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IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

BEFORE SHRI KULDIP SINGH, JM &
MS PADMAVATHY S, AM

I.T.A. No. 1783/Mum/2023
(Assessment Year: 2016-17)

I.T.A. No. 1784/Mum/2023
(Assessment Year: 2017-18)

I.T.A. No. 1785/Mum/2023
(Assessment Year: 2018-19)

HDFC Bank Ltd., HDFC Bank House, Senapati Bapat Marg, Delisle Road, S.O Mumbai- 400013 **PAN : AAACH2702H**	Vs.	**The DCIT-2(3)(1),** Room No.552, 5th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.
Appellant)	:	**Respondent**)

I.T.A. No. 3375/Mum/2023
(Assessment Year: 2016-17)

I.T.A. No. 3374/Mum/2023
(Assessment Year: 2017-18)

I.T.A. No. 3371/Mum/2023
(Assessment Year: 2018-19)

The DCIT-2(3)(1), Room No.552, 5th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	**HDFC Bank Ltd.,** HDFC Bank House, Senapati Bapat Marg, Delisle Road, S.O Mumbai- 400013 **PAN : AAACH2702H**

Appellant)	:	**Respondent)**

Appellant/Assessee by	:	Shri Yogesh Thar a/w Shri Chaitanya Joshi & Ms. Vidhi Salot, CA
Revenue/Respondent by	:	Shri Biswanath Das, CIT-DR
Date of Hearing	:	17.01.2024
Date of Pronouncement	:	24`.01.2024

O R D E R

Per Bench :

These cross appeals by the assessee and the Revenue are against the separate orders of the Commissioner of Income Tax/National Faceless Appeal Centre [in short 'the CIT(A)'] all dated 27.03.2023 for the Assessment Years (AY) 2016-17, 2017-18 and 2018-19. The issues contended in all these appeals are identical and therefore, these appeals are heard together and disposed of through this common order. The issues against which the assessee and the Revenue have raised grounds are tabulated as under:

Assessee's Appeal

Issue	AY 2016-17	AY 2017-18	AY 2018-19
Disallowance under section 14A – Disallowance to be restricted to the extent of suo-moto disallowance offered by the assessee	Ground No.1	Ground No.1	Ground No.1
Disallowance of ESOP of expenses	Ground No.2	Ground No.2	-

Revenue's Appeal

Issue	AY 2016-17	AY 2017-18	AY 2018-19
Disallowance under section 14A – Amendment brought in by Finance Act 2022 is retrospective	Ground No.1	Ground No.1	Ground No.1
Disallowance of broken period interest on securities	Ground No.2	Ground No.2	Ground No.2
Disallowance of bad-debts on Credit Card	Ground No.3	Ground No.3	Ground No.3
Disallowance towards provision for debit and credit reward points	Ground No.4	Ground No.4	Ground No.4
Disallowance of revised claim for deduction under section 36(1)(viia)	Ground No.5	Ground No.5	
Disallowance of ESOP of expenses			Ground No.5

2. We will first consider the assessee's appeal for adjudication.

ITA No. 1783/Mum/2023 – AY 2016-17

Disallowance under section 14A – Ground No.1

2. During the year under consideration, the assessee had earned exempt income to the tune of Rs. 480,76,49,494/-. The Assessing Officer (AO) called on the assessee as to why disallowance should not be made under section 14A r.w.r 8D. The assessee vide letter dated 28.12.2018 offered a disallowance under section 14A to the tune of Rs. 20,18,079/- based on the Accountant's report. The assessee also relied on the decision of the Hon'ble Supreme Court in the case of Maxopp Investments Ltd. Vs. CIT (2018) [91 taxmann.com 154 (SC)] and submitted that the securities which are held as stock in trade by the assessee should not be considered for disallowance under section 14A r.w.r.8D. The AO accepted the said contention of the assessee that the disallowance under section 14A cannot be

applied on securities held as stock in trade. However, with regard to strategic investments made by the assessee in its subsidiaries, the AO invoked the provisions of section 14A r.w.r. 8D. The AO made disallowance under section 14A r.w.r. 8D(2)(ii) and also 8D(2)(iii) as per the below table:

	Description	**Amount as per Rule 8D(2)**	**Addition**
(i)	the amount of expenditure directly relating Nil to income which does not form part of total income;	Nil	Nil
(ii)	(ii) in a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely:- B A x C Where A amount of expenditure by way of = interest other than the amount of interest included in clause (i) incurred during the previous year: B the average of value of investment, = income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year; C the average of total assets as = appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;	3451,64,41,000	

			15,15,95,974
		2853,36,51,839	
		649674,31,91,000	
(iii)	an amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year	14,26,68,259	14,26,68,259
	Total Disallowance under Section 14A		29,42,64,233

3. Accordingly, the AO had arrived at disallowance of Rs. 29,42,64,233/-. Aggrieved the assessee filed further appeal before the CIT(A). Before the CIT(A), the assessee had contended both the disallowance made under Rule 8D(2)(iii) and 8D(2)(ii). With regard to disallowance under section 14A r.w.r. 8D(2)(ii) the assessee submitted that, assessee's own funds are sufficient and therefore, no is warranted. With regard to disallowance made by the AO under Rule 8D(2)(ii), the CIT(A) has given a detailed finding and gave relief to the assessee stating that when the assessee is having sufficient own funds no disallowance shall be warranted . With regard to 8D(2)(iii) the CIT(A) by relying on assessee's own case in ITA No. 374/Mum/2012 for AY 2008-09 held that for the purpose of disallowance under Rule 8D(2)(iii) the disallowance should be restricted to only those investments yielding exempt income. Against the decision of the CIT(A), the assessee is before the Tribunal contending that the plea of the assessee before the

CIT(A) was to restrict the disallowance to the suo-moto disallowance offered by the assessee and the said relief has not been considered by the CIT(A).

4. The ld. AR with regard to the plea that disallowance should be restricted to the suo-moto disallowance, submitted that the assessee has investments which are in the nature of stock in trade and also are strategic investments made in subsidiaries. The ld. AR drew our attention to the financial statements of the assessee to submit that there has not been any movement in the investments made in subsidiaries as per the financial statements for the year ended 31.03.2016 (page 10 of PB). The ld. AR further submitted that the assessee has followed a scientific method to arrive at the suo-moto disallowance which has been certified by the Accountant of the assessee which has not been considered by the AO (page 85 to 142 of PB). The ld. AR also submitted that since the assessee has invested in subsidiaries for strategic purposes, the cost of the senior officers of the company who are involved in making the strategic decision and since these strategic decision are taken during he board meeting, the cost involved in conducting the board meeting or considered for the purpose of arriving at the suo-moto disallowance. The ld. AR drew our attention to the relevant part of the Accountant's report which explains the manner in which the suo-moto disallowance is arrived in assessee's case as extracted below:

> "**6.4. Part D: Disallowance of administrative/ managerial expenses in respect of strategic investments**
>
> The Hon'ble Supreme Court in the case of Maxopp Investment Ltd (supra) in the context of recording of satisfaction has held that having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was

not accepting the said apportionment. In that eventuality, satisfaction would have to be recorded to this effect.

Attribution of Top Managerial Expenses

Step 1: The detailed workings are attached as Annexure 5 to this report. In these workings, we have identified from the recorded minutes of the Board meeting of the HDFCBL's agendas pertaining to subsidiary companies. These agendas include adoption of the accounts, evaluation of the progress of the subsidiary companies, additional infusion of capital, if any for the year under consideration and several other items.

Step 2: Thereafter, we proceed to identify the total cost incurred in the Board meeting. The total cost includes sitting fees paid to non-executive directors, salary cost of the executive directors and other employees (deputed on the Board of the subsidiary companies of the HDFCBL) pertaining to the date of the Board meeting, secretarial cost for conducting the Board meeting, rental charges in case where meeting is conducted outside the HDFCBL's owned premises, travel cost of all the directors which has been incurred for the purpose of this Board meeting and other expenses which are incurred for the purpose of the Board meeting.

Step 3: The total cost of conducting the Board meeting has been identified for every meeting which the Bank has conducted. After identifying the total cost, the Bank counts the total agenda discussed in the Board meeting. The total agenda pertaining to the subsidiary companies is also identified. The ratio of the agenda pertaining to the subsidiary companies in proportion to the total agendas is applied to the total cost incurred for the particular Board meeting. This amount is attributed as disallowance for the purpose of section 14A of the Act.

