dated 9.4.2014 and pointed out that in the said case also it was held that the provisions of section 115JB of the Act are not applicable to banks and the same are applicable only w.e.f. 01.04.2013 vide amendment to the said section made through Financial Act, 2012.

36. The Ld. DR, on the other hand, relied upon the order of the Assessing Officer.

37. We have heard the contentions of both the parties. We find no reason to interfere in the order of the Ld.CIT(Appeals). As pointed out by the Ld. counsel for assessee it has been repeatedly held by the Coordinate Benches of the I.T.A.T. that the provisions of section 115JB are not applicable to the banking companies in the

impugned assessment year. The Mumbai Bench of the ITAT considered and decided an identical issue in the case of Bank of India Vs. Addl.CIT at para 6 of its order as under:

> *"6. Ground No.5 is regarding applicability of provisions of section 115JB in the case of Bank.*
>
> *6.1 The Ld. AR of the assessee submitted that the provisions of section 115JB are not applicable to a banking Commissioner since the accounts of banks are prepared under schedule III of banking regulation Act and not in accordance with the schedule VI of the Company's Act. In support of his contention he has relied upon the following decisions:*
>
> > *(i) Kurung Thai Bank PCL dated 30.09.2010 (ITA 3390/Mum/2009)*
> >
> > *(ii) Maharashtra State Electricity Board (82 ITD 422)*
> >
> > *(iii) Kerala State Electricity Board (329 ITR 91) (HC)*
> >
> > *(iv) Union Bank of India dated 30.06.2011 (ITA No. 4702/mum/2010)*
> >
> > *(v) ICICI Lombard General Insurance Vs. Department of Income Tax (ITA 4286/Mum/2009).*
>
> *6.2 On the other hand, the Ld. DR has relied upon the orders of authorities below,*
>
> *6.3 Having considered the rival submissions as well as relevant material on record, we note that this issue has been considered by this Tribunal in the series of decisions including the decision relied upon by the Ld. AR of the assessee. In the case of ICICI Lombard General Insurance (supra) the coordinate bench of this Tribunal has considered and decided an identical issue in para 6 as under:-*
>
> > *"6. We have heard the Id AR of the assessee as well as the Id DR and considered the relevant material on record. An identical issue has been considered and decided by us in assessee's own case for the AY 2003-04 in ITA No. 2398/Mum/2009 as under;*
> >
> > *"9 We have considered the rival submissions as well as the relevant material on record. There is no quarrel on the point that the assessee, being an Insurance Company is not required to prepare its accounts as per Part II & III of Schedule VI of the Companies Act 1956, Sub. Section (2) of sec 211 are required every P&L accounts of the Companies shall be prepared as per the requirement of*

Part II of Schedule VI. However, the proviso to sub. Sec (2) of sec. 211 of the Companies Act creates an exemption of applicability of sub. Sec, (2) inter-alia in respect of Insurance companies or banking companies or any other companies engaged in generation and supply of electricity for which a form of profit and loss account has been specified in or under the Act governing such class of company. Even if an Insurance Company does not disclose any matter in the Balance Sheet and P&L account because the same is not required to be disclosed by the Insurance Act shall not be treated un-discloser of a true and fair view of the state of affairs of the company as the said condition has been relaxed by sub.sec 5 of sec 211 of the Companies Act.

9.1 It is to be noted that in order to align the provisions of the I T Act with the Companies Act, an amendment has been brought into the statute by the Finance Act 2012 whereby sec 115JB has been amended w.e.f 2013 and therefore, prior to 1.4.2013, the provisions of sec. 115JB cannot be applied in case of Insurance, banking, electricity, generation and distribution companies and other class of companies, which are not required to prepare their accounts and particularly Balance Sheet and P&L account as per part II & III of Schedule VI of the Companies Act.