For instance, if the total cost incurred for conducting the Board meeting is Rs. 10 lakhs and out of the total 20 agendas in the Board meeting, 5 agendas pertains to subsidiary associate and joint venture companies, 1/4th i.e. (5/20) cost of the Board meeting viz., Rs. 2.5 lakhs would be attributed as amount to be disallowed under section 14A of the Act.

Employees engaged on Board of Subsidiary Companies

HDFC Bank has identified that they have the following employees which are on the Board of the subsidiary companies:

Sr.No.	Name of the employee	Subsidiary Company	Designation (director)
1	Mr. Abhay Aima	HDFC Securities Ltd	Non-Executive

2	Mr. Dhiraj Relli	HDFC Securities Ltd	Non-Executive
3	Mr. Aseem Dhuru	HDFC Securities Ltd	Non-Executive
4	Mr. Kaizad Bhaarucha	HDB Financial Services Ltd	Non-Executive
5	Mr. Anil Jaggia	HDB Financial Services Ltd	Non-Executive
6	Mr. Jimmy Tata	International Asset Reconstruction Co Ltd	Non-Executive
7		ADFC Pvt. Ltd.	Non-Executive

The aforesaid employees are on the payrolls of HDFCBL as group head of one department of the other or they hold position as key managerial personnel (KMPs). These employees/ KMPs also attend the Board meeting of HDFCBL.

The total salary [cost-to-company (CTC)] is identified. These employees are paid salaries even on the days when they have attended the Board meeting of the subsidiary companies.

Therefore, the cost of such days has been identified by dividing the total CTC with 365 days i.e. the entire year. Such per day cost of all the employees has been attributed for the purpose of disallowance u/s. 14A of the Act.

Further, these employees have also attended the Board meeting of HDFCBL. The cost per day for attending the Board meeting is identified and the same is thereafter allocated in the ratio of agenda pertaining to the subsidiary companies and the total agenda."

5. The ld. AR also took the Bench through the actual calculation workings which are done as per the process stated above. To summarise that the assessee has used a scientific method in order to arrive at the suo-moto disallowance, the ld. AR submitted that the lower authorities have completely ignored the suo-moto disallowance working done by the assessee and has proceeded to arrive at the disallowance under section 14A r.w.r. 8D(2)(iii). The ld. AR also raised a legal

contention that the AO while invoking the provisions of section 14A r.w.r. 8D(2)(iii) did not record any satisfaction. The ld. AR further submitted that the AO while arriving at the disallowance did not record any findings as to why the suo-moto disallowance calculated by the assessee is not correct thereby failed to record any satisfaction. The ld. AR in this regard relied on the decision of the Co-ordinate Bench in the case of Aditya Birla Finance Ltd. Vs. ACIT (83 taxmann.com 85) where the Tribunal has accepted similar accountant report and held that the disallowance should be restricted to the suo-moto disallowance. The relevant findings of the co-ordinate bench are as extracted below:

> *"3.28 In the light of the foregoing discussion, we find that neither the Ld. Assessing Officer nor the Ld. Commissioner of Income Tax (Appeal) pointed out any defect in the accounts of the assessee, therefore, the ratio laid down in the case of Britania Industries Ltd. v. Dy CIT [IT Appeal No.390 (Kol.) of 2013, dated 2-3- 2016], Rapiakos Brett & Co. Ltd. v. Addl. CIT(A) [IT Appeal No. 7490 (Mum.) of 2013, dated 10-11-2016] supports the case of the assessee. The ratio laid down in Fedex Finance (P) Ltd. v. Dy. CIT [IT Appeal Nos. 1067 & 1073 (Mum.) of 2013] and White Water Mass Media v. ACIT [IT Appeal No. 2963(Mum.) of 2013] supports the case of the assessee. It is also noted that during assessment proceedings, the report of the accountant, specifying the basis for calculating the amount disallowable u/s 14A of the Act was submitted by the assessee and the Ld. Assessing Officer without rejecting the report mechanically applied Rule-D and computed the amount of disallowance, which cannot be said to be justified. At best, the disallowance may be restricted as suo-moto made by the assessee. Thus, no further disallowance was required to be made."*

6. Therefore, the ld. AR submitted that on this count also the disallowance made by the AO as confirmed by the CIT(A) without recording satisfaction is bad in law.

7. We have heard the parties and perused the material on record. During the course of assessment, the AO made disallowance under section 14A by applying Rule 8D(2)(ii) and 8D(2)(iii). The CIT(A) gave relief to the assessee to the extent

of disallowance made under section 8D(2)(ii) accepting the contention of the assessee that the own funds are employed for making strategic investment in subsidiaries and therefore, no disallowance was warranted towards interest expenses. With regard to disallowance under Rule 8D(2)(iii) though the assessee has raised the contention before the CIT(A) that the disallowance, if any should be restricted the suo-moto disallowance made by the assessee before the AO, it is noticed that the CIT(A) has relied on the order of the Co-ordinate Bench in assessee's own case for AY 2008-09 to hold that no disallowance under Rule 8D(2)(ii) is warranted and also that for the purpose of Rule 8D(2)(iii) only those investments yielding exempt income should be considered for the purpose of disallowance. The CIT(A) had not given any finding with regard to the plea of the assessee that the disallowance should be restricted to the suo-moto disallowance made by the assessee. The contention of the assessee in this regard is two fold. One the suo-moto disallowance has been arrived at on the basis of a scientific method wherein all the relevant costs incurred towards strategic investments in subsidiaries have been considered and proportionate disallowance is arrived at. The alternate contention of the assessee is that the AO failed to record satisfaction before invoking the provisions of section 14A.

8. On the first contention of the assessee, we noticed that the assessee has followed a scientific method as explained in the Accountant's report which is extracted in the earlier part of this order for arriving at the disallowance under section 14A. From the perusal of the financial statements, it is also noticed there no movement in the investment made in the subsidiaries and therefore, there is merit in the contention of the ld. AR that only the cost pertaining to the Board meeting where strategic decisions are taken with regard to investments in subsidiaries and the proportionate costs of those employees in the company who involving the

decisions have been considered for the purpose of disallowance under section 14A and that the said method is appropriate.

9. On the contention that the AO has not recorded any satisfaction, it is relevant to take note of the following observations of the AO before he proceeded to compute the disallowance under section 14A.

> *"3.3 Excluding stock-in-trade from the total investment, the strategic investment for the assessee as on 31.03 2015 was Rs. 2853,16,62,252/- and as on 31.03.2016 was Rs. 2853,56,41,425/ Hence, the average value of investment is Rs. 2853,36,51,839/- These investments cannot be managed without inherent expenses since no investments can be made without market analysis and expertise The assessee could not have got the market expertise and the necessary staff for free and has to necessarily incur expenditure. It is not possible without sufficient expertise as to selection of securities and timely swaps. With increase in technicalities involved in market operations the assessee is bound to have expert advice and necessary staff to act in a time bound manner for proper investments. The assessee would be in receipt of various daily reports, fortnightly reports and monthly reports at regular intervals so that the assessee can take informed decisions regarding deployment / redemption of their investments in various schemes. These inputs have costs in terms of substantial time as well as cost on account of conveyance, traveling, telephone / mobile bills, stationery etc. It is difficult to ascertain such cost in quantitative terms. However the cost on approximate basis has to be considered for the purpose of disallowance. Hence I am satisfied that the disallowance under Section 14A as per Rule BD has to be made."*

10. From the above observations of the AO, it is clear that thought the AO is stating that the assessee would have incurred many indirect expenses towards investments in subsidiaries he has not mentioned anything adverse with regard to the way in which the assessee has computed the suo-moto disallowance. Considering the fact that the investments made are in subsidiaries companies and that there is no movements in the investments during the year under consideration. We do not see merit in the findings given by the AO that the assessee should have incurred indirect expenses such as market report, telephone stationary, etc. for the

purpose of investments. We are also of the view that the observations of the AO as extracted above cannot be considered to be recording of satisfaction, since the AO has not stated anything as to why the calculation of suo-moto disallowance is not acceptable by the AO and why he is not satisfied about the correctness of the said calculation. Therefore, there is merit in the alternate contention of the assessee that the AO has invoked section 14A without recording satisfaction and therefore, bad in law. The Hon'ble Supreme Court in the case of Maxopp Investments (supra) while considering the similar issue and have given a finding that the AO needs to record satisfaction that having regard to the kind of the assessee suo-moto disallowance under section 14A is not correct. In view of these discussions and considering the judicial pronouncements, we are of the view that the AO is not correct in invoking the provisions of section 14A without recording any satisfaction as to why the suo-moto disallowance computed by the assessee is not correct. Accordingly, we delete the disallowance made by the AO and direct the AO to restrict the disallowance to the suo-moto disallowance made by the assessee. It is ordered accordingly.

Disallowance of ESOP expenses – Ground No.2

11. The ld. AR in this regard submitted that the assessee for the first time made the claim before the CIT(A) with regard to the ESOP Expense. The CIT(A) did not allow the claim of assessee following the decision of the Supreme Court in the case of Goetz (India) Ltd. vs. CIT (2006) 284 ITR 323 (SC). The CIT(A) also did not accept the submission of the assessee that the issue is covered by the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Biocon Ltd. (2020) 430 IR 151 (Kar. HC)

12. Before us, the ld. AR submitted that the additional claim based on facts existing on record should have been admitted and adjudicated by the Appellate Authority and in this regard placed reliance on the decision of the Jurisdictional High Court in the case of Pruthvi Brokers and Shareholders Pvt. Ltd. (2012) 349 ITR 336 (Bom.). On merits, the ld. AR submitted that the issue is squarely covered by the decision of the Karnataka High Court in the case of Biocon Ltd. (supra) which has been followed by the Co-ordinate Bench in assessee's own case for AY 2008-09 (ITA No. 374/Mum/2012).

13. The ld. DR submitted that the assessee has made a fresh claim before the CIT(A) for the first time and therefore, the decision of the Hon'ble Supreme Court in the case of Goetz (India) Ltd. (supra) has been correctly applied by the CIT(A). Further, the ld. DR submitted that the Departmental is in appeal before the Supreme Court against the decision of the Karnataka High Court in the case of Biocon (supra) and therefore, the issue of allowability of ESOP expenses has not reached finality. Therefore, the ld. AR prayed that the claim of the assessee shall not be entertained.

14. We have heard the parties and perused the material on record. We noticed that the jurisdictional High Court in the case of Pruthvi Brokers and Shareholders (supra) has considered the issue of admitting additional claim before the Appellate Authority and held that

> *"22. It was then submitted by Mr. Gupta that the Supreme Court had taken a different view in Goetze (india) Ltd (supra). We are unable to agree. The decision was rendered by a Bench of two learned judges and expressly refers to the judgment of the Bench of three learned judges in National Thermal Power Comp Ltd. (supra). The question before the Court was whether the appellant-assessee could make a claim for deduction, other than by filing a revised return. After the return was filed, the appellant sought to claim a deduction by way of a*

letter before the Assessing Officer. The claim, therefore, was not before the appellate authorities. The deduction was disallowed by the Assessing Officer on the ground that there was no provision under the Act to make an amendment in the return of income by modifying an application at the assessment stage without revising the return. The Commissioner of Income-tax (Appeals) allowed the assessee's appeal. The Tribunal, however, allowed the department's appeal. In the Supreme Court, the assessee relied upon the judgment in National Thermal Power Co. Ltd. (supra) contending that it was open to the assessee to raise the points of law even before the Tribunal. The Supreme Court held:-

> *"4. The decision in question is that the power of the Tribunal under section 254 of the Income- tax Act, 1961, is to entertain for the first time a point of law provided the fact on the basis of which the issue of law can be raised before the Tribunal. The decision does not in any way relate to the power of the Assessing Officer to entertain a claim for deduction otherwise than by filing a revised return. In the circumstances of the case, we dismiss the civil appeal. However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the income-tax Appellate Tribunal under section 254 of the Income-tax Act, 1961. There shall be no order as to costs." [Emphasis supplied)*
>
> *23. It is clear to us that the Supreme Court did not hold anything contrary to what was held in the previous judgments to the effect that even if a claim is not made before the assessing officer, it can be made before the appellate authorities. The jurisdiction of the appellate authorities to entertain such a claim has not been negated by the Supreme Court in this judgment. In fact, the Supreme Court made it clear that the issue in the case was limited to the power of the assessing authority and that the judgment does not impinge on the power of the Tribunal under section 254."*

15. Considering the ratio laid down by the Jurisdictional High Court in the above case, we hold that the CIT(A) is not correcting in not admitting the claim of the assessee with regard to ESOP expenses. On merits we notice that a similar issue is considered by the Hon'ble Karnataka High Court in the case of Biocon Ltd. (supra) where it is held that

> *"10. From perusal of section 37(1), which has been referred to supra, it is evident that an assessee is entitled to claim deduction under the aforesaid provision if the expenditure has been incurred. The expression 'expenditure' will*

also include a loss and therefore, issuance of shares at a discount where the assessee absorbs the difference between the price at which it is issued and the market value of the shares would also be expenditure incurred for the purposes of section 37(1) of the Act. The primary object of the aforesaid exercise is not to waste capital but to earn profits by securing consistent services of the employees and therefore, the same cannot be construed as short receipt of capital. The tribunal therefore, in paragraphs 9.2.7 and 9.2.8 has rightly held that incurring of the expenditure by the assessee entitles him for deduction under section 37(1) of the Act subject to fulfillment of the condition.

11. The deduction of discount on ESOP over the vesting period is in accordance with the accounting in the books of account, which has been prepared in accordance with Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999.

12 So far as reliance place by the revenue in the case of Infosys Technologies Ltd.(supra) is concerned, it is noteworthy that in the aforesaid decision, the Supreme Court was dealing with a proceeding under section 201 of the Act for non-deduction of tax at source and it was held that there was no cash inflow to the employees. The aforesaid decision is of no assistance to decide the issue of allowability of expenses in the hands of the employer. It is also pertinent to mention here that in the decision rendered by the Supreme Court in the aforesaid case, the Assessment Years in question was 1997-98 to 1999-2000 and at that time, the Act did not contain any specific provisions to tax the benefits on ESOPs. Section 17(2)(iiia) was inserted by Finance Act, 1999 with effect from 1-4-2000. Therefore, it is evident that law recognizes a real benefit in the hands of the employees. For the aforementioned reasons, the decision rendered in the case of Infosys Technologies is of no assistance to the revenue. The decisions relied upon by the revenue in A. Gajapathy Naidu, Morvi Industries Ltd. and Keshav Mills Ltd.(supra) support the case of assessee as the assessee has incurred a definite legal liability and on following the mercantile system of accounting, the discount on ESOPs has rightly been debited as expenditure in the books of account. We are in respectful agreement with the view taken in PVP Ventures Ltd. And Lemon Tree Hotels Ltd/ case (supra).”

16. Respectfully following the above judicial precedence, we hold that the ESOP expenses claimed by the assessee an allowable expenditure under section 37(1) of the Act. Accordingly, we direct the AO to allow the claim of the assessee. This ground of the assessee is allowed.

ITA No. 1784/Mum/2023 – AY 2017-18

17. The issues contended by the assessee for AY 2017-18 through various grounds is tabulated in the earlier part of this order from which it is clear that ground no. 1 & 2 pertaining to disallowance under section 14A and disallowance of ESOP expenses is identical to AY 2016-17. Therefore, our decision with regard to these issues as adjudicated in AY 2016-17 is mutatis mutandis applicable to AY 2017-18 also. Accordingly, we allow the ground raised by the assessee i.e. ground no.1 & 2 in favour of the assessee.

ITA No. 1785/Mum/2023- AY 2018-19

18. The issues contended by the assessee for AY 2018-19 through various grounds is tabulated in the earlier part of this order from which it is clear that ground no. 1 pertaining to disallowance under section 14A is identical to AY 2016-17. Therefore, our decision with regard to this issue as adjudicated in AY 2016-17 is mutatis mutandis applicable to AY 2018-19 also. Accordingly, we allowed the ground raised by the assessee i.e. ground no.1 in favour of the assessee.

Revenue's Appeal

Condonation of delay

19. There is a delay of 120 days in filing all the appeals by the Revenue. The ld. DR in this regard filed a letter requesting for condonation of delay stating that the concerned AO was not in good health and therefore, could not carry out his duty fully which resulted in the delay in filing the appeal. The ld. DR accordingly prayed that there is reasonable cause for the delay which needs to be condoned.