9.2 The Hyderabad Bench of the Tribunal in the case of State Bank of Hyderabad (supra) has considered and decided a similar issue; though in the case of bank in paras 13 & 14 as under:

> *"13. The provisions of Sec.ll53B will be applicable to all companies. However, it is contended that Sec. 115JB will be applicable only where the assessee is required to show profit & loss account in accordance with schedule VI of companies act. As the banks are required to prepare balance sheet and profit & loss account in accordance with the Banking Regulation Act, provision of 115JB cannot be applied to the banks. In the case of Maharashtra State Electricity Board vs. CIT (82 ITD 422) it was held that provisions of book profit cannot be applied to Electricity Companies. Banking Companies and companies engaged in generation and supply of electricity do not have to prepare their accounts in accordance with parts II and III of Sch. VI of the Companies Act by the virtue of proviso to sec 21 1(2) of the Companies Act. We find that by the Finance Act 2012, with effect from 1.4.2013, even companies to which Proviso to sec 211(2) applies (the banking*

Companies and companies engaged in generating and distribution of electricity), should prepare their P&L and balance Sheet in accordance with the provisions of the Act Governing such companies. This would mean that prior to AY 2013-14, provisions of sec 115)B will not apply to companies to which proviso to sec 211(2) of the companies Act, 1956 applies. 77? Assessee *being a company to which proviso to sec 211(2) of the Companies Act 1956 applies, will not be liable to be taxed under sec 115JB.*

14. The Mumbai Tribunal in the case of Krung Thai Bank Vs. JCIT (133 777 435), to which one of us is a party has held that provisions of sec 115JB cannot be applied to the banking company."

9.3 Similarly, in the case of Reliance Energy (supra), the coordinate Bench of this Tribunal has held in paras 28 & 29 as under:

"28 *As discussed above when it is not possible to prepare the accounts under the Companies Act for the purpose of computation u/s 115JB, therefore, the* assesses *cannot be forced to prepare the accounts when it is not possible. Therefore, we are in agreement with the contentions of the assessee in as much as the accounting policies followed in the electricity accounts if followed for the preparation of Companies Act account will not disclose true and fair view and will not be in accordance with part II and III of Schedule V of the Companies Act, The ratio of the decisions of the Hon'ble Supreme Court and the ratio of the decision of the Tribunal discussed above are in support of the contentions of the assessee. We further found that the issue of applicability of sec. 115} came before the Tribunal for AY 88-89. Taking into cons/deration the preparation of accounts under the Electricity Act and other contentions the assessee including the decisions of the Supreme Court in the case of B.C.Srinivasa Setty (supra), the Tribunal has held that the provisions of sec. 115] are not attracted on the facts of the present case.*

29 As discussed above, the assessee is following the accounting policies under the Electricity Supply act and prepared its accounts in view of those very policies. Following those very policies, the accounts in accordance with part II & III of Schedule VI of the Companies Act are not applicable at all. Once there is no possibility for preparing the accounts in accordance with the part II & II of Schedule VI of Companies Act then the provisions of sec, 115JB cannot be forced, Therefore, in view of the above facts and

circumstances and respectfully following the above decisions of the Hon'ble Supreme Court and the decision of the Tribunal for AY 88-89, we hold that provisions of sec. 115JB are not applicable on the facts of the present case."

10 Following the decisions of the coordinate Benches of this Tribunal, we hold that when the insurance companies, banking companies and electricity generation and distributions companies are treated In the same class as per the provisions of sec 211 of the Companies Act in preparing their final accounts, then these companies cannot be treated differently for the purpose of sec. 115JB and accordingly, the provislons of sec, L15JB are not applicable in the case of the assessee,"

Accordingly, this issue is decided in favour of the assessee and against the revenue".

6.4 Though, section 115JB has been amended to bring all the Companies in its ambit vide Finance Act 2012, w.e.f 1.4.2013, however, the said amendment is not applicable in the assessment year under consideration.

6.5 Following the decision of co-ordinate bench of this Tribunal we decide this issue in favour of the assessee.

The Ld. DR has not brought to our notice any contrary decision of the I.T.A.T. or the Hon'ble High Court or any higher judicial authority in this regard.

38. In view of the same, therefore, the action of the Assessing Officer in making addition of expenses disallowed u/s 14A to the book profits of the assessee, we hold, was unwarranted. We, therefore, uphold the order of the Ld.CIT(Appeals). Ground No.3 raised by the Revenue is also dismissed.