20. The ld. AR on the other hand vehemently opposed the condonation of delay.

21. We have heard the parties and perused the material on record. From the perusal of the letter of condonation filed by the ld. DR, we noticed that the concerned officer Shri Nitin Kumar Deshkar was not in good health and ultimately opted for VRS for the said reason. Therefore, there is merit in the claim that the AO could not fully focused on the official duties which resulted in the delay in filing the appeal by the Revenue. In our considered opinion there is reasonable cause for the delay in filing the appeal by the Revenue and therefore, following the decision of the Hon'ble Supreme Court decision in the case of Collector, Land Acquisition Vs. MST.Katiji & Ors., (167 ITR 471) (SC) we condone the delay of 120 days in filing the appeal and admit the appeal for adjudication.

ITA.No.3375/Mum/2023

Disallowance under section 14A – Ground No.1

22. The contention of the Revenue is that the CIT(A) erred in not appreciating that the amendment brought in by Finance Act 2022 to section 14A whereby it has been clarified that the provisions of section 14A can be invoked when the assessee has investments which have the potentional of yielding exempt income and the amount of exempt income earned is not relevant in this context. The ld. DR in this regard submitted that the Explanation inserted by the Finance Act, 2022 is clarificatory in nature and therefore, should be applied retrospectively. The ld. DR further submitted that the Guwahati bench of the Tribunal in the case of ACIT vs Williomson Financial Services Ltd ((2022) 140 Taxmann.com 164 (Guwahati – Trib)) while considering the similar issue has correctly interpreted the word used in

the Explanation namely "the provisions of this section shall apply and shall be deemed to have always applied" which would mean that the provisions are clarificatory in nature and is inserted only for the purpose of removal of doubt. Accordingly, the ld. DR submitted that the Guwahati Bench of the Tribunal has correctly held that the Explanation inserted to section 14A is retrospective in nature. With regard to the assessee's claim that the Delhi High Court in the case of PCIT Vs. ERA Infrastructure India Ltd. (141 taxmann.com 289 (Del. HC) where it is held that the Explanation inserted to section 14A is prospective in nature, the ld. DR submitted that the Hon'ble High Court had not interpreted the words "shall deemed to always applied" and therefore, should be distinguished.

23. The ld. AR on the other hand relied on the decision of the Hon'ble Delhi High Court in the case of Era Infrastructure (supra) which was pronounced after the decision of the Guwahati Bench of the Tribunal and therefore, the issue is squarely covered by the decision of the Hon'ble High Court.

24. We have heard the parties and perused the material on record. We noticed that the Hon'ble Delhi High Court in the case of Era Infrastructure India Ltd. (supra) has considered a similar issue where it has been held that

> *"5. However a perusal of the Memorandum of the Finance Bill, 2022 reveals that it explicitly stipulates that the amendment made to section 14A will take effect from 1st April, 2022 and will apply in relation to the assessment year 2022-23 and subsequent assessment years. The relevant extract of Clauses 4, 5, 6 & 7 of the Memorandum of Finance Bill, 2022 are reproduced here-in-below.*
>
> > *"4. In order to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to insert an Explanation to section 14A of the Act to clarify that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where exempt*

income has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such exempt income.

5. This amendment will take effect from 1st April, 2022.

6. It is also proposed to amend sub-section (1) of the said section, so as to include a non- obstante clause in respect of other provisions of the Income-tax Act and provide that no deduction shall be allowed in relation to exempt income, notwithstanding anything to the contrary contained in this Act.

7. This amendment will take effect from 1st April, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years." (emphasis supplied)

6. Furthermore, the Supreme Court in Sedco Forex International Drill. Inc. v. CIT [2005] 149 Taxman 352/279 ITR 310 has held that a retrospective provision in a tax act which is "for the removal of doubts cannot be presumed to be retrospective, even where such language is used, if it alters or changes the law as it earlier stood. The relevant extract of the said judgment is reproduced here-in-below.

'9. The High Court did not refer to the 1999 Explanation in upholding the inclusion of salary for the field break periods in the assessable income of the employees of the appellant. However, the respondents have urged the point before us.

10. In our view the 1999 Explanation could not apply to assessment years for the simple reason that it had not come into effect then. Prior to introducing the 1999 Explanation, the decision in CIT v. 5.G. Pgnatale [(1980) 124 (TR 391 (Guj.)] was followed in 1989 by a Division Bench of the Gauhati High Court in CIT v. Goslino Mario [(2000) 241 ITR 314 (Gau.)). It found that the 1983 Explanation had been given effect from 1-4-1979 whereas the year in question in that case was 1976-77 and said: (ITR p. 318)

"[I] It is settled law that assessment has to be made with reference to the law which is in existence at the relevant time. The mere fact that the assessments in question has (sic) somehow remained pending on 1-4-1979, cannot be cogent reason to make the Explanation applicable to the cases of

the present assessees. This fortuitous circumstance cannot take away the vested rights of the assessees at hand."

11. The reasoning of the Gauhati High Court was expressly affirmed by this Court in CIT V. Goslino Mario [(2000) 10 SCC 165: (2000) 241 ITR 312]. These decisions are thus authorities for the proposition that the 1983 Explanation expressly introduced with effect from a particular date would not effect the earlier assessment years.

12. In this state of the law, on 27-2-1999 the Finance Bill, 1999 substituted the Explanation to Section 9(1)(ii) (or what has been referred to by us as the 1999 Explanation). Section 5 of the Bill expressly stated that with effect from 1-4-2000, the substituted Explanation would read:

"Explanation. For the removal of doubts, it is hereby declared that the income of the nature referred to in this clause payable for-

(a) service rendered in India; and

(b) the rest period or leave period which is preceded and succeeded by services rendered in India and forms part of the service contract of employment, shall be regarded as income earned in India."

The Finance Act, 1999 which followed the Bill incorporated the substituted Explanation to Section 9(1)(/) without any change.

13. The Explanation as introduced in 1983 was construed by the Kerala High Court in CIT V. S.R. Patton [(1992) 193 ITR 49 (Ker.)] while following the Gujarat High Court's decision in S.G. Pgnatale [(1980) 124 ITR 391 (Guj.)] to hold that the Explanation was not declaratory but widened the scope of Section 9(1)(ii). It was further held that even if it were assumed to be clarificatory or that it removed whatever ambiguity there was in Section 9(1)(ii) of the Act, it did not operate in respect of periods which were prior to 1-4-1979. It was held that since the Explanation came into force from 1-4-1979, it could not be relied on for any purpose for an anterior period.

14. In the appeal preferred from the decision by the Revenue before this Court, the Revenue did not question this reading of the Explanation by the Kerala High Court, but restricted itself to a question of fact viz. whether the Tribunal had correctly found that the salary of the assessee was paid by a foreign company. This Court dismissed the appeal holding that it was a question of fact. (CIT v. SR Patton [(1998) 8 SCC 608].)

15. Given this legislative history of Section 9(1)(/), we can only assume that it was deliberately introduced with effect from 1-4-2000 and therefore intended to apply prospectively [See CIT v. Patel Bros. & Co. Ltd., (1995) 4 SCC 485, 494 (para 18): (1995) 215 ITR 165]. It was also understood as such by CBDT which issued Circular No. 779 dated 14-9-1999 containing Explanatory Notes on the provisions of the Finance Act, 1999 insofar as it related to direct taxes. It said in paras 5.2 and 5.3.

"5.2 The Act has expanded the existing Explanation which states that salary paid for services rendered in India shall be regarded as income earned in India, so as to specifically provide that any salary payable for the rest period or leave period which is both preceded and succeeded by service in India and forms part of the service contract of employment will also be regarded as income earned in India.

5.3 This amendment will take effect from 1-4-2000, and will accordingly, apply in relation to Assessment Year 2000-2001 and subsequent years"

16. The departmental understanding of the effect of the 1999 Amendment even if it were assumed not to bind the respondents under section 119 of the Act, nevertheless affords a reasonable construction of it, and there is no reason why we should not adopt it.

17. As was affirmed by this Court in Goslino Mario [(2000) 10 SCC 165: (2000) 241 ITR 312] a cardinal principle of the tax law is that the law to be applied is that which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication. (See also Reliance Jute and Industries Ltd. v. CIT [(1980) 1 SCC 139: 1980 SCC (Tax) 671.) An Explanation to a statutory provision may fulfill the purpose of clearing up an ambiguity in the main provision or an Explanation can add to and widen the scope of the main section [See Sonia Bhatia v. State of UP., (1981) 2 SCC 585, 598: AIR 1981 SC 1274, 1282 para 24]. If it is in its nature clarificatory then the Explanation must be read into the main provision with effect from the time that the main provision came into force [See Shyam Sunder v. Ram Kumar, (2001) 8 SCC 24 (para 44), Brij Mohan Das Laxman Das v. CIT, (1997) 1 SCC 352, 354; CIT v. Podar Cement (P.) Ltd., (1997) 5 SCC 482, 506). But if it changes the law it is not presumed to be retrospective, irrespective of the fact that the phrases used are "it is declared" or "for the removal of doubts" (emphasis supplied)

7. The aforesaid proposition of law has been reiterated by the Supreme Court in M.M. Aqua Technologies Ltd. v. CIT [20211 129 taxmann.com 145/282

Taxman 281/436 ITR 582. The relevant portion of the said judgment is reproduced here-in-below:-

> *"22. Second, a retrospective provision in a tax act which is "for the removal of doubts" cannot be presumed to be retrospective, even where such language is used, if it alters or changes the law as it earlier stood. This was stated in Sedco Forex International Drill inc. v. CIT, (2005) 12 SCC 717 as follows:*
>
> *17. As was affirmed by this Court in Goslino Mario [(2000) 10 SCC 165] a cardinal principle of the tax law is that the law to be applied is that which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication. (See also Reliance Jute and Industries Ltd. v. CIT [(1980) 1 SCC 1391) An Explanation to a statutory provision may fulfil the purpose of clearing up an ambiguity in the main provision or an Explanation can add to and widen the scope of the main section [See Sonia Bhatia v. State of UP., (1981) 2 SCC 585]. If it is in its nature clarificatory then the Explanation must be read into the main provision with effect from the time that the main provision came into force [See Shyam Sunder v. Ram Kumar, (2001) 8 SCC 24; Brij Mohan Das Laxman Das v. CIT, (1997) 1 SCC 352; CTT v. Podar Cement (P.) Ltd., (1997) 5 SCC 482). But if it changes the law it is not presumed to be retrospective, irrespective of the fact that the phrases used are "it is declared" or "for the removal of doubts",*
>
> *18. There was and is no ambiguity in the main provision of section 9(1)(ii). It includes salaries in the total income of an assessee if the assessee has earned it in India. The word "earned" had been judicially defined in SG. Pgnatale ((1980) 124 ITR 391 (Guj.)] by the High Court of Gujarat, in our view, correctly, to mean as income "arising or accruing in India". The amendment to the section by way of an Explanation in 1983 effected a change in the scope of that judicial definition so as to include with effect from 1979, "income payable for service rendered in India".*
>
> *19. When the Explanation seeks to give an artificial meaning to "earned in India" and brings about a change effectively in the existing low and in addition is stated to come into force with effect from a future date, there is no principle of interpretation which would justify reading the Explanation as operating retrospectively." (emphasis supplied)*

8. Consequently, this Court is of the view that the amendment of section 14A, which is "for removal of doubts" cannot be presumed to be retrospective even

where such language is used, if it alters or changes the law as it earlier stood."

25. Therefore, respectfully following the decision of the Hon'ble Court, we are of the considered view that the Explanation inserted by Finance Act, 2022 to section 14A is prospective in nature. Accordingly, ground raised by the Revenue is rejected.

Disallowance of Broken period interest on securities – Ground No.2

26. The AR argued that the issues is covered by the decision of Hon'ble Bombay High Court in the case of CIT Vs. HDFC Bank Ltd. [366 ITR 505 (Bom. HC)] has considered the similar issue and held that no substantial question of law arises in this regard. The ld. AR also drew our attention to the decision of the Co-ordinate Bench in assessee's own case for AY 2012-13 (ITA No. 5672 & 5660/Mum/2017 dated 16.07.2021) has considered the same issue where it is held that

"19. We have given a thoughtful consideration to the aforesaid issue, and find, that the Tribunal in the assessee's own case for the immediately preceding year ie A.Y. 2011-12 in ITA No. 6187/Mum/2016 had decided the said issue in favour of the assessee and had dismissed the revenues appeal. It was observed by the Tribunal that the issue pertaining to allowability of broken period interest had been decided by the Hon'ble jurisdictional High Court and the Tribunal in the assessee's own case for A.Y. 2008-09, A.Y. 2009-10 and A.Y. 2010-11 in ITA No.s 375,722,3465,4367/Mum/2012 and ITA No. 1795/Mum/2010, dated 12.11.2014. It was observed by the Tribunal that in all the aforementioned decisions it was held that the broken period interest paid by the assessee was allowable as a deduction while computing its total income. Observing, that the issue was covered in the assessee's own case by various decisions of the Tribunal and that of the Hon'ble jurisdictional High Court, the order of the CIT(A) vacating the disallowance of broken period interest was upheld by the Tribunal. For the sake clarity the relevant observations of the Tribunal are culled out as under:

"7. The only issue to be decided is deletion of disallowance by the Id. CIT(A) in respect of broken period interest in the sum of Rs. 1947,35,93,107/-.

7.1. We have heard nval submissions and perused the materials available on record. We find that assessee has debited an amount of Rs. 1947,35,93,107/- in the profit and loss account as broken period interest. The assessee submitted that this broken period interest paid is nothing but part of the price paid for the securities at the time of its acquisition. The Id. AO observed that the said purchase price is in the nature of capital outlay and hence, the same cannot be allowed as deduction while computing business income of the assessee. The Id. AO observed that similar disallowance was made in assessee's own case for the AY.2009-10 and the revenue appeal was pending before this Tribunal at the time of completion of the assessment proceedings. Hence, in order to keep the issue alive, disallowance was made by the Id. AO. We find that the Id. CIT(A) had deleted this addition by following the decision of the Hon'ble Jurisdictional High Court in assessee's own case and the decision of this Tribunal in assessee's own case for A.Y 2008-09 and 2009-10 and 2010-11 in ITA Nos, 375, 722, 3465, 4367/Mum/2012 and ITA No. 1795/Mum/2010 dated 12/11/2014. In all these decisions, it was held that the broken period interest paid by the assessee is allowable as deduction while computing total income of the assessee. Since, this issue is already covered in assessee's own case by various decisions of this Tribunal and Hon'ble Jurisdictional High Court, which has been rightly followed by the Id. CIT(A), we do not find any infirmity in the order of the Id. CIT(A). Accordingly, the grounds raised by the revenue are dismissed.

8. In the result, appeal of the revenue is dismissed."

As the facts and the issue involved in the present appeal remains the same as were there before the Tribunal in the assessee's own case for the immediately preceding year ie A.Y. 2011-12 in ITA No. 6187/Mum/2016, as well as in the preceding years, therefore, we respectfully follow the same. We, thus, finding no infirmity in the view taken by the CIT(A) who had rightly vacated the disallowance of the broken period interest on HTM securities of Rs. 165,60,89,890/-, uphold the same. The Ground of appeal No. 5 raised by the revenue is dismissed."

27. The ld. DR fairly conceded that the issues covered by the above mentioned decision of the Jurisdictional High Court.

28. We have heard the parties and perused the material on record. Considering that the facts for the year under consideration being identical, we are of the view that the issue of allowance of broken period interest on securities is covered by the decision of Co-ordinate Bench in assessee's own case for AY 2012-13 is applicable for the year under consideration also. Accordingly we see no reason to interfere with the decision of the CIT(A). This ground of the Revenue is dismissed.