39. In effect, the appeal of the Revenue is dismissed.

ITA No/482/Chd/2017:Revenue's Appeal for A.Y 2012-13

40. Ground No.1 raised by the Revenue reads as under:

> *"1. Whether in the facts and circumstances of the case, the Ld. CIT(A), Patiala is legally correct in deleting the addition of Rs.18,25,14,604/- made by the Assessing Officer on account of apportionment of expenses against exempted income u/s 14A of the Income Tax Act, 1961 read with rule 8D of the Income Tax Rules, 1962."*

41. It was common ground between both the parties that the issue raised in the above ground was identical to that raised in ground No.1 of the Revenue's appeal in ITA No.787/Chd/2017 dealt with in earlier part of our order. We therefore hold that the decision rendered therein at para 27 will apply mutatis mutandis to this ground. Following the same we dismiss the ground of appeal No.1 raised by the Revenue.

42. Ground Nos.2 & 3 raised by the Revenue read as under:

> *"2. Whether in the facts and circumstances of the case, the Ld. CIT(A), Patiala is legally correct in deleting the addition of Rs.3,38,08,1167- made by the Assessing Officer on account of disallowance of excess depreciation on ATM.*
>
> *3. Whether in the facts and circumstances of the case, the Ld. CIT(A), Patiala is legally correct in adjudicating that the provisions of section 115JB of the Income Tax Act, 1961 are not applicable to the case of the assessee for the year under consideration."*

43. It was common ground between both the parties that the issues raised in the above grounds were identical to that raised in ground Nos.2 & 3 respectively of the Revenue's appeal in ITA No.787/Chd/2017 dealt with in earlier part of our order. We therefore hold that the decision rendered therein at para 32 and para 37 will apply

mutatis mutandis to these grounds. Following the same we dismiss the grounds of appeal Nos. 2 & 3 raised by the Revenue.

44. The appeal of the Revenue is dismissed.

ITA No. 510/Chd/2017:Assessee's appeal for A.Y 2013-14

45. One of the issues raised in the above appeal has been referred to the Hon'ble President,ITAT,for constituting a Special Bench of the Tribunal.The appeal therefore is not being dealt with by us,as per the Rules and Procedures for the administration of the ITAT prescribed in the Office Manual of the ITAT.

ITA No.483/Chd/2017 Revenue's appeal for A.Y 2013-14

46. The issues raised in the above cross appeal of the Revenue,for A.Y 2013-14,we find are not connected with the issues raised in the assessees appeal in ITA No.510/Chd/2017 for the impugned year,which has not been dealt with by us on account of reference having been made on one of the issues raised in the appeal to the President ,ITAT,for constituting a Special Bench ,as stated above. Also admittedly the issues raised in the present appeal are identical to that raised in Revenues appeal for A.Y 2011-12 in ITA No.787/Chd/2017,which has been dealt with in earlier part of our order.We therefore consider it appropriate to adjudicate the present appeal.

47. Ground No.1 raised by the Revenue reads as under:

> *1. Whether in the facts and circumstances of the case, the Ld. CIT(A), Patiala is legally correct in deleting [1]ie addition of Rs.28,82,80,000/- made by the Assessing Officer on account of apportionment of expenses against exempted income u/s 14A of the Income Tax Act, 1961 read with rule 8D of the Income Tax Rules, 1962.*

48. It was common ground between both the parties that the issue raised in the above ground was identical to that raised in ground No.1 of the Revenue's appeal in ITA No.787/Chd/2017 dealt with in earlier part of our order. We therefore hold that the decision rendered therein at para 27 will apply mutatis mutandis to this ground. Following the same we dismiss the ground of appeal No.1 raised by the Revenue.

49. Ground No.2 raised by the Revenue reads as under:

> *2. Whether in the facts and circumstances of the case, the Ld. CIT(A), Patiala is legally correct in deleting the addition of Rs.3,38,08,ll6/- made by the Assessing Officer on account of disallowance of excess depreciation on ATM.*

50. It was common ground between both the parties that the issue raised in the above ground was identical to that raised in ground No.2 of the Revenue's appeal in ITA No.787/Chd/2017 dealt with in earlier part of our order. We therefore hold that the decision rendered therein at para 32 will apply mutatis mutandis to this ground. Following the same we dismiss the ground of appeal No.2 raised by the Revenue.

51. The appeal of the Revenue is dismissed.

ITA No. 538/Chd/2017 Assessee's Appeal for A.Y.2014-15

52. One of the issues raised in the above appeal has been referred to the Hon'ble President,ITAT,for constituting a Special Bench of the Tribunal.The appeal therefore is not being dealt with by us,as per the Rules and Procedures for the administration of the ITAT prescribed in the Office Manual of the ITAT.

ITA No. 721/Chd/2017: Revenue's Appeal for A.Y 2014-15

53. The issues raised in the above cross appeal of the Revenue,for A.Y 2014-15,we find are not connected with the issues raised in the assessees appeal in ITA No.538/Chd/2017 for the impugned year,which has not been dealt with by us on account of reference having been made on one of the issues raised in the appeal to the President ,ITAT,for constituting a Special Bench ,as stated above. Also admittedly the issues raised in the present appeal are identical to that raised in Revenues appeal for A.Y 2011-12 in ITA No.787/Chd/2017,which has been dealt with in earlier part of our order.We therefore consider it appropriate to adjudicate the present appeal.

54. Ground No.1 raised by the Revenue reads as under:

> *1. Whether in the facts and circumstances of the case, the Ld. CIT(A), Patiala is legally correct in deleting the addition of Rs.2,02,88,889/- made by the Assessing Officer on account of apportionment of expenses against exempted income u/s 14A of the Income Tax Act, 1961 read with rule 8D*

of the Income Tax Rules, 1962."

55. It was common ground between both the parties that the issue raised in the above ground was identical to that raised in ground No.1 of the Revenue's appeal in ITA No.787/Chd/2017 dealt with in earlier part of our order. We therefore hold that the decision rendered therein at para 27 will apply mutatis mutandis to this ground. Following the same we dismiss the ground of appeal No.1 raised by the Revenue.

56. Ground No.2 raised by the Revenue reads as under:

> *2. Whether in the facts and circumstances of the case, the Ld. CIT(A), Patiala is legally correct in deleting the addition of Rs. 1,79,11,0787- made by the Assessing Officer on account of disallowance of excess depreciation on ATM."*

57. It was common ground between both the parties that the issue raised in the above ground was identical to that raised in ground No.2 of the Revenue's appeal in ITA No.787/Chd/2017 dealt with in earlier part of our order. We therefore hold that the decision rendered therein at para 32 will apply mutatis mutandis to this ground. Following the same we dismiss the ground of appeal No.2 raised by the Revenue.

58. The appeal of the Revenue is dismissed.

ITA No.1259/Chd/2017:Assessee's appeal for A.Y 2014-15

59. One of the issues raised in the above appeal has been referred to the Hon'ble President,ITAT,for constituting a Special Bench of the Tribunal.The appeal therefore is not

being dealt with by us,as per the Rules and Procedures for the administration of the ITAT prescribed in the Office Manual of the ITAT.

60. In the result;

i) The appeal of the assessee in ITA No.861/Chd/2017 is partly allowed.

ii) The appeal of the Revenue in ITA No.787/Chd/2017 is dismissed.

iii) The appeal of the Revenue in ITA No.482/Chd/2017 is dismissed.

iv) The appeal of the assessee in ITA No.510,538 &1259/Chd/2017 have not been dealt with by us for reasons stated in the order.

v) The appeal of the Revenue in ITA No.483/Chd/2017 is dismissed.

vi) The appeal of the Revenue in ITA No.721/Chd/2017 is dismissed.

Order pronounced in the open court.

Sd/- Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Dated : 9th February, 2018

Rati

Copy to:
1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT
5. The DR

Assistant Registrar,
ITAT, Chandigarh