Disallowance of bad debts on credit cards – Ground No.3

29. During the year under consideration, the AO noticed that the assessee has claimed Rs. 375,10,36,088/- as write off of bad debts towards credit card. The AO did not allow the claim of the assessee for the reason that the credit card bad debts were never taken into account for computing the income of the assessee and that the same does not represent the money lent in the ordinary course of business of banking. The relevant observation of the AO is extracted below:

> *"(i) It is observed that as per provisions of Section 36(1)(vii), the assessee is allowed deduction of any amount of bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee. However, the aforesaid provisions are subject to the provisions of section 36(2), which provide that deduction cannot be claimed for bad debt unless such debt has been taken into account in computing the income in the previous year or in an earlier previous years or it represents money lent in the ordinary course of the business of banking or money lending.*
>
> *(ii) The banking services are defined and controlled by the provisions of section 5(b) and section 6 of the Banking Regulation Act, 1949 and are essentially services arising from acceptance of deposits of money from the public. Credit card services can be carried on by any person including non-banking financial institutions. One need not be a customer of a bank to avail and use a credit card. Thus, the credit card services are not part of the business of banking.*

(iii) The activity of offering of credit cards in India is not the business of money lending. The activity is mainly carried out through the provisions of the services provided by two American Companies i.e. Visa card and Master card. These two American companies have signed agreements with shops, establishments, enterprises that they would accept payments by cards on purchase of goods and services made by the customers. The banks have also been taken help from Visa and Master cards by paying fees and on the strength of their agreements with these two American companies banks have issued cards to various customers. The customers or the card holders holding the cards of the banks issued in association with Visa and Master card can make purchases without carrying any money. After the transaction of purchase and services is made the data gets electronically transferred to the computer base of Visa or master card and after the settlement the amounts are intimated to the banks by the card operators. The bank then raises the bills on their customers and gives them a grace period. If the customers make payments within the grace period no interest is charged by the banks. The bank also gives an option to the cardholders to pay by EMI with interest and service charges. From the above description, it is clear that the banks by issuing credit card does not carry out the business of money lending, but acts only as service provider or as agent of the card issuer companies such as Visa or master card. Therefore, the bad debts incurred with regard to issuance and services of credit cards are neither related to banking business or business of money lending.

(iv) Hence, the deduction claimed u/s 36(1)(vii) regarding bad debt on credit cards is not allowed and Rs. 375,10,36,088/- is added back to the total income of the assessee. Penalty proceedings u/s 271(1)(c) of the Act are initiated for furnishing inaccurate particulars of income."

30. The CIT(A) allowed the claim of the assessee stating that the services provided by the assessee is a banking service which is part of the lending activity . The CIT(A) placed reliance on the decision of the Delhi High Court in the case of JDS Apparels Pvt. Ltd. 370 ITR 454 (Del. HC) and the decision of the Jurisdictional Bombay High court in the case of PCIT Vs. Hotel Leela Ventures Ltd. (ITA No. 847 & 954 of 2016 dated 18.12.2018).

31. The ld. DR relied on the order of the AO to submit that the credit card written off as bad debts cannot be allowed as deduction under section 36(1)(vii) for the reason that the assessee accounts for income from credit card only to the extent of commission and not the entire amount paid towards credit cards. Further, the ld. DR submitted that the AO has given a clear finding with regard to the credit card business being not part of the regular banking business and therefore, the amount cannot be allowed as a deduction as bad-debts.

32. The ld. AR on the other hand submitted that the assessee has to settle to the Merchants for the purchases made by the credit card holder and therefore, the amount which is irrecoverable from the customers should be allowed as incurred in the normal course of business of the assessee. The ld. AR also placed reliance on the decision of the Co-ordinate Bench of the Tribunal in the case of IndusInd Bank Ltd. Vs. ACIT (ITA Nos. 2676 & 2675/Mum/2019 dated 26.10.2022)

33. We have heard the parties and perused the material on record. We noticed that in RBI Circular No. /2013-DVOD 14/414.NO.BP.BC78/21.04.048/2013-14 dated 20.12.2013, the RBI has come out with clarification for Asset Classification and Provisioning pertaining to advances- credit card accounts wherein it is stated that

> *"In order to bring consistency and induce transparency it is advised that a credit cared account will be treated as non-performing asset, if the minimum amount is due as mentioned in the statement is not paid fully within 90 days from the next statement date"*

34. Therefore there is merit in the contention that the amount settled by the assessee to the merchants against the purchases made by the credit card holders is given in the normal course of business. Further we also noticed that the Jurisdictional High Court in the case of Hotel Leela Ventures Ltd (supra). while

considering the applicability of deduction of tax at source under section 194H on the credit card charges has held that the amount of fees retained by the Bank is a fee charged by them for having rendered the banking services and cannot be treated as commission or brokerage. We also noticed that the Co-ordinate Bench in the case of Indusind Bank (supra) has considered as similar issue and held that

> *"17.3. We find that assessee had been deriving huge income of Rs.152.32 crores from its total credit card business of Rs.2030 Crores. Out of the said business, Rs.8.34 Crores had turned bad which assessee had claimed as bad debts u/s.36(1)(vii) of the Act. It is not in dispute that assessee had indeed offered income from credit card business as income under the head „profits and gains of business or profession" and which has been taxed as such by the ld. AO. Hence, the income derived from credit card business has been accepted as business income by the ld. AO. The satisfaction of requirement of offering of income in terms of Section 36(2) of the Act has been done by the assessee in the instant case. Hence, if any of the debts in respect of income already offered to tax by the assessee bank had become bad, and the same is written off as bad debt by the assessee in its books of accounts, the assessee would certainly be entitled for deduction u/s.36(i)(vii) of the Act. It need not be routed through provision for bad and doubtful debts account. Moreover, we find that RBI has issued a master circular dated 01/07/2013 which provides for credit card / debit card and rupee denominated co-branded prepaid card portions of the banks. The said circular clearly establishes the fact that credit card business is part and parcel of banking business. This fact that was placed on record by the assessee before the lower authorities had been ignored by them. Further as part of the banking license granted by the RBI, the assessee is entitled to carry on the banking business either departmentally or through a company set up for this purpose. We find that credit card could be issued by the assessee bank only to its customers. Hence, the observation made by the ld. PCIT in the case of ICICI Bank for the A.Y.2013-14 that a person need not be a customer of the bank to obtain credit card is fundamentally incorrect. Credit card business according to the RBI master circular is a permissible banking business activity provided under Banking Regulation Act and hence, it could be safely construed that credit card business is part and parcel of the banking business carried on by the assessee bank. We find that VISA and Master Card only act as service provider. The monies are lent by the assessee bank. The entire risk of bad debts thereon is borne by the assessee bank and not the service providers.*

17.4. We hold that the claim of bad debts to be routed through provision for bad and doubtful debts account would be relevant if the provision is created u/s.36(1)(viia) of the Act. The assessee duly drew our attention from the computation of income that total amount of bad debts of Rs.179,25,17,964/- is reduced by the amount of brought forward provision for bad and doubtful debts claimed u/s.36(1)(viia) of the Act in the preceding previous year of Rs.159,78,14,026/- and only the balance amount of Rs.19,47,03,938/- was claimed as deduction as bad debts u/s.36(1)(vii) of the Act. In this regard, we have verified the computation of income annexed in page 38 & 39 of the paper book. We have also gone through the workings for bad debts written off enclosed in page 43 of the paper book. Hence, it is observed that the bad debts arising from credit card business is part and parcel of total bad debts reflected by the assessee. Hence, we have no hesitation to hold that bad debts arising from credit card business would be part and parcel of loss arising in the course of banking business and hence liable as deduction u/s.36(1)(vii) of the Act. Accordingly, the ground No.4 raised by the assessee is allowed."

35. Combined reading of the RBI Circular and the decisions of the Hon'ble High Court and the Co-ordinate Bench leads us to the conclusion that the bad debts arising out of the business of credit card services is part of the banking activities and the loss arising on account of un-recovered balance is arising out of the normal course of banking business. Accordingly, the same shall be allowed as a deduction under section 36(1)(vii) of the Act. We, therefore, uphold the decision of the CIT(A) in allowing the claim of the assessee. The ground raised by the Revenue in this regard is dismissed.

Disallowance towards provision for debit and credit card reward points – Ground No.4

36. During the year under consideration, the assessee has made a provision of Rs. 179.5 crores towards credit card and debit card reward points. The AO held that the provision made is a book entry and is not a real expenditure incurred by the assessee. Therefore, the AO held the provision to be an ascertained liability. The AO based on the perusal of annual reports for the subsequent financial year

was of the view that the assessee is utilizing only Rs. 65-70 crores out of the provision made and accordingly disallowed a sum of Rs. 106.29 crores.

37. The CIT(A) deleted the disallowance stating that the assessee has followed a scientific basis for arriving at the provision and therefore, the same is not a contingent liability. Further, the CIT(A) considered the opinion of the expert advisory committee of the Institute of Chartered Accounts of India wherein that accounting treatment of reward points given to credit card holder has been provided. The CIT(A) also held that the job of the actuary who computes the amount of provision to be made, is highly specialized job and therefore, the provision made for reward points on credit and debit cards deserves to be allowed.

38. The ld. DR in this regard submitted that the AO has analyzed the data pertaining to actual utilization of the provision made as reported in the notes to accounts of subsequent years and has disallowed the amount accordingly. The ld. DR further submitted that the provision only to the extent of the amount actually utilized can be held to be an ascertained liability and therefore, the AO has correctly disallowed the excess provision.

39. The ld. AR on the other hand argued that the provision for reward points is based on the actuarial method and therefore, cannot be held to be an unascertained liability. The ld. AR further argued that the provision is computed on a cumulative basis year on year and the difference between the opening balance and the closing balance is what is debited to the P&L A/c. Therefore, there is no excess provision in the books of account and therefore, the disallowance made by the AO based on the provision as per the balance sheet as on 31.03.2016 is not correct. The ld. AR

relied on the decision of the Co-ordinate Bench in the case of ACIT Vs. Shoppers Stop Ltd. (ITA No. 1835/Mum/2010 dated 25.01.2012.

40. We have heard the parties and perused the material on record. The assessee provides for reward points on credit and debit cards based on actuarial valuation. The difference between the closing and the opening balance based on the actuarial report is debited to the P&L A/c and claimed as a deduction. In this regard, we noticed that the AO has made the disallowance based on the difference between the closing provision as of 31.03.2016 and the subsequent utilization and came to the conclusion that the provision made by the assessee is excess. The CIT(A) allowed the claim of the assessee stating that the provision made on the basis of actuarial valuation cannot be held to be an ascertained liability since the actuarial valuation takes into consideration various factors such as discount available to the Bank on purchase, customer leaving the credit cards is without redeeming the points, customer losing eligibility to redeem points, etc. In this regard we noticed that a similar issue has been considered by the Co-ordinate Bench of the Tribunal in the case of Shoppers Stop Ltd. where it has been held that

> *"10. The Commissioner (Appeals) has dealt with the issue of allowability of the claim of assessee on reward points from para-3.3 to 3.3.2 of his order, which is reproduced below for ready reference:-*
>
> > *"3.3 I have considered the assessment order and the submissions of the appellant. As I see, the Assessing Officer has disallowed the claim as an unascertained expenditure in view of the fact that the appellant is recognizing redemption of the FCC point only when gift vouchers or points are actually redeemed by a customer. The Assessing Officer has been Led to this view by the Auditor's Notes to Financial Statement reproduced by him in the assessment order. As against this, the main plank of appellant's defence is that the claim is being made in sync with the concept of matching revenue and costs and that in terms of the judicial decisions relied upon the claim is allowable.*

Weighing these two basic positions, I find that the issue begs the following questions:-
i) Whether or not the claim of the reward point is a cost attached to corresponding revenue?

ii) Whether or not the ascertainment of the claim is substantially accurate based on the consistent trend of redemption of rewards points ?

iii) Whether or not excess/shortage is accounted for after verification?

3.3.1 The answer to these questions lead me to agree with the appellant that the claim is allowable. To this end, in answer to the first question, I find that the FCC points claim have their genesis in the sales made and accordingly, when they are earned, incurred to earn the corresponding revenue. As I find, when a sale is made under the scheme, simultaneously and since the appellant has to bear the cost of the redemption, the points assume the character of cost in relation to the redemption entitled sale. The appellant's claim is thus, in full agreement with the concept of matching revenue and costs. In this respect, I find the appellant's reliance on the decision of the Hon'ble Supreme Court in the case Calcutta Co. Ltd. Vs. CIT (WB) 37 ITR 1 as apt and appropriate. In the case Calcutta Co. Ltd. Vs. CIT, the Hon'ble Supreme Court has, in the context of a future discharge of liability in connection with development of plots,! held that the liability on the assessee having been imported, the Liability would be an accrued liability and would not convert into a conditional one merely because the liability was to be discharged at a future date. This view has been echoed by the Hon'ble Supreme Court again in their decision in the case Bharat Earth Movers Vs. CIT. Once the concept of matching revenue and costs is found established, the next natural question would be to see the quality and accuracy of the quantification of the cost to see whether on not the FCC points debited are based on scientific calculation and research. This brings us to the second question. In this respect, I find that the appellant recognizes the liability to the extent of 50% of the points on a conservative basis clued into its past experience suggesting that 50% of the reward points granted were redeemed by the customers. Further, I also note that since the value of reward points also includes gross profit margin for the purpose of quantification of liability, the appellant- reduces the estimated gross profit margin of 30%. I find this process of quantification scientific as it is based on past trends and further, I also find it reasonable since the final liability debited also takes into account the trend of redemption and the gross profit margins. In this view of the matter, the ascertainment of the FCC points is found to be based on sound

and reasonable quantification. This being so, the claim cannot be disallowed on the ground that it is an unascertained expenditure. In this respect, the decision 9f1 the Hon'ble Supreme Court in the case Rotork Controls India (P) Ltd. Vs. CIT bears special mention. In this decision, in the context of allowability of provision for warranty on account of warranty claims likely to arise on the sales, the Hon'ble Supreme Court has held that if historical trend indicates that in past, large number of sophisticated goods were being manufactured and the defects existed in some of the items manufactured and sold, then provision made for warranty in respect of army of such sophisticated goods would be entitled to deduction from the gross receipts u/s.37(1), provided the data is systematically maintained by the assessee. In this decision, the Hon'ble Supreme Court has further held that a provision is recognized when : (a) an enterprise has a present obligation as a result of past event, (b) it is probable that an outflow of resources will be required to settle the obligation and (c) a reliable estimate can be made of the amount of the amount of the obligation. The FCC points claimed by the appellant passes these tests laid down by the Hon'ble Supreme Court. To this end, it may be noted that the claim here is attached to an obligation of redemption and carries on the liability of an outflow of resources when the points are redeemed. Further, as may be noted, the appellant quantifies the FCC liability at 50% of the actual reward points based on its past experience that a minimum 50% gross points granted were redeemed by the customers. Further, this is again reduced by gross profit margin of 30%. The appellant also maintains proper accounting entry in the FCC points redemption account and also runs a software on the redemption process. Premised on this, find that the tests of historical basis and systematic entry of data as laid down by the Supreme Court are fulfilled by the appellant's method of quantification and accounting of the FCC points. In this respect, I also note that the appellant's reliance on the decision of the Hon'ble ITAT, Mumbai Bench in the case ACIT. Circle 5(1), Mumbai and M/s. Jet Airways India P. Ltd. in TA No.3691/M/02 as very apt and appropriate. In this decision, vide its order dated 30.05.2006 while allowing the airline's claim on its scheme called "frequent flyer programme", a claim very similar to the FCC reward points in the appellant's case, the Hon'ble ITAT has held as under:-

> *"In our view, the claim of the assessee has been properly allowed by the CIT(A). The assessee has a scheme known as "frequent flyer programme", Whereby the passengers who frequently use the services of the assessee's airline are permitted to accumulate certain number of miles o their credit..... Any redemption of the accumulated mileage in the subsequent years is debited to the provision account. To track the miles earned by each*

member, a member is required to mention his "JP Membership Number at the time of making booking or at the time of checking in for a flight based on this information available in the system, the miles are then updated-in each members account. The total number of miles earned is ascertained in the above manner and a provision for the cost of tickets to be issued in future for the unutilized redeemable miles is made in the books of accounts as a liability. Such liability is claimed as revenue expenditure. In our view, the claim of the assessee is based on the liability it has undertaken under the frequent flyer programme. It is not the case of the revenue that the liability provided by he assessee is not in accordance with the scheme operated by the assessee. The liability provided is in respect of variable cost of flying the aircraft. That is also based on the minimum cost. In our view, these provisions are based on the experience of the airline and the actual miles accumulated by the passengers. If one were to go through the entire scheme it cannot be said that provision made by the assessee is in respect of a contingent liability. The principle laid down by the Hon'ble Supreme Court in the case of Bharat Earth Movers (supra), equally applies to the scheme in question and the claim of the assessee has been properly appreciated by the CIT(A) and his order is confirmed."

I now come to the third question. In this respect, I find that the accounting method followed by the appellant duly redresses the fallout of any excess/shortage as the appellant accounts for the excess/ shortage after verification of redemption for each customer. I further find that the revenue on account of sale is also accounted gross. These are safeguards against the possibility of double deduction of expenses.

3.3.2 In line with the foregoing, I find that in view of the concept of matching revenue and costs, the scientific and reasonable basis of the quantification of the FCC claim, the judicial decisions discussed above and adequate safeguards against the possibility of double deduction, the appellant's claim is allowable. Accordingly, the disallowance is deleted and the ground of appeal is allowed."

"11. We fully agree with the aforesaid findings of the Commissioner (Appeals). The facts, issues and the findings are brought out nicely by the Commissioner (Appeals). As and when the customer of the assessee makes a particular purchase, the customer is given a monetary right, in the form of rebate in the cost of goods that he may purchase at a future date. Thus, as and when a right is given, the assessee incurs a liability which it has claimed as marketing expenditures. The assessee, based a historical data, in

a scientific manner, has estimated that only 50% of the reward points given are likely to be encashed by the customers. Out of this, 50% gross profit margin is reduced and the balance is only claimed as expenditure. On a direction from the Bench, the assessee has also filed data from the assessment year 2005-06 to the assessment year 2010-11, which shows that the points lapsed was shown as income. The assessee has also proved that this is a consistent accounting policy being followed year after year. On this factual matrix, we uphold the findings of the Commissioner (Appeals). Consequently, the ground raised by the Revenue is dismissed. As we have upheld the order passed by the Commissioner (Appeals), we do not adjudicate the issue of re-opening raised under Rule-27, as it would be an academic exercise.

12. In the result, Revenue's appeal is dismissed."

41. Considering the fact that in the expert advisory committee of the ICAI, it is stated that the liability towards reward points on credit and debit cards should not be limited to the points expected to be redeemed in a particular period such as next year and that the actuarial report based on which the provision is made takes into consideration all the relevant factors with regard to the reward points, in our considered view there is merit in the claim of the assessee that the provision made towards reward points on credit and debit cards should be allowed as a deduction. Accordingly, we hold that there is no infirmity in the decision of the CIT(A) in allowing the claim of the assessee with regard to the provision for reward points on credit and debit cards. This ground of the Revenue is dismissed.

Disallowance of revised claim for deduction under section 36(1)(viia) – Ground No.5

42. The assessee vide letter dated 24.12.2018 stated that at the time of filing the return of income the census data was not fully available and since the data is now available the deduction with respect to Rural Branches have been revised on the basis of such data. The assessee revised the claim under section 36(1)(viia) r.w.r.

6ABA from Rs. 245,25,02,963/- to Rs. 358,31,63,918/-. The AO did not allow the revised claim by the assessee stating that the revised claim during assessment proceedings cannot be allowed without filing the revised return of income relying on the decision of the Hon'ble Supreme Court in the case of Goetz India Ltd. (supra). The CIT(A) allowed the revised claim of the assessee for the reason that the assessee has not made a new claim but has asked for re-computation of the deduction claimed which is based on re-classification of the existing branches into Rural and Urban branches which was not available at the time of filing the return of income. The relevant observation of the CIT(A) is extracted below:

> *"9.4.1 It is seen that during the assessment proceedings, the assessee has revised the claim of deduction u/s 36(1)(viia) r.w. Rule 6ABA which the Ld. AO rejected following the decision of Hon'ble Supreme Court in the case of Goetze (India) vs. CIT (284 ITR 323) SC. In support of the grounds of appeal against such rejection the assessee appellant has uploaded submission containing several judgements of the High Courts including the jurisdictional High Court which have been respectfully considered. It is seen that the assessee has not made a new claim but has asked for re-computation of the deduction claimed which is based on re-classification of the existing branches into rural and/or urban branches because of non-availability of the exact data at the time of filing the ITR but was made available later on by the respective authority in the web-site.*
>
> *9.4.2 As per submission, the assessee has relied upon the decision/judgement given in the case of Chicago Pneumatic India Ltd vs. DCIT (15 SOT 252) (Mum), decision of the Hon'ble Gujarat High Court in case of Choksi Metal Refinery vs. CIT (107 ITR 63), decision of the Hon'ble Delhi HC in the case of CIT v. Natraj Stationery Products (P) Ltd. (2009) 312 ITR 22, decision of the Hon'ble Jurisdictional Bombay High Court in Pruthvi Brokers & Shareholders Pvt. Ltd (2012) 349 ITR 0336 (BOM) and decision of the Hon'ble Gujarat High Court in the case of Arvind Mills Ltd. [TS592-HC-2012(GUJ)] which cover the factual findings. Thus, respectfully following the judgements of the jurisdictional High Court and other High Court(s),* ***Ground No. VI and its supportive grounds taken by the appellant are allowed."***

43. The ld. DR submitted that the reason given by the assessee for revising the deduction claimed under section 36(1)(viia) before the AO is not bonafide and that the assessee should have made the claim by filing the revised return of income. Accordingly, the ld. DR supported the order of the AO.

44. The ld. AR on the other hand submitted that the assessee has not made a fresh claim but has only revised the quantum of deduction claim and therefore, the CIT(A) correctly allowed the claim. The ld. AR accordingly prayed that the decision of the CIT(A) be upheld.

45. We have heard the parties and perused the material on record. It is a settled position that when the assessee has not made a fresh claim but has only revised the claim which is already made in the return of income, the disallowance cannot be denied on the ground that the additional claim is not made by filing the revised return of income. In assessee's case it is an admitted position that the assessee has not made a fresh claim under section 36(1)(viia) but has only re-computed the amount of claim based on the fresh data made available with respect to the classification of branches into Rural and Urban. Therefore, we are inclined to agree with the decision of the CIT(A) and accordingly, direct the AO to verify the revised claim and allow the same in accordance with law. It is ordered accordingly. This ground of the revenue is dismissed.

ITA No. 3374/Mum/2023

46. The issues contended by the Revenue for AY 2017-18 through various grounds is tabulated in the earlier part of this order from which it is clear that ground no. 1 to 5 pertaining to various disallowances as allowed by the CIT(A) are identical to AY 2016-17. Therefore, our decision with regard to these issues as

adjudicated in AY 2016-17 is mutatis mutandis applicable to AY 2017-18 also. Accordingly, we dismiss ground no.1 to 5raised by the Revenue.

ITA No. 3371/Mum/2023- Revenue's Appeal

47. The issues contended by the Revenue for AY 2018-19 through various grounds is tabulated in the earlier part of this order from which it is clear that ground no. 1 to 4 pertaining to various disallowances as allowed by the CIT(A) are identical to AY 2016-17. Therefore, our decision with regard to these issues as adjudicated in AY 2016-17 is mutatis mutandis applicable to AY 2018-19 also. Accordingly, we dismiss ground no.1 to 4 raised by the Revenue.

48. For AY 2018-19 the revenue has raised Ground No.5 regarding the ESOP expenses allowed by the CIT(A). The ESOP expenses claimed by the assessee in the return of income was disallowed by the AO and the CIT(A), however on further appeal allowed the claim of the assessee by relying on the decision of the co-ordinate bench in assessee's own case for AY 2008-09. The Revenue is in appeal before the tribunal against the decision of the CIT(A). We have while considering the assessee's appeal for AY 2016-17 on the issue of disallowance of ESOP expenses not allowed by the AO in the said AY have held that the same needs to be allowed as a deduction by placing reliance on the decision of the Karnataka High Court in the case of Biocon Ltd. (supra) and also the decision of the co-ordinate bench in assessee's own case for AY 2008-09. Since the facts pertaining to the issue for AY 2018-19 is identical to the facts in AY 2016-17, our decision for AY 2016-17 is mutatis mutandis applicable to the issue for AY 2018-19 also. Therefore, we dismissed the ground raised by the Revenue with regard to disallowance of ESOP expenses.

49. In the result, the assessee's appeal for AY 2016-17 to AY 2018-19 is allowed and the Revenue's appeal for AY 2016-17 to 2018-19 is dismissed.

Order pronounced in the open court on 24-01-2024.

Sd/-	***Sd/-***
(KULDIP SINGH)	**(MS. PADMAVATHY S)**
Judicial Member	**Accountant Member**

**SK, Sr. PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai