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आयकर अपीलीय अधिकरण,'ए' न्यायपीठ,चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री वी दुर्गाराव,न्यायिक सदस्य एवं श्री मंजुनाथा.जी, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./**ITA Nos.: 677 & 678/Chny/2019**
निर्धारणवर्ष / Assessment Years: 2014-15 & 2015-16

M/s. Karur Vysya Bank Ltd, Central Office, Erode Road, Karur – 639 002. **[PAN: AAACT-3373-J]**	v.	Deputy Commissioner of Income Tax, Circle -2(1), Trichy.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./**ITA Nos.: 1343 & 1321/Chny/2019**
निर्धारणवर्ष / Assessment Years: 2014-15 & 2015-16

Deputy Commissioner of Income Tax, Circle -2(1), Trichy.	v.	M/s. Karur Vysya Bank Ltd, Central Office, Erode Road, Karur – 639 002. **[PAN: AAACT-3373-J**
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by : Shri. Anandhan, CA and Smt. Lalitha, CA

Revenue by : Shri. Nilay Baran Som, CIT

सुनवाई की तारीख/Date of Hearing : 13.03.2024
घोषणा की तारीख/Date of Pronouncement : 09.04.2024

आदेश /O R D E R

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

These four cross appeals filed by the assessee, and revenue are directed against the order passed by the learned

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Commissioner of Income Tax (Appeals)-1, Chennai, dated 07.02.2019and 11.02.2019 and pertains to assessment year 2014-15 and 2015-16, respectively. Since, facts are identical and issues are common, for the sake of convenience, the appeals filed by the assessee and as well as revenue are being heard together and disposed off, by this consolidated order.

ITA. No. 677/Chny/2019 for AY 2014-15:

2. The assessee has raised common grounds of appeal for both the assessment years. Therefore, for the sake of brevity grounds of appeal filed by the assessee for assessment year 2014-15 is reproduced as under:

> *"1. The order of the learned Commissioner of Income Tax (Appeals} is against law and facts of the case.*
>
> *2. The learned Commissioner of Income Tax (Appeals} erred in law and on facts in confirming the disallowance of Rs. 16,79,49,238/- being provision for leave encashment.*
>
> *2.1. The learned Commissioner of Income Tax (Appeals} failed to appreciate the fact that the section 43B(f) of the Income Tax Act, 1961 has been struck down by Hon'ble Calcutta High Court.*
>
> *2.2. The learned Commissioner of Income Tax (Appeals} failed to appreciate the fact that the provision for leave encashment is an allowable deduction.*
>
> *3. The learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the disallowance of Rs. 30,00,00,000/- u/s 36(1)(viii) by holding that the amount was not transferred to special reserve during the financial year.*
>
> *3.1 The learned Commissioner of Income Tax (Appeals} failed to appreciate the fact that the appellant bank had created*

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reserve in the next financial year in compliance of the provisions of Section 36(1)(viii).

3.2 The learned Commissioner of Income Tax (Appeals} failed to appreciate that reserve created in subsequent / succeeding years but before the finalization of grant of deduction under Section 36(1)(viii) i.e. as per date of order of assessment is required to be considered while allowing the assessee's claim for deduction under Section 36(1)(viii).

3.3 The learned Commissioner of Income Tax (Appeals} erred in not relying on decision of Tribunal applicable to the facts of the case.

4. The learned Commissioner of Income Tax (Appeals} erred in law and on facts in disallowing the depreciation on investments which are stock-in-trade of the bank amounting to Rs. 48,20,32,466/-.

4.1. The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that the investments of the appellant bank are stock in trade and the appellant bank is eligible to claim the loss arising out of the valuation of the stock at cost or market value whichever is lower.

4.2. The learned Commissioner of Income Tax (Appeals) erred in disallowing the depreciation by relying on the RBI guidelines.

4.3. The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that the appreciation need not be adjusted against the depreciation.

4.4. The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that appreciation being notional income cannot be taxed.

4.5. The learned Commissioner of Income Tax (Appeals} erred in not following the CBDT Circular Nos 18/2015 and 6/2016.

5. The learned Commissioner of Income Tax (Appeals) erred in law and on facts in making addition of Rs. 24,27,60,018/- being reversal of NPA provision.

5.1 The learned Commissioner of Income Tax (Appeals) failed to appreciate that it was reversal of provision and not income.

5.2 The learned Commissioner of Income Tax (Appeals) failed to appreciate that write back of the excess provision cannot be treated as deemed income u/s 41(1).

5.3 The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that the Assessing Officer did not bring

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anything on record to prove that the appellant bank derived any benefit in respect of the provision written back.

6. The learned Commissioner of Income Tax (Appeals) erred in law and on facts in disallowing claim of Rs. 65,72,75,190/- by holding that the appellant had made excess claim of bad & doubtful debts.

6.1. The learned Commissioner of Income Tax (Appeals) failed to appreciate fact that the amount of Rs. 65,72,75,790 has been arrived at based on the amount debited to the Profit & Loss account.

6.2. The learned Commissioner of Income Tax (Appeals) failed to appreciate that non rural debts are not covered by the proviso to Sec 36(1)(vii).

7. The learned Commissioner of Income Tax (Appeals) erred in adding a sum of Rs.16,79,49,238/- being the provision for leave encashment while computing the book profit u/s 115JB of the Income Tax Act, 1961.

7.1. The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that the provision for leave encashment was an ascertained liability and as such cannot be added back while computing book profit u/s 115JB.

For all these and other grounds, which may be urged at the time of hearing, the appellant pray that its appeal be allowed."

3. The brief facts of the case are that, the appellant is a private sector bank engaged in the business of providing banking services. The appellant has filed its return of income for the assessment year 2014-15 on 29.09.2014, by declaring current year loss of Rs. 182,34,28,390/- and book profit of Rs. 402,40,04,224/- u/s. 115JB of the Income-tax Act, 1961 (hereinafter referred to "the Act"). The appellant has subsequently filed revised return on 25.05.2015 declaring current year loss of Rs.

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233,84,08,636/- and once again it has filed a revised return on 28.03.2016, declaring loss of Rs. 263,84,08,636/-. The case has been selected for scrutiny and the assessment has been completed u/s. 143(3) of the Act on 31.12.2016 and determined the loss at Rs. 179,14,56,908/- and book profit of Rs. 419,19,53,462/- u/s. 115JB of the Act by making the following additions:

Sl.No	**Particulars**	**Amount in Rs.**
1	Disallowance of provision for leave encashment	16,79,49,238
2	Addition of interest accrued on NPA	93,92,500
3	Stale draft account	2,46,14,514
4	Disallowance of ex-gratia	26,05,79,311
5	Disallowance u/s. 36(1)(viii)	30,00,00,000
6	Bad debts [Ground not taken before CIT(A) and hence, ground is not taken before ITAT]	7,29,184
7	Disallowance u/s. 14A	79,95,384
8	Disallowance of depreciation on ATMs	7,56,91,597
	Total disallowance/addition	**84,69,51,728**

4. Being aggrieved by the assessment order, the assessee preferred before the ld. CIT(A). Before the ld. CIT(A), the assessee has challenged various additions made by the Assessing Officer. During the appellate proceedings, the ld. CIT(A) vide their letter dated 12.02.2018, issued enhancement notice to the assessee

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on certain issues including disallowance of excess claim of depreciation on investments, disallowance u/s. 36(1)(viia) of the Act on the issue of incremental advances and excess claim of bad and doubtful debts and also release of NPA etc. The assessee challenged proposed enhancement of assessment on legal ground as well as various additions proposed by the ld. CIT(A). The ld. CIT(A), after considering relevant submissions of the assessee and also taken note of various provisions of law disposed off appeal filed by the assessee by partly enhancing the total income and also deleted certain additions including addition of interest accrued on NPA, addition towards stale drafts account, disallowance of exgratia, disallowance u/s. 14A and disallowance of depreciation on ATM. However, sustained additions made towards disallowance for provision for leave encashment and disallowance u/s 36(1)(viii) of the Act. The ld. CIT(A), had also enhanced the assessment and directed the Assessing Officer to make additions towards disallowance of excess claim of depreciation on investments, disallowance u/s. 36(1)(viia) in respect of identification of rural branches based on 2011 census, release of NPA and excess claim of bad and

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doubtful debts. Aggrieved by the ld. CIT(A) order, the assessee as well as the revenue are in appeal before us.

5. The first issue that came up for our consideration from ground no. 2.1 to 2.2 of assessee appeal is disallowance of the provision for leave encashment of Rs. 16,79,49,238/-. The assessee has claimed deduction of provision for leave encashment. The Assessing Officer disallowed the same on the ground that, as per Section 43B(f) of the Act, deduction for Leave Encashment is allowable only on actual payment and provision for Leave Encashment cannot be allowed as deduction.

5.1 The Ld. Counsel for the assessee, Shri. S. Anandhan, CA and R. Lalitha, CA, submitted that though the issue was debatable in the past, he fairly conceded that the issue is now settled against the assessee by the decision of the co-ordinate bench of this Tribunal in the assessee's own case in ITA No. 54/Chny/2018 – AY 2012-13 order, dated 10-01-2020.

5.2 In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that

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the assessee is not entitled for deduction towards the provision for Leave Encashment and thus, we are inclined to uphold the findings of the ld. CIT(A) and reject ground taken by the assessee.

6. The next issue that came up for our consideration from ground no 3.1 to 3.3 of assessee appeal is disallowance of deduction of Rs. 30,00,00,000 claimed u/s 36(1)(viii). The facts with regard to the impugned dispute are that, the appellant has claimed a deduction of Rs. 30,00,00,000 u/s 36(1)(viii) of the Act. The appellant bank had not transferred any amount to a Special Reserve as required under that Section during the financial year 2013-14. However, it had transferred the said amount during the financial year 2014-15 from out of the general reserve. The Assessing Officer has disallowed the claim, mainly on account of the fact that the amount was not transferred to Special Reserve during the financial year 2013-14. The Assessing Officer has also observed that the decision of the co-ordinate bench of the Tribunal in the assessee's case has not been accepted by the department. On appeal, the ld. CIT(A) upheld the

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disallowance. Aggrieved by the ld. CIT(A) order, the assessee is in appeal before us.

6.1 The Ld. Counsel for the assessee, submitted that this issue is squarely covered in favour of the assessee by the decision of ITAT in assessee's own case for the assessment year 2009-10in ITA 1640/Mds/2014 order dt 29.02.2016, where the issue has been restored back to the AO to decide the issue afresh in accordance with law keeping in view of the ratio laid down by the Hon'ble ITAT in the case of ACIT v Corporation Bank in ITA 1264/Bang/2013 order dt 11.03.2015. He also relied on the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT v Punjab State Industrial Development Corporation [2010] 323 ITR. Alternatively, Ld. Counsel for the assessee, submitted that the amount transferred to Statutory and other reserves should be treated as transfer to Special Reserve. For this he relied on the ITAT decision in the case of Nizamabad District Cooperative Central Bank Ltd v Income tax Officer 2014 (12) TMI 562-Hon'ble ITAT Hyderabad.

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6.2 The ld. DR, Shri. Nilay Baran Som, CIT, on the other hand supporting the order of the Assessing Officer and ld. CIT(A) submitted that, in order to claim deduction u/s 36(1)(viii), it is imperative that the creation of reserve should be out of the total income of the relevant previous year for which deduction is claimed. The ld. DR placed reliance on the Hon'ble Madras High Court decision in the case of CIT v Tamil Nadu Industrial Investment Corpn. Ltd [1999] 107 Taxman 16 (Mad).The ld. DR submitted that the Special Reserve has to be created in the respective Previous Year.

6.3 The Ld. Counsel for the assessee in his reply submitted that the jurisdictional Hon'ble Madras High Court in the case of Tamil Nadu Industrial Investment Corpn. Ltd (supra) laid down the principle that the Reserve should be created out of the total income of the Previous Year and it did not laid down that the reserve should be created in the previous year. He further submitted that in that case the assessee wanted to make good the deficiency in creating the reserve in the subsequent year by utilizing the excess reserve created in the earlier years. Upholding the decision of the ITAT, the Court held that the surplus reserves created in the earlier years cannot be

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considered for allowing the deduction in the current year. Therefore, the said decision is not applicable to the facts of this case.

6.4 We have heard the rival parties, perused material available on record and gone through orders of the authorities below. The assessee had earned a profit of Rs. 429.59 Cr during the previous year 2013-14. It had transferred an amount of Rs. 157 Cr to Revenue & Other Reserves. During the Financial Year 2014-15, from out of the Revenue Reserve, the appellant transferred an amount of Rs. 30 Cr to Special Reserve. From these facts it can be seen that the assessee has transferred Rs. 30 Cr to Special Reserve from the profits of the previous year 2013-14 and therefore, is eligible to claim the deduction u/s 36(1)(viii). Though as per the section, Reserve needs to be created out of the income of the previous year, there is no stipulation that the Reserve should be created in the previous year itself. A similar issue has been decided by the co-ordinate Bench of this ITAT in the assessee's own case in ITA No. 1640/Mds/2014 order dated 29-02-2016 for the Asst Year 2009-10. In that case also, the Reserve was created

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subsequently and the ITAT allowed the appeal by way of remand by observing as follows:

> *"24. We have considered the rival contentions and perused the orders of authorities below. The assessee has claimed benefit of deduction under section 36(1)(viii) of the Act for the first time in the assessment year 2009- 10. This reserve is to be apportioned from the net profit along with other reserves and it is a "below the line operation", i.e., after arriving net profit and at the time of apportioning the balance of profit to various reserves. The Assessing Officer has observed that the assessee has not segregated this amount from the general reserve in 2009. Though the assessee has claimed deduction, the required special reserve was not created and found in the balance sheet of the assessee as on 31.03.2009, but in the year 2010, it had created ₹.10 crores reserve by withdrawing the same from the general reserve. Since the assessee has not created the special reserve in the financial year 2008-09 relevant to the assessment year 2009-10, the deduction claimed by the assessee under section 36(1)(viii) of the Act was disallowed and the ld. CIT(A) confirmed the disallowance made on this account. Admittedly, though the assessee has for the first made a claim for the benefit of deduction under section 36(1)(viii) of the Act, it is a fact that the assessee has not created the special reserve in the financial year 2008- 09 relevant to the assessment year 2009-10. However, the assessee has created the amount of ₹.10 crores reserve by withdrawing the same from the general reserve in the year 2010.*
>
> *25. On perusal of the calculation adopted by the assessee bank as in the original claim, the 'operating profit' was total income minus total expenses (excluding provisions & contingencies). Actually, for the purpose of allowing deduction under this section, it has to be considered whether the profits derived from business of providing long-term finance computed under the head 'Profits and gains of business or profession' or not. The long-term finance is defined under clause (h) of the Explanation to section 36(1)(viii) as per which, the long-term finance means any loan or advance where the terms under which moneys are loaned or advanced provided for repayment along with interest there on during the period of not less than five years. From the above, it is clear that profits derived from long-term finance only can be considered for the purpose of allowing deduction under section 36(1)(viii) of the Act and hence these receipts as interest on deposits, lease rentals, consultancy and other professional charges, legal fees, guarantee commission, appraisal fees, financial changes, interest on guarantee commission and miscellaneous income,*

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etc., are not in the nature of income from long-term finance and hence these receipts cannot be included in total income for the purpose of computing deduction allowable to the assessee under section 36(1)(viii) of the Act. These receipts can be attributed to the income of business of providing long-term finance but it cannot be said that these are income derived from the business of providing long-term finance because the business of providing long-term finances, can be carried out even without these activities such as consultancy, legal service, appraisal, etc., in leasing there is no finance and hence lease rental is not income from providing long-term finance. Other interests and financial charges are not shown to be out of providing long-term finance and hence not eligible for deduction under section 36(1)(viii) of the Act.

26. Under the above facts and circumstances, we set aside the order of the ld. CIT(A) on this issue and direct the Assessing Officer to decide the issue afresh in accordance with law keeping in view of the ratio laid down by the Bangalore Benches of the Tribunal in the case of ACIT v. Corporation Bank in I.T.A. No.1264(Bang)2013 dated 11.03.2015 after allowing opportunity of hearing to the assessee. Thus, the ground raised by the assessee is allowed for statistical purposes."

6.5 We further agree with the submissions of the Ld. Counsel for the assessee that the decision of jurisdictional Hon'ble Madras High Court relied on by the Ld. DR is not applicable to the facts of the case. In this case also, it is seen that the assessee had income of Rs. 429.95 Cr during the Financial Year 2013-14 as evidenced in the Profit & Loss A/c. Out of this profit, it had transferred Rs. 157 Cr to the Revenue & Other Reserves. In the Financial Year 2014-15, it had transferred Rs. 30 Cr to Special Reserve from the Revenue & Other Reserves. In the assessment order also, this fact has been noted by the

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AO. The only reason for disallowing the claim of the assessee is that the Reserve was not created during the Financial Year 2013-14 and the ITAT order for the earlier year has not been accepted by the Department. Therefore, respectfully following the decision of the co-ordinate bench of the ITAT in assessee's own case, we hold that the assessee is entitled to the deduction u/s 36(1)(viii) as the Reserve was created out of the profits for the year 2013-14 and delete the addition made by the AO. This ground of the assessee's appeal is allowed.

7. The next issue that came up for our consideration from ground nos. 4.1 to 4.5 of assessee appeal is depreciation on investments. The appellant bank is treating its security as stock in trade. For the purpose of income tax, it prepares a separate investment trading account and offers the net result of the trading account to tax. It values individual securities at lower of cost or market value. However, for the purpose of books of accounts, the bank classifies securities as per RBI norms in the following categories i.e., Held to Maturity (HTM), Available for Sale (AFS) and Held for Trading (HFT) and also value them as per RBI guidelines. The Assessing Officer did not deal with this issue while completing the assessment. In

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the appellate proceedings before the Ld. CIT(A), the AO moved an enhancement petition requesting the Ld. CIT(A) to disallow depreciation on investments by relying on instruction no. 17/2008, dated 26th Nov, 2008 and according to the Assessing Officer, the appellant bank has to classify securities under HFT & AFS, as per RBI norms and depreciation has to be aggregated scrip wise and only the net depreciation, if, any, after adjusting the appreciation, is required to be provided in the accounts. The ld. CIT(A) confirmed additions based on the enhancement petition by the Assessing Officer.

7.1 The Ld. Counsel for the assessee, submitted that this issue is squarely covered in favour of the assessee by the decision of the ITAT in the case of State Bank of India in ITA No. 3644 & 4563 / Mum / 2016 – order dated 03-02-2020 in which the ITAT after analyzing various decisions of Hon'ble Supreme Court, held that the notional appreciation need not be adjusted against the depreciation. Without prejudice to this submission, the Ld. Counsel for the assessee made a technical objection that the enhancement by the Ld. CIT(A) itself is beyond the powers of the Ld. CIT(A) u/s 251 of the Act. It is the submission of the Ld. Counsel for the assessee that the

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power of the CIT(A) u/s 251(1)(a) of Act to enhance extends only to those items that were dealt by the AO in the assessment order. He submitted that though the power the Ld. CIT(A) is co-terminus with that of the AO, new issues / additions / sources of income would fall outside the ambit of provisions of section 251 of the Act in regard to enhancement of income. The Ld. Counsel for the assessee, in his written submissions, relied on the case law of Hon'ble Delhi High Court in the case of CIT vs. Sardari Lal & Co., [2001] 251 ITR 864 (Delhi) and argued that the Hon'ble Delhi High Court has categorically held that whatever the question of taxability of income from a new sources of income is concerned, which had not been considered by the AO in the assessment order, jurisdiction to deal with the same in appropriate cases may be dealt with u/s.147 or u/s. 263 of the Act as the law mandates and if the requisite conditions are fulfilled but it is inconceivable that in presence of such specific provisions a similar power is available to the first appellate authority u/s.251 of the Act. He also relied on various decisions including that of the Hon'ble Supreme Court. The ld. Counsel for the assessee further submitted that the issue of the power to enhance has been challenged separately vide Ground no 10.

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7.2 The ld. DR, on the other hand supporting the order of the ld. CIT(A) submitted that, the bank has classified securities into three categories, HTM securities which are carried at acquisition cost unless the cost is more than the face value. Securities Available For Sale (AFS) are valued at quarterly or at more frequent intervals. Similarly, securities Held for Trading (HFT) will be valued at monthly or at more frequent intervals. The CIT(A), has followed RBI guidelines and instruction no. 17/2008 dated 26th Nov, 2008 and worked out disallowances. Therefore, the argument of the assessee that the issue is settled by the decision of the ITAT in the case of State Bank of India is incorrect. On the issue of the power of the CIT(A) to enhance, the ld. DR submitted that, the CIT(A) has been given powers to not only confirm, reduce, or annul the assessment, but even pass an order enhancing the income determined by the AO and the Courts have held that in terms of Sec 251 of the Act, the CIT(A) has wide powers, which includes power of enhancement of assessment. The ld. DR further submitted that the powers conferred upon the CIT(A) was plenary in view of the explanation inserted by the Finance No(2) Act, 1977 and was different in its express wordings from the corresponding Section 31 of the Indian Income tax Act,

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1922. He submitted that the decisions relied on by the ld. Counsel for the assessee were rendered without considering the Explanation to Section 251 of the Act.

7.3 The ld. DR relied on the following case laws:-

1)Shapoorji Pallonji Mistry (S C)44 ITR 891

2) Rai Bahadur Hardutroy Motilal Chamaria (SC) 66 ITR 443

3) Kanpur Coal Syndicate (SC) 52 ITR 229

4) State of TN vs. Arulmurugan and Co. (Madras HC) 51 STC 381

5) Megatrends Inc. (Madras HC) TS-93-HC-2016

6) The Villupuram District Central Co-operative Bank Ltd (Chennai ITAT) in ITA no 981/Chny/2020

7.4 We have heard the rival parties, perused the material available on record and gone through the orders of the authorities below. We find that this issue is purely a new issue raised by CIT(A) and this was never the subject matter of appeal before him or this was never discussed by the AO during assessment proceedings or even a whisper is not there in the assessment order about this issue. Now, the question arises whether the CIT(A), whose powers are coterminous with those of the AO can go into the new issues altogether. We

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have gone through the provisions of section 251 of the Act and noted that the first appellate authority has plenary powers in disposing of an appeal and the scope of his powers is coterminous with that of the AO. He can do what the AO can do and can also direct the latter to do what the latter failed to do. This issue was considered by Hon'ble Madras High Court in the case of CIT vs. T.T Krishnamachari and Co., 223 ITR 224, wherein the Hon'ble High Court has held that the first appellate authority has all the powers which the original authority may have. In the absence of any statutory provisions to the contrary, the appellate authority is vested with all the plenary powers which the sub-ordinate authority has in the matter. It was held by Hon'ble High Court that an item of income noticed by the officer, but not examined by him from the point of view of its taxability or non-taxability, cannot be said to have been considered by him. Consideration does not mean incidental or collateral examination of any matter by the officer in the process of assessment. There must be something in the assessment order to show that the officer has applied his mind to a particular subject matter or the particular sources of income with a view to its taxability or to its non-taxability and not to any incidental connection. As in the

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present case, the Hon'ble Madras High Court has considered that the sources was not new and which was already noticed by the AO, the Hon'ble High Court has upheld the order of the first appellate authority for making enhancement but the ratio laid down by the Hon'ble Madras High Court is very clear and categorical.

7.5 We have also gone through the case law of Hon'ble Supreme Court in the case of CIT vs. Shapoorji Pallonji Mistry, [1962] 44 ITR 891 (SC), wherein the Hon'ble Supreme Court has considered this issue and held that it would not be open to the first appellate authority to introduce into assessment a new source of income as his power of enhancement is restricted only to income which was subject matter of consideration for the assessment by the AO and for this, the Hon'ble Supreme Court noted the reasoning as under:-

> *"In our opinion, this Court must be held not to have expressed its final opinion on the point arising here, in view of what was stated at pp. 709 and 710 of the Report. This Court, however, gave approval to the opinion of the learned Chief Justice of the Bombay High Court that s. 31 of the Income-tax Act confers not only appellate powers upon the Appellate Assistant Commissioner in so far as he is moved by an assessee but also a revisional jurisdiction to revise the assessment with power to enhance the assessment. So much, of course, follows from the language of the section itself. The only question is whether in enhancing the assessment for any year he can travel outside the record, that is to say, the return made by the assessee and*

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the assessment order passed by the Income-tax Officer with a view of finding out new sources of income, not disclosed in either. It is contended by the Commissioner of Income-tax that the word "assessment" here means the ultimate amount which an assessee must pay, regard being had to the charging section and his total income. In this view, it is said that the words "enhance the assessment" are not confined to the assessment reached through a particular process but the amount which ought to have been computed if the true total income had been found. There is no doubt that this view is also possible. On the other hand, it must not be overlooked that there are other provisions like s. 34 and 33B which enable escaped income from new sources to be brought to tax after following a special procedure. The assessee contends that the powers of the Appellate Assistant Commissioner extend to matters considered by the Income-tax Officer, and if a new source is to be considered, then the power of remand should be exercised. By the exercise of the power to assess fresh sources of income, the assessee is deprived of a finding by two tribunals and one right of appeal.

The question is whether we should accept the interpretation suggested by the Commissioner in preference to the one, which has held the field for nearly 37 years. In view of the provisions of section 34 and 33b which escaped income can be brought to tax, there is reason to think that the view expressed uniformly about the limits of the powers of the Appellate Assistant Commission to enhance the assessment has been accepted by the legislature as the true exposition of the words of the section. If it were not, one would expect that the legislature would have amended section 31 and specified the other intention in express words. The Income-tax Act was amended several times in the last 37 years, but no amendment of section 31(3) was undertaken to nullify the rulings, to which we have referred. In view of this, we do not think that we should interpret section 31 differently from what has been accepted in India as its true import, particularly as that view is also reasonably possible."

7.6 Further, as cited by ld. Counsel for the assessee, the Hon'ble Delhi High Court in the case of Sardari Lal& Co, supra, wherein the Hon'ble Delhi High Court has considered the case laws cited by the ld. DR and finally held that no new source of

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income can be introduced by CIT(A) while deciding the appeal and enhancement of income. The Hon'ble Delhi High Court has considered this issue in great detail as under:-

> *"A similar question has been examined by the Apex Court as noted above, on several occasions. We do not think it necessary and appropriate to proliferate this judgment by making reference to all the decisions. A few of the important ones need to be noticed. One of the earliest decisions on the point was in CIT v. ShapoorjiPallonjiMistry (1962) 44 ITR 891 (SC). The matter related to the corresponding provisions of the Indian Income Tax Act, 1922 (hereinafter referred to as "the old Act"). It was held, inter alia, that in an appeal filed by the assessed, the Appellate Assistant Commissioner has no power to enhance the assessment by discovering a new source of income not considered by the Income Tax Officer in the order appealed against. A similar view was expressed in CIT v. RaiBahadurHardutroyMotilalChamaria (1967) 66 ITR 443 (SC). That also related to a case under section 31(3) of the old Act. It was held that the power of enhancement under section 31(3) of the old Act was restricted to the subject-matter of the assessment or the source of income, which had been considered expressly or by clear implication by the assessing officer from the point of view of taxability and that the Appellate Assistant Commissioner had no power to assess the source of income, which had not been taken into consideration by the assessing officer. It is to be noted that strong reliance was placed by learned counsel for the revenue on the decision of the Apex Court in CIT v. NirbheramDaluram (1997) 224 ITR 610. It was submitted that a different view was expressed about the scope and ambit of the power of the first appellate authority vis-a-vis the sources considered by the assessing officer and even if the action of the first appellate authority related to a new source of income not considered by the assessing officer, it was not impermissible. It is to be noted that in Union Tyres' case (supra), this decision was also considered by this court in the background of what had been stated in Daluram's case (supra) and it was observed that there was really no difference from the view expressed earlier in ShapoorjiPallonjiMistry's case (supra) and RaiBahadurHardutroyMotilalChamaria's case (supra).*

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The learned counsel for the revenue also submitted that this conclusion of the Division Bench needs a fresh look. We have considered this submission in the background of what had been stated by the Apex Court in Jute Corporation's case (supra) and Daluram's case (supra). In Jute Corporation's case (supra), the Apex Court while considering the question whether the Appellate Assistant Commissioner has the jurisdiction to allow the assessed to raise an additional ground in assailing the order of assessment before it, referred to Shapoorji's case (supra), and drew a distinction between the power to enhance tax on discovery of a new source of income and granting a deduction on the admitted facts supported by the decision of the Apex Court. Relying on certain observations made by the Apex Court in CIT v. Kanpur Coal Syndicate (1964) 53 ITR 225 (SC), the Apex Court held that powers of the first appellate authority are coterminous with those of the assessing officer and the first appellate authority is vested with all the wide powers, which the subordinate authority may have in the matter. In Daluram's case (supra), the decisions of Kanpur Coal's case (supra) and Jute Corporation's case (supra) were also considered and it was observed by the Apex Court that the appellate powers conferred on the first appellate authority under section 251 of the Act were not confined to the matter, which had been considered by the Income Tax Officer, as the first appellate authority is vested with all the wide powers of the assessing officer may have while making the assessment, but the issue whether these wide powers also include the power to discover a new source of income was not commented upon. Consequently, the view expressed in ShapoorjiPallonjiMistry's case (supra) and RaiBahadurHardutroyMotilalChamaria's case (supra) still holds the feet. It may be noted that the issue was considered in CIT v. McMillan and Co. (1958) 33 ITR 182 (SC). Referring to a decision of the Bombay High Court in NarondasManordass v. CIT (1957) 31 ITR 909 (Bom), it was held that the language used in section 31 of the old Act is wide enough to enable the first appellate authority to correct the Income Tax Officer not only with regard to a matter which has been raised by the assessed but also with regard to a matter which has been considered by the assessing officer and determined in the course of the assessment. It is also relevant to note that in the Jute Corpn. of India Ltd.'s case (supra), the Apex Court, inter alia, observed as follows :

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"…… The AAC, on an appeal preferred by the assessed, had jurisdiction to invoke, for the first time, the provisions of rule 33 of the Indian Income Tax Rules, 1922 (hereinafter referred to as 'the Rules'), for the purpose of computing the income of a non-resident even if the Income Tax Officer had not done so in the assessment proceedings. But, in ShapoorjiPallonjiMistri [1962] 44 ITR 891, this court, while considering the extent of the power of the Appellate Assistant Commissioner, referred to a number of cases decided by various High Courts including the Bombay High Court judgment in NarrondasManordass [1957] 31 ITR 909 and also the decision of this court in McMillan & Co. [1958] 33 ITR 182 and held that, in an appeal filed by the assessed, the AAC has no power to enhance the assessment by discovering new sources of income not considered by the Income Tax Officer in the order appealed against. It was urged on behalf of the revenue that the words 'enhance the assessment' occurring in section 31 were not confined to the assessment reached through a particular process but the amount which ought to have been computed if the true total income had been found. The court observed that there was no doubt that this view was also possible, but having regard to the provisions of sections 34 and 33B, which made provision for assessment of escaped income from new sources, the interpretation suggested on behalf of the revenue would be against the view which had held the field for nearly 37 years…." (p.692) [Emphasis, supplied].

Looking from the aforesaid angles, the inevitable conclusion is that whenever the question of taxability of income from a new source of income is concerned, which had not been considered by the assessing officer, the jurisdiction to deal with the same in appropriate cases may be dealt with under section 147/148 of the Act and section 263 of the Act, if requisite conditions are fulfillled. It is inconceivable that in the presence of such specific provisions, a similar power is available to the first appellate authority. That being the position, the decision in Union Tyres' case (supra) of this court expresses the correct view and does not need reconsideration. This reference is accordingly disposed of."

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7.7 In view of the above case laws considered and facts of the case that the issue i.e., disallowance of depreciation on investment, was never subject matter of assessment order. Hence, we are of the view that enhancement made by CIT(A) on altogether new issue is without authority of law and accordingly, we quash the enhancement. Since we have decided the issue on technical grounds, the issue on merits is left open.

8. The next issue that came up for our consideration from ground nos. 5.1 to 5.3 is addition of Release of NPA provision. During the assessment proceedings the AO did not raise the issue. However during the appellate proceedings before the CIT(A), the AO moved an enhancement petition requesting him to enhance the income in respect of reversal of NPA provision made by the assessee in the books. The Ld. Counsel for the assessee at the outset submitted that this issue is also a new issue considered by the ld. CIT(A) for enhancement and as such the power of enhancement could not be exercised. He also argued on merits that no addition can be made in this regard.

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8.1 The Ld. DR re-iterated the submission made earlier in respect of the power to enhance.

8.2 We have heard the rival parties, perused material available on record and gone through orders of the authorities below. We find that this issue is also a purely a new issue raised by CIT(A) and this was never the subject matter of appeal before him or this was never discussed by the AO during assessment proceedings or even a whisper is not there in the assessment order about this issue. The reasons given by us in the preceding paragraph on the power of enhancement shall mutatis mutandis apply to this ground of appeal as well. Therefore, we quash the enhancement and allow the ground of assessee's appeal by directing the AO to delete the addition. Since we have decided this issue on technical grounds, the issue on merits is left open.

9. The next issue that came up for our consideration from ground no. 6.1 & 6.2 of assessee's appeal is deduction u/s. 36(1)(vii) of the Act, in bad debts actually written off in the books of accounts of the assessee. The facts with regard to the impugned dispute are that, the assessee is a scheduled bank

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and has claimed deduction u/s. 36(1)(viia) of the Act, in respect of provision for bad and doubtful debts. The assessee had also claimed deduction u/s. 36(1)(vii) of the Act, towards actual write off of bad debts totaling to Rs. 189,21,11,268 of which Rs. 189,13,82,084 pertains to non rural advances and Rs. 7,29,184 pertains to rural advances. The Assessing Officer, however disallowed the bad debts write off pertaining to rural branches, as per provisions of section 36(1)(vii) of the Act and Explanation (2), and following the decision of the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd vs CIT [2012] 343 ITR 270 (SC). Before the CIT(A) the AO moved an enhancement petition contending that bad debts written off should be adjusted against the provision for bad & doubtful debts account made under section 36(1)(viia) without any distinction between rural and other advances and only excess over the credit balance in the account can be claimed as deduction u/s 36(1)(vii).

9.1 The Ld. Counsel for the assessee, Shri. S. Anandhan, CA, & R Lalitha, CA, at the outset submitted that this issue has been covered in favour of the assessee by the decision of ITAT in the case of M/s. City Union Bank Ltd – ITA No. 1120 / Chny

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/ 2019 – order dated 11-03-2024 for the Asst Year 2015-16.He also submitted that the AO did not consider this issue from this point of view in the assessment order and therefore the enhancement is not tenable. He further submitted that the Bangalore Benches, in the case of Karnataka Bank Ltd vs DCIT in ITA No. 1907/Bang/2018, wherein the issue has been dealt in detail in light of provisions of section 36(1)(vii) of the Act and explanation provided thereunder and also provisions of section 36(1)(viia) r.w.s. 36(2)(v) of the Act. The Tribunal had also discussed the issue in light of explanation (2) inserted by Finance Act, 2013 w.e.f. 01.04.2014 in light of decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank vs CIT [2012] 343 ITR 270, and held that for the purpose of deduction towards write off of non-rural debts u/s. 36(1)(vii) of the Act, there is no need to adjust credit in the account of provision for bad and doubtful debts created in terms of section 36(1)(viia) of the Act. The Ld. Counsel for the assessee, has argued the issue at length in light of the decision of Karnataka Bank Ltd vs DCIT (Supra) and held that, even after insertion of Explanation (2) to section 36(1)(vii) of the Act, the ratio laid down by the Hon'ble Supreme Court in the above case is not nullified, in so far as, deduction in

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respect of bad debts written off by non rural branches. He, further submitted that, clause (a) of section 36(1)(vii) of the Act is a beneficial provision provided to banks operating in rural areas and extending credit facilities and thus, when the bank is claiming deduction towards provision for bad and doubtful debts, on the basis of provisions credited, then if you adjust write off of non-rural debts against provision account, then the benefit given to rural banks is taken away. In other words, when it comes to deduction towards write off of bad debts deductible u/s. 36(1)(vii) of the Act, the advances given by rural branches alone needs to be considered, without any adjustment towards provisions credited for non-rural advance and actual write off of non-rural advances. This issue is also covered by the decision of Hon'ble Delhi High Court in the case of Oriental Bank of Commerce vs PCIT in ITA No. 521/2023, where the Hon'ble High Court has considered provisions of section 36(1)(vii) of the Act and explanation provided thereto and held that there is no substantial question of law raised from the decision of the Tribunal. From the above, it is very clear that the findings of the ITAT in respect of deduction towards provision for bad and doubtful debts u/s. 36(1)(viia) and write off of bad debts u/s. 36(1)(vii) of the Act, pertains to

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rural advances should be considered separately without any adjustment in respect of write off of bad debts pertains to non-rural debts. Therefore, he submitted that the ld. CIT(A) erred in not considering relevant facts while deciding the issue and thus, the enhancement made by the Ld. CIT(A) towards disallowance of deduction claimed u/s. 36(1)(vii) of the Act should be deleted.

9.2 The ld. DR, on the other hand supporting the order of the ld. CIT(A) submitted that, after insertion of Explanation (2) to section 36(1)(vii) by Finance Act, 2013 w.e.f. 01.04.2014, there is no ambiguity in respect of deduction towards provision for bad and doubtful debts u/s. 36(1)(viia) of the Act and deduction towards write off of actual bad debts u/s. 36(1)(vii) r.w.s. 36(2)(v) of the Act, because the Explanation has been inserted to remove doubts in light of certain judicial precedents including the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank vs CIT (Supra), and thus, the arguments of the Ld. Counsel for the assessee that, even after insertion of Explanation (2), provision for bad and doubtful debts and write off of bad debts in respect of rural advances should be separately considered without any adjustment in

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respect of write off of non-rural debts. In this regard, he has filed a detailed submission which has been reproduced as under:

"Bad debts written off claimed u/s.36(1)(vii)

This issue pertains to all the three assessment years: 2014-15, 2015-16 and 2017-18. The assessee has claimed deduction of bad debts written off as irrecoverable u/s.36(1)(vii) of the Income Tax Act in its Computation of Income as under:

AY	***Amount (Rs. In Cr)***
2014-15	*189.21*
2015-16	*480.84*
2017-18	*264.88*

This deduction was claimed in the Statement of Computation of Income for respective years but the same was not claimed as expenditure in the audited financial accounts prepared and published by the assessee.

While computing the income referred in section 28 of the Income Tax Act, ***bad debts written off*** *is an allowable deduction u/s.36. In order to claim the said deduction, the assessee has to prepare their accounts in accordance with law by charging those expenditures into the P&L a/c and net profit has to be arrived accordingly. The section 36(1)(vii) of the Income Tax Act reads as under:*

"subject to the provisions of sub-section (2), the amount of any bad debt or part there of which is ***written off as irrecoverable in the accounts*** *of the assessee,*

for the previous year,"

Proviso- *I: as per this proviso,*

"in case of an assessee to which clause (viia) applies, the amount of the deduction relating to any such debt or part there of shall be limited to the amount by which such debt or part there of exceeds the credit balance in the provision for bad and doubtful debts accounts made under that clause."

It is further explained in Explanation-2:

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"For the removal of doubts, it is hereby clarified that for the purposes of the proviso to clause (vii) of this sub-section and clause (v) of sub-section (2), ***the account referred to therein shall be only one account*** *in respect of provision for bad and doubtful debts under clause (viia)* ***and such account shall relate to all types of advances,*** *including advances made by rural branches;"*

The assessee bank can claim bad debts written off as irrecoverable u/s.36(1)(vii), ***subject to*** *the provision of sub section (2) of section 36 of the Income Tax Act.*

Provided,assessee being a scheduled bank, where they already claimed deduction of 'provision for bad and doubtful debt' under clause (a) of section 36(1)(viia), to claim bad debt write off, the write off should exceed the credit balance in the "provision for bad and doubtful debt" made. Sub clause (v) of section 36(2) categorically prescribes that no such deduction (bad debt write off) shall be allowed to the assessee falling under 36(1)(viia), unless the assessee has debited the amount of such debt or part of debt in the previous year to the provision for bad and doubtful debts a/c made under 36(1)(viia).

In the instant case, the assessee has written off bad debts in the computation of income without routing it through the accounts as prescribed by law. It has not debited the bad debts written off in the books of account nor has it debited in the provision for bad and doubtful debts as mandated by law. In this connection, the following is submitted for kind consideration:

1. *The assessee has debited provision for bad and doubtful debts ("PBDD") in the books of account. This is charged as expense in the profit and loss account. The profit and loss account from the annual accounts can be perused. The said provision for bad and doubtful debts is debited under the head "provisions and contingencies". The amounts of PBDD debited to P & L a/c is shown in table below:*

AY	***Amount debited into P&L account***
2014-	*189.47*
2015-	*467.03*
2017-	*417.30*

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The amounts of PBDD made by the assessee is in respect of all the advances irrespective of whether the advances relate to rural or non-rural branches. This implies that the assessee has been creating PBDD for all advances irrespective of whether they are rural or non-rural branches. That is, the assessee has been maintaining only one account under the head PBDD as mentioned in explanation 2 to section 36(1)(vii) and the same is debited to the profit and loss account. The said PBDD, subject to the limits mentioned in section 36(1)(viia), has been allowed to the assessee.

*The amounts of **PBDD** debited to Profit & Loss a/c and the amount claimed u/s.36(1)(viia) is shown in table below:*

AY	***Amount debited into P&L account***	***Amount claimed u/s.36(1)(viia)***
2014-15	*189.47*	*105.58*
2015-16	*467.03*	*140.39*
2017-18	*417.30*	*225.89*

2. The assessee has also claimed deduction in respect of bad debts written off as irrecoverable u/s 36(1)(vii)

2.1 For claiming bad debt write off as irrecoverable, the assessee has to debit that bad debt in to the P&L a/c by crediting the corresponding debtor account in the Balance Sheet. This is what prescribed in section 36(1)(vii) of the IT Act. Law is settled on this aspect. The accounting treatment for bad debt write off is

Debit	*bad debt*	*P&L Ac*
Credit	*Corresponding Debtor A/c in*	*Balance sheet*

2.2 In the Computation of Income submitted by the assessee for the above three assessment years in appeal, the assessee has claimed the bad debts written off as under:

AY	***Amount (Rs. In Cr)***
2014-15	*189.21*
2015-16	*480.84*

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2017-18	264.88

2.3 The appellant has claimed both provision for bad and doubtful debts u/s.36(1)(viia) and bad debt write off as irrecoverable u/s 36(1)(vii) of the Income Tax Act as deduction while computing the total income.

2.4 However, the claim of bad debts written off is not allowable to the assessee as it has not debited the write off of bad debts to the profit and loss account and correspondingly closed the debtor account. Further the assessee has to satisfy the conditions mentioned in section 36(2)(v). Sub clause (v) of section 36(2) categorically prescribes that no such deduction (bad debt write off) u/s 36(1)(vii) shall be allowed to the assessee falling under 36(1)(viia), unless the assessee has debited the amount of such debt or part of debt in the previous year to the provision for bad and doubtful debts a/c made under 36(1)(viia).

2.5 As per RBI guidelines-prudential norms, assessee has to make a provision for bad and doubtful debt or provision for NP A on each NP A. It is classified as provision for bad and doubtful assets, category-I or category-2, provision for loss asset etc. Such provision is depending upon the performance of NP A and the securities against each such NP A. "Loss asset" is a category of provision for NP A where 100% provision was made in the books of accounts. It is to be mentioned here that it has already passed through doubtful category- I, doubtful category-2 etc. This is also to be debited as provision for NPA only into the P&L account. If any recovery is made out of this NP A, it has to be duly offered as income u/s 41(1).

2.6 It is clear from the accounts furnished by the assessee that no bad debts have been written off in the books of account of the assessee. As the bad debts were not written off in the books, it is not eligible to claim deduction u/s.36(1)(vii). Further the bad debts written off were not debited to the ***PBDD*** *thus not fulfilling the condition prescribed u/s 36(2)(v).*

2. 7 The assessee has been claiming that the debts written off are urban debts and can be claimed separately u/s 36(1)(vii) and not subject to provisions of section 36(1)(viia) which governs only bad debts of rural advances. Such a claim is not acceptable in view of the newly inserted explanation 2 to section 36(1)(vii) w.e.f. AY 2014-15. The explanation makes it

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very clear that the provision u/s.36(l)(viia) is for bad and doubtful advances related to both urban and rural advances.

Further, the explanatory memorandum while introducing the explanation 2 makes it very clear that provision u/s.36(1)(viia) is for bad and doubtful debts is related to both urban and rural advances.

The Memorandum to the Finance Act, *2013 is reproduced below:*

"It has also been interpreted that there are separate accounts in respect of provision for bad and doubtful debt under clause (viia) for rural advances and urban advances and if the actual write off of debt relates to urban advances, then, it should not be set off against provision for bad and doubtful debts made for rural advances. There is no such distinction made in clause (viia) of section 36(1). In order to clarify the scope and applicability of provision of clause (vii), (viia) of sub-section (1) and sub-section (2), it is proposed to insert ***an*** *Explanation in clause (vii) of section 36(1) stating that for the purposes of the proviso to section 36(1)(vii) and section 36(2)(v), only one account as referred to therein is made in respect of provision for bad and doubtful debts under section 36(1)(viia) and such account relates to all types of advances, including advances made by rural branches. Therefore, for an assessee to which clause (viia) of section 36(1) applies, the amount of deduction in respect of the bad debts actually written off under section 36(1)(vii) shall be limited to the amount by which such bad debts exceeds the credit balance in the provision for bad and doubtful debts account made under section 36(1)(viia) without any distinction between rural advances and other advances "*

Hence, it is clear that the explanation applies to a bank as a whole and not for any specific type of advances.

The assessee claims that section 36(1)(viia) is applicable only to rural bad debts write off and not for urban bad debts write off which can be claimed u/s 36(1)(vii). The section 36(1)(viia) was inserted by Finance Act 1979 w.e.f. 01.04.1980. The section starts as ***"in respect of <u>any</u> provision for bad and doubtful debts made by".*** ***It*** *includes NPAs irrespective of whether the advances related to rural or non-rural. W.e.f. 1-4-1989, section 36(1)(vii) also undergone substantial change.* ***It*** *is clearly explained in circular 464 of 1986.*

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Explanation 1 to section 36(1)(vii) *introduced in Finance Act 2001 w.r.e.f 1.4.1989 to plug the tax payers from claiming both provisions for bad debts as well as bad debt write off as an allowable deduction simultaneously of the same bad debt, reads as under:*

"Explanation 1.-For the purposes of this clause, any bad debt or part thereof written off as irrecoverable in the accounts of the asses see shall not include any provision for bad and doubtful debts made in the accounts of the assessee. "

The provision of section 36(1)(vii) allows deduction of bad debt write off as irrecoverable in the accounts of the assessee. Section 36(l)(viia) allows deduction of ***any*** *provision for bad and doubtful debt made by assessee. Some of the judicial pronouncements gave findings that section 36(l)(viia) allows deduction of bad debt of rural branch NPA and section 36(l)(vii) of the Income Tax Act allows deduction of bad debts of non-rural NP A of the respective bank. To clear the doubts, as explained earlier, Explanation 2 was brought into the statute in Finance Act, 2013.*

The claim of the assessee is not legally valid in view of the newly inserted explanation and hence is not to be accepted. From the accounts, it is seen that it has created only one account for PBDD which covers all types of advances and has published the same in the annual accounts. The provision created is for both rural and urban advances. Now, to make an artificial distinction is not valid.

Hence, as the assessee has failed to debit the bad debts written off in the accounts i.e either to ***PBDD*** *nor charged it to profit and loss account, its claim has no merit.*

In this connection, the following cases are relied upon:

a) Vijaya Bank vs CIT 323 ITR 166

"After the insertion of the Explanation, the assessee(s) is now required not only to debit the profit and loss account but simultaneously, also to reduce loans and advances or the debtors from the assets side of the balance sheet to the extent of the corresponding amount so that at the end of the year the amount of loans and advances/debtors is shown as net of provisions for impugned bad debt. "

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At this juncture, reference is drawn to the decisions relied on by the assessee in the case of ***PCIT*** *v* ***Oriental Bank of Commerce (Delhi High Court) in ITA 521/2023*** *wherein the Hon'ble Delhi High Court confirmed the order of the Hon'ble Delhi Tribunal dated 04.03.2022 in Oriental Bank of Commerce v AdCIT in ITA No. 1199/Del/2018.*

It is pertinent to note that the decisions of the Hon'ble Delhi Tribunal and Delhi High Court rely on the decision of the Hon'ble Supreme Court in Vijaya Bank (supra) which stated that there must be PBDD debit to the P&L along with reduction of Loans & Advances. The relevant portion of the decision in Vijaya Bank (supra) has been reproduced above.

In the facts of the case of Oriental Bank of Commerce, the assessee had reduced the PBDD from Loans & Advances as recorded in the order of the Hon'ble Delhi Tribunal. Hence, the Hon'ble Courts relied on Vijaya Bank (supra) and decided the matter in favour of the assessee.

However, in the instant cases, the assessee has not reduced the PBDD from the Advances in the Balance Sheet (reference is drawn to Schedule 9 -Advances of the Balance Sheet of the assessee for the respective assessment years. Relevant pages of the financials have been enclosed).

Hence, the decisions in the case of Oriental Bank of Commerce (supra) are not applicable in the facts of the instant case and cannot be relied on by the assessee.

b) ***DCIT vs ING Vysya Bank [2014] 42 taxmann.com 303 (Bang-Trib)***

" .... what has to be seen by the AO is as to whether provision for bad doubtful debts is created irrespective of whether it is in respect of rural or non-rural advances by debiting into P&L account."

State Bank of Hyderabad vs DCIT [2015] 63 taxmann.com 322 (HydTrib.)

On *careful analysis of section under section 36(1)(viia) it is very much clear that assessee being a scheduled bank can claim deduction in respect of provision for bad and doubtful debts made in its books of account, which does not exceed the aggregate of amount not exceeding*

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7. 5 per cent of the total income computed before making any deduction under section 36(1)(viia) and Chapter-VIA and an amount not exceeding 10 per cent of the aggregate average advances made by rural branches of such bank computed in terms with the prescribed rules. Thus, on reading of the aforesaid provision, it is very much clear that for claiming deduction under the said provision, assessee has to fulfil two conditions, firstly, it must have made a provision for bad and doubtful debts in its books of account and secondly the maximum deduction allowable is to the extent of 7. 5 per cent of the total income and 10 per cent of the aggregate average advances made by rural branches of such bank. ***On*** *a reading of the provisions of section 36(1)(viia), as it stands now, it is very much clear that there is no restriction imposed under the said provision to indicate that assessee cannot make a provision for non-rural/urban advances. That being the case, department's argument that deduction under section 36(1)(viia) has to be restricted only to the extent of provision for bad and doubtful debts relating to rural advances, is not acceptable. [Para 39}*

It is well settled that actual provision made by assessee on account of provision for bad and doubtful debt irrespective of the fact whether it is rural or non-rural, has to be seen while examining assessee's claim of deduction under section 36(1)(viia). *If the bank does not have rural branch, it will not get deduction relating to 10 per cent of aggregate average advances made by rural branches. However, it will be eligible to claim deduction of 7. 5 per cent of total income.Bifurcating the provision for bad and doubtful debt as one relating to rural advances and other advances (non-rural) does not arise for consideration. Thus, reasoning of the Assessing Officer in confining the deduction claimed under section 36(1)(viia) only to the provision made towards rural advances, is not in accordance with the statutory provision. On the other hand, the view expressed by Commissioner (Appeals) while allowing assessee's claim of deduction is as per the statutory provision. Accordingly, there is no infirmity in the order of Commissioner (Appeals) in allowing assessee's claim of deduction for Rs. 616.55 crores u/s 36(1)(viia). [Para 3]*

Alternate claim regarding taxability u/s.41(4)

Now, whether the alternative claim that if the bad debt write off is disallowed by the AO, recovery of the bad debt write off u/s.41(4) of the Income Tax Act was also not to be charged

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was right? It is an incorrect claim. Prima facie, for the assessee, section 36(l)(vii) and section 41(4) is not be applicable as they have not written off any bad debt as irrecoverable in their accounts (Profit & Loss accounts). Only they created provision for bad and doubtful debts and claimed as a deduction as per section 3 6(1)(viia) of the IT Act to the extent they are entitled.

Whenever the appellant created the provision for NP A/provision for bad and doubtful debt, it is allowed as a deduction u/s 36(1)(viia).

***If** they provide 100% provision over the period years on those NP A, it will be classified as loss asset.*

***If** such NP A started performing, they have to offer the same as income in the P&L account as provision no longer required*

***It** has to be charged u/s 41 (1) of the I T Act as reversal of provision.*

*This principle has been established in the case of **PragathiGrameena Bank Ltd vs CIT [2018] 91 taxmann.com 343 (Kar)** which has been affirmed by the Hon'ble Supreme Court.*

Prudential write off/ technical write off

*These are prudential norms prescribed as per RBI norms. When they create 100% provision of any that NP A, it will be classified as loss asset. The technical write off or prudential write off or head office write off takes place in head office. However, in books of respective branch account it remains as advance recoverable. **It** cannot be written off as irrecoverable. These write off are not all bad debt write off as irrecoverable as contemplated in section 36(l)(vii) of the Income Tax Act. The Hon'ble Supreme Court explained the differences between these two in **Southern Technologies vs JCIT [201 0J in 320 ITR 577.** This is also once again reiterated in the latest decision by the Apex Court in the case of **PCJT vsKhyati Realtors (P.)Ltd [2022] 141 taxmann.com 461.***

*In the case of **PCIT v. Khyati Realtors (P.)Ltd (supra),** the Hon'ble Supreme Court gave the analysis and conclusion from paragraph 11 to 13. At paragraph 13, the Apex Court explained the scope of section 36(l)(vii) after 1.4.1989. **It** has also analysed various other decisions of the Supreme Court on*

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the subject of bad debt write off, contemplated u/s 36(l)(vii) and gave its salient finding in point no. I 7 as under:

"17. It is evident from the above rulings of this court, that:

(i) The amount of any bad debt or part thereof has to be written-off as irrecoverable in the accounts of the assessee for the previous year;

(ii) Such bad debt or part of it written-off as irrecoverable in the accounts of the assessee cannot include any provision for bad and doubtful debts made in the accounts of the assessee;

(iii) No deduction is allowable unless the debt or part of it "has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year", or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee;

(iv) The assessee is obliged to prove to the AO that the case satisfies the ingredients of Section 36(1)(vii) as well as section 36(2) of the Act."

Summary:

It *is submitted that mere provision for NP A cannot be considered as write off u/s.36(1)(vii) as held by Supreme Court in the case of* ***Southern Technologies vs ACJT 352 ITR 577.*** *Reliance is also placed on the decision rendered by Hon 'ble Kerala High Court in the case of* ***CIT vs Hotel Ambassador [2002] 253 ITR 430,*** *wherein it was held that the deduction u/s.36(l)(vii) of the Act is allowable only if the assessee debits the same into the accounts as irrecoverable.*

Exactly, on similar facts and grounds, the Hon'ble Supreme Court has admitted the SLP in the case of ***Commissioner of Income-tax, LTU vsVijaya Bank [2021] in 130 taxmann.com 149.***

Reliance is further placed on the decision of the Hon'ble Supreme Court in ***Vijaya Bank vs CIT 323 ITR 166,*** *wherein it was held that the assessee is now required not only to debit the profit and loss account but simultaneously, also to reduce loans and advances or the debtors from the assets side of the*

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balance sheet to the extent of the corresponding amount so that at the end of the year the amount of loans and advances/debtors is shown as net of provisions for impugned bad debt.

Finally, it is well settled that actual provision made by assessee on account of provision for bad and doubtful debt irrespective of the fact whether it is rural or non-rural, has to be seen while examining assessee's claim of deduction under section 36(1)(viia). *If the bank does not have rural branch, it will not get deduction relating to 10 per cent of aggregate average advances made by rural branches. However, it will be eligible to claim deduction of 7.5 per cent of total income. Bifurcating the provision for bad and doubtful debt as one relating to rural advances and other advances (non-rural) does not arise for consideration.*

*Assessee is a scheduled bank falling. under**clause (a) of section 36(1)(viia)** of the Income Tax Act. They are entitled for **any** provision for bad and doubtful debt made by them in the books of accounts, not exceeding the limits prescribed therein which has already been claimed. No other bad debt was actually written off as irrecoverable as per section 36(1)(vii) of the Income Tax Act in the annual accounts published. Hence, the claim of bad debt write off in the computation of income is not true and correct.*

Prayer:

In light of the detailed submissions enumerated above and the judicial decisions relied on, it is prayed that the grounds raised by the assessee bank against the disallowances u/s.36(1)(vii) may be rejected."

9.3 We have heard both the parties, perused material available on record and gone through orders of the authorities below. This issue has been decided in favour of the bank by this Tribunal in the case of M/s City Union Bank Ltd (supra). The Tribunal held as follows:

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"We have also carefully considered the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank vs CIT (Supra) and subsequent Explanation (2) inserted by Finance Act, 2013 w.e.f. 01.04.2014, in light of the decision of Hon'bleITAT Bangalore Bench in the case of Karnataka Bank vs DCIT (Supra) in ITA No. 1907/Bang/2018. The controversy with regard to claim for deduction towards provision for bad and doubtful debts in terms of section 36(1)(viia) of the Act and deduction towards actual write off of bad debts u/s. 36(1)(vii) r.w.s. 36(2)(v) of the Act, has to be understood in the context of rural advance and non-rural advance given by the banks.

10.4 The provisions of section 36(1)(vii) deals with deduction toward bad debts or part thereof which is written off as irrecoverable in the accounts of the assessee subject to the provision of sub-section (2) to section 36 of the Act. As per said provision in the case of assessee, to which clause (viia) applies, the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under that clause. Sub-section (2) to section 36 prescribed conditions for making any deduction for bad debts or part thereof and as per sub-section (v) to section 36(2), where debts or part thereof relates to advances made by an assessee to which clause (viia) of sub-section (1) applies, no such deduction shall be allowed unless the assessee had debited the amount of such debt or part of debt in that previous year to the provision for bad and doubtful debts account made under that clause. A combined reading of sections 36(1)(vii) r.w.s. 36(2)(v) of the Act, it is abundantly clear that in order to get deduction u/s. 36(1)(vii) of the Act towards write off of irrecoverable bad debts, the assessee should first make a provision in terms of section 36(1)(viia) of the Act and deduction towards write off of actual bad debts should be in excess of credit balance in the provision for bad and doubtful debts account. There are litigations on this issue. The Hon'ble Supreme Court has dealt with this issue in the case of Catholic Syrian Bank vs CIT (Supra) and observed that, sub-clause (a) to section 36(1)(vii) of the Act applies only to rural advances. Taking a clue from the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank vs CIT (Supra), the ITAT Bangalore Bench in the case of Karnataka Bank Ltd vs DCIT (supra), has dealt the issue at

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length in light of provisions of section 36(1)(vii) r.w.s. 36(2)(v) of the Act and also provisions of section 36(1)(viia) of the Act, and held that write off of non-rural bad debts should be considered only against provision for bad and doubtful debts in respect of non-rural advances as per section 36(1)(viia) of the Act. In other words, the credit balance in provision for bad and doubtful debts in respect of rural advance only needs to be adjusted against write off of rural bad debts in terms of section 36(1)(viia) of the Act, without considering write off of non-rural debts. The relevant findings of the Tribunal are as under:

> *"7.7 We heard the Ld D.R and perused the record. Now the core question that arises is whether the bad debts relating to non-rural branches are also required to be first debited to PBDD a/c and then the excess amount over and above the balance available in PBDD alone could be allowed as bad debts u/s. 36(1)(vii) of the Act.*
>
> *7.8 The provisions of sec. 36(1)(vii) allows deduction as under:-*
>
> > *"36(1)(vii) Subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year. Provided that in the case of an assessee to which clause (viia) applies, the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account under that clause.*
> >
> > *……..*
> > *Explanation 2 – For the removal of doubts, it is hereby clarified that for the purposes of the proviso to clause (vii) of this sub-section and clause (v) of sub section (2), the account referred to therein shall be only one account in respect of provision for bad and doubtful debts under clause (via) and such account shall relate to all types of advances, including advances made by rural branches;"*
> > *The provisions of sec. 36(2)(v) are relevant here and it reads as under:-*

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> *"(2) In making any deduction for a bad debt or part thereof, the following provisions shall apply----*
>
> *…….*
>
> *(v) where such debt or part of debt relates to advances made by an assessee to which clause (viia) of sub-section (1) applies, no such deduction shall be allowed unless the assessee has debited the amount of such debt or part of debt in that previous year to the 'provision for bad and doubtful debts' account made under that clause."*

A combined reading of provisions of clause (vii) of sec.36(1), the proviso there under and clause (v) of sec.36(2) would show that

> *(a) the bank should debit the actual bad debts written off by it to "PBDD a/c" (sec. 36(2)(v))*
>
> *(b) the deduction u/s. 36(2)(vii) shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the PBDD made under clause (viia) of sec.36(1).*

7.9 The contention of the revenue is that the Explanation 2 has expanded the scope of the proviso to sec. 36(1)(vii) and hence the bad debts relating to non-rural branches are also required to be first debited to PBDD a/c and the excess amount alone can be allowed as deduction u/s. 36(1)(vii) of the Act. According to revenue, the decision rendered by Hon'ble Supreme Court in the case of Catholic Syrian Bank (2012)(343 ITR 270). In the above said case, the Hon'ble Supreme Court has expressed the view that the provisions of sec. 36(1)(vii) and 36(1)(viia) allow separate deduction and they are independent provisions. The Supreme Court further held that the clause (viia)(a) applies only to rural advances. So the bad debts relating to non-rural advances need not be deducted against the PBDD allowed under clause (a) of sec.36(1)(viia) of the Act. The Hon'ble Supreme Court, inter alia, also observed as under:-

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> *"31 It was neither in dispute earlier nor is it disputed before us, that the assessee-bank is maintaining two separate accounts, one being a provision for bad and doubtful debts other than provision for bad debts in rural branches and another provision account for bad debts in rural branches for which separate accounts are maintained…."*

Referring to the above said observations, the revenue has taken the view that the Hon'ble Supreme Court has rendered its decision on the assumption that the banks would be maintaining two separate PBDD a/c, viz., one for rural branches and another one for non-rural branches.

7.10 It is possible that all banks may not be maintaining two separate accounts, as observed by the Hon'ble Supreme Court. Hence there was an apprehension in the minds of revenue with regard to the effect of the decision rendered by Hon'ble Supreme Court. For instance, if a particular bank is maintaining only a single PBDD a/c for the provision created u/s. 36(1)(viia) of the Act and even if that bank is not having any rural branches, then it may try to avail the benefit of decision rendered by Hon'ble Supreme Court and may possibly contend that

> *(i) the provision allowed u/s. 36(1)(viia) shall apply only to Rural branches.*
>
> *(ii) since it does not maintain two separate PBDD a/c for rural and non-rural advances, the bad debts relating nonrural branches need not be reduced from the PBDD a/c allowed u/s. 36(1)(viia) in terms of sec. 36(2)(v) and the proviso to sec. 36(1)(vii) of the Act.*

However, the Ld A.R submitted before us that the Explanation 2 has been inserted in sec. 36(1)(vii) by Finance Act, 2013 (after the decision of Catholic Syrian Bank) to debar certain assessees to avail the interpretation given by Hon'ble Supreme Court in the case of Catholic Syrian Bank (supra).

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7.11 We have considered the arguments advanced by Ld A.R on this point. According to Ld A.R, if we closely analyse the provisions of sec. 36(1)(viia) of the Act, the intention of the Parliament in inserting Explanation -2 shall become clear. Accordingly, we analysed the provisions of sec.36(1)(viia) and notice that the said section allows deduction of PBDD to various types of assessees, viz.,

> *(i) Clause (a) of sec. 36(1)(viia) shall be applicable to a Scheduled bank (not being a bank incorporated by or under the laws of a country outside India) or non-scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank. The quantum of deduction is 7.50% of Total income (computed before making any deduction under this clause and Chapter VIA) and an amount not exceeding 10% of aggregate average advances made by the rural branches of such bank.*
>
> *(ii) Clause (b) of sec. 36(1)(viia) shall be applicable to a bank incorporated by or under the laws of a country outside India. The quantum of deduction is 5% of the total income (computed before making any deduction under this clause and Chapter VIA).*
>
> *(iii) Clause (c) is applicable to a public financial institution or a State financial corporation or a State industrial investment corporation. The quantum of deduction is 5% of total income (computed before making any deduction under this clause and Chapter VIA).*
>
> *(iv) Clause (d) is applicable to Non-banking financial company from AY 2017-18.*

The Hon'ble Supreme Court in the case of Catholic Syrian Bank (supra) has held that the PBDD allowed under clause (a) of Sec. 36(1)(viia) refers to 'rural advances' only. In fact the expression "rural branches" finds place in clause (a) only. It can be noticed that the

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reference to "rural branches" is not there in clause (b) to (d). Generally, the foreign banks may not have rural branches. However, such kind of banks, financial institutions, NBFC etc. are also eligible to claim deduction towards PBDD u/s. 36(1)(viia) of the Act under clauses (b) to (d). In view of the decision rendered in the case of Catholic Syrian bank, it is possible that the assessees covered by clause (b) to (d) may contend that the bad debts written off by them need not be adjusted against PBDD allowed u/s. 36(1)(viia) of the Act, since the bad debts relate to "non-rural debts". Accordingly, we are of the view that the Explanation 2 has been inserted in order to bring the assesses covered by clauses (b) to (d) within the ambit of the proviso to sec. 36(1)(vii) and sec. 36(2)(v) of the Act. Hence, in our view, advances given by rural and non-rural branches mentioned in Explanation 2 shall apply to the assesses covered by clause (b) to (d) of sec. 36(1) (viia) of the Act.

7.12 At this juncture, we may gainfully refer to the "MEMORANDUM EXPLAINING FINANCE BILL 2013", which brings out the intention of the Parliament in inserting Explanation-2 in sec. 36(1)(vii) of the Act. It is extracted below:-

> ***"Clarification for amount to be eligible for deduction as bad debts in case of banks:-***
>
> *Under the existing provisions of section 36(1)(viia) of the Income-tax Act, in computing the business income of certain banks and financial institutions, deduction is allowable in respect of any provision for bad and doubtful debts made by such entities subject to certain limits specified therein. The limit specified under section 36(1)(viia)(a) of the Act restrict the claim of deduction for provision for bad and doubtful debts for certain banks (not incorporated outside India) and certain cooperative banks to 7.5% of gross total income (before deduction under this clause) of such banks and 10% of the aggregate average advance made by the rural branches of such banks. This limit is 5% of gross total income*

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(before deduction under this clause) under sections 36(1)(viia)(b) and 36(1)(viia)(c) for a bank incorporated outside India and certain financial institutions.

Provisions of clause (vii) of section 36(1) of the Act provides for deduction for bad debt actually written off as irrecoverable in the books of account of the assessee. The proviso to this clause provides that for an assessee, to which section 36(1)(viia) of the Act applies, deduction under said clause (vii) shall be limited to the amount by which the bad debt written off exceeds the credit balance in the provision for bad and doubtful debts account made under section 36(1) (viia) of the Act. The provisions of section 36(1)(vii) of the Act are subject to the provisions of section 36(2) of the Act. The clause (v) of section 36(2) of the Act provides that the assessee, to which section 36(1)(viia) of the Act applies, should debit the amount of bad debt written off to the provision for bad and doubtful debts account made under section 36(1) (viia) of the Act. Therefore, the banks or financial institutions are entitled to claim deduction for bad debt actually written off under section 36(1)(vii) of the Act only to the extent it is in excess of the credit balance in the provision for bad and doubtful debts account made undersection 36(1)(viia) of the Act.

However, certain judicial pronouncements have created doubts about the scope and applicability of proviso to section 36(1)(vii) and held that the proviso to section 36(1)(vii) applies only to provision made for bad and doubtful debts relating to rural advances. Section36(1)(viia) of the Act contains three sub-clauses, i.e. sub-clause (a), subclause (b) and sub-clause (c) and only one of the subclauses i.e. sub-clause (a) refers to rural advances whereas other sub-clauses do not refer to the rural advances. In fact, foreign banks generally do not have rural branches. Therefore, the provision for bad and doubtful debts account

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made under clause (viia) of section 36(1) and referred to in proviso to clause (vii) of section 36(1) and section 36(2)(v) applies to all types of advances, whether rural or other advances. It has also been interpreted that there are separate accounts in respect of provision for bad and doubtful debt under clause (viia) for rural advances and urban advances and if the actual write off of debt relates to urban advances, then, it should not be set off against provision for bad and doubtful debts made for rural advances. There is no such distinction made in clause (viia) of section 36(1). In order to clarify the scope and applicability of provision of clause (vii), (viia) of sub-section (1) and subsection (2), it is proposed to insert an Explanation in clause (vii) of section 36(1) stating that for the purposes of the proviso to section 36(1)(vii) and section 36(2)(v), only one account as referred to therein is made in respect of provision for bad and doubtful debts under section 36(1)(viia) and such account relates to all types of advances, including advances made by rural branches. Therefore, for an assessee to which clause (viia) of section 36(1) applies, the amount of deduction in respect of the bad debts actually written off under section 36(1)(vii) shall be limited to the amount by which such bad debts exceeds the credit balance in the provision for bad and doubtful debts account made under section 36(1)(viia) without any distinction between rural advances and other advances. This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

The CBDT has issued an Explanatory note to the Provisions of Finance Act, 2013 on 24.01.2014 in F No.142/24/2013 – TPC, wherein also the very same explanations have been given for introducing Explanation – 2 in Sec. 36(1)(vii) of the Act. The above said Memorandum and the Explanatory Note issued by the Government/CBDT supports our view.

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7.13 Our view is further fortified by certain observations made by Hon'ble Supreme Court in the case of Catholic Syrian Bank (supra). We may refer to paragraph 27 of the decision now:-

> *"27. As per this proviso to clause (vii), the deduction on account of the actual write off of bad debts would be limited to the excess of the amount written off over the amount of the provision which had already been allowed under clause (viia). The proviso by and large protects the interests of the Revenue. In case of rural advances which are covered by clause (viia), there would be no such double deduction. The proviso, in its terms, limits its application to the case of a bank to which clause (viia) applies. Indisputably, clause (viia)(a) applies only to rural advances."*
>
> *It is pertinent to note that the Hon'ble Supreme Court has categorically held that clause (a) of sec. 36(1)(viia) applies to rural advances only. If the Parliament wanted to undo the above said interpretation given by the Hon'ble Supreme Court, it should have brought amendment in clause (a) to sec. 36(1)(viia) to make its intention clear that the clause (a) shall apply to both rural and non-rural advances. Since there is no such amendment, the interpretation given by Hon'ble Supreme Court that "clause (viia)(a)applies to rural advances only" shall remain intact. Explanation 2 inserted in sec. 36(1)(vii), in our view, does not override the above said interpretation given by Hon'ble Supreme Court.*

7.14 In the Memorandum explaining the purpose of introducing Explanation -2 in Sec. 36(1)(vii), it has been acknowledged that only the clause (a) refers to "rural branches". It has also been stated that the foreign banks do not have rural branches. The assesses covered by clause (b) to (d) may not be having rural branches. Hence, the memorandum explains as under with regard to the decision rendered by Hon'ble Supreme Court in the case of Catholic Syrian Bank (supra):-

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> *"However, certain judicial pronouncements have created doubts about the scope and applicability of proviso to section 36(1)(vii) and held that the proviso to section 36(1)(vii) applies only to provision made for bad and doubtful debts relating to rural advances."*

Because of the interpretation so given by Hon'ble Supreme Court, as discussed earlier, there arose a necessity for the Parliament to clarify that the PBDD allowed u/s. 36(1)(viia) shall apply to all types of advances including advances made by rural branches. However, as stated earlier, the clause (a) to sec.36(1)(viia) has been held to be applicable to rural advances only and this interpretation has not been overridden by any amendment.

7.15 As noticed earlier, the assessees covered by clauses (b) to (d) may not be having rural branches, but they would be getting the benefit of deduction of PBDD u/s. 36(1)(viia) of the Act. Hence, in order to bring those assessees within the ambit of the proviso to sec. 36(1)(vii) and sec. 36(2)(v), it was imperative for the Parliament to clarify the legal position and accordingly Explanation-2 has been inserted in sec. 36(1)(vii) of the Act. Accordingly, on the analysis of the provisions discussed above, we are of the view that the above said Explanation-2 shall operate

> *(a) in respect of clause (a) of sec. 36(1)(viia) of the Act only to rural advances and*
>
> *(b) in respect of clauses (b) to (d), for advances given by both rural and non-rural branches.*

7.16 In the instant case, the assessee has claimed deduction towards PBDD under clause (a) to sec. 36(1)(viia) of the Act, meaning thereby, the clause (a) is applicable to rural advances only as per the decision given by Hon'ble Supreme Court in the case of Catholic Syrian Bank. Hence the bad debts relating to non-rural branches are not required to be adjusted against PBDD allowed under clause (a) of sec. 36(1)(viia) of the Act in

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terms of the proviso to sec. 36(1)(vii) and sec. 36(2)(v) of the Act.

7.17 In view of the foregoing discussions, we are unable to agree with the view expressed by LdCIT(A) on this issue. Accordingly, we set aside the order passed by LdCIT(A) on this issue and direct the AO to allow the bad debts relating to nonrural branches u/s. 36(1)(vii) of the Act without adjusting the same against the PBDD a/c, since the said PBDD a/c relates to rural advances only''.

10.5 In this view of the matter and by respectfully following the decision of coordinate bench of ITAT Bangalore in the case of Karnataka Bank vs DCIT (Supra), which has been further strengthened by the decision of Hon'ble Delhi High Court in the case of Oriental Bank of Commerce vs PCIT (supra), we are of the considered view that, the bad debts written off relating to non-rural advances is not required to be adjusted against provision for bad and doubtful debts allowed u/s. 36(1)(viia) of the Act and thus, we direct the Assessing Officer to re-compute deduction in respect of write off of non:- rural debts without any adjustment to credit balance in the provision for bad and doubtful debts account in respect of rural advance."

9.4 Since the facts of both the cases are same, respectfully following the above decision of the co-ordinate bench in the case of City Union Bank Ltd, we hold that the bad debts written off relating to non-rural advances is not required to be adjusted against provision for bad and doubtful debts made u/s. 36(1)(viia) of the Act and quash the enhancement made by the CIT(A) allowing the ground of assessee's appeal by directing the AO to delete the addition. Since we have decided this issue on merits, the issue on technical ground is left open.

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10. The next issue that came up for our consideration from ground no 7 of assessee appeal is against the addition made by the Assessing Officer in computing the book profit u/s 115JB towards provision for leave encashment. The assessee had made provision for leave encashment in the books based on actuarial valuation and claimed the same as deduction while computing book-profit by observing the same an unascertained liability.

10.1 The Ld. Counsel for the assessee, submitted that this issue is squarely covered in favour of the assessee by the decisions of Hon'ble Himachal Pradesh High Court in the case of HP. Tourism Development Corporation Ltd 2013 (6) TMI 97- HIMACHAL PRADESH HIGH COURT and of ITAT in TVS Infotech Limited 2019 (6) TMI 1287- ITAT CHENNAI.

10.2 The Ld. DR relied on the orders of the lower authorities.

10.3 We have heard the rival parties, perused material available on record and gone through orders of the authorities below. We find that this issue is squarely covered Hon'ble Himachal Pradesh High Court in the case of HP. Tourism

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Development Corporation Ltd (supra). While allowing the claim of the assessee and dismissing the appeal of the department the held as follows:

> *"In both these appeals, the Assessing Officer, relying on the decision of the Calcutta High Court, in the case of CIT versus Bharat General & Textile Mills Ltd. 1986 157 ITR 158 (Cal) held that the provision made by the respondent in the books of account towards leave encashment of employees for the relevant period was unascertained liability and, therefore, was required to be disallowed. The Appellate Tribunal, however, over turned that finding recorded by the Assessing Officer. The Appellate Tribunal accepted the plea of the respondent that the provision made by the respondent in the concerned accounting year was in respect of "ascertained and definite liability" of the respondent towards leave allowance to be paid to the employees. Consistent with that finding, the Appellate Tribunal, relying on the decision of the Apex Court in the case of Bharat Earth Movers versus Commissioner of Income Tax (2000) 245 ITR 428 allowed the appeal and was pleased to set aside the assessment order to the extent disallowing the amount towards leave allowance to be paid to the employees. The Appellate Tribunal allowed the claim of the respondent assessee. It is not open for this Court to over turn the finding of fact so recorded by the Appellate Tribunal and, moreso, when the issue is already covered by the decision of the Apex Court in the case of Bharat Earth Movers. It will be apposite to advert to the exposition of the Apex Court in the said decision, which reads thus:-*
>
> *"The law is settled: if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied the liability is not a contingent one. The liability is in praesenti though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain." (Emphasis supplied)*
>
> *3. The argument of the appellant that the finding recorded by the Tribunal is in-appropriate, cannot be the basis to admit these appeals and, moreso, when the substantial question, formulated by the Department, already stands answered by*

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the decision of the Apex Court in Bharat Earth Movers (supra). Hence, dismissed."

10.4 Since the facts of both the cases are same, respectfully following the above decision, we hold that the provision for leave encashment is an ascertained liability and cannot be added to book profit, allowing the ground of assessee's appeal by directing the AO to delete the addition.

11. The next issue that came up for our consideration from ground no 8 of assessee appeal is the enhancement ordered by the CIT(A) to rework the deduction u/s. 36(1)(viia) of the Act by reclassifying some of the banks as non rural based on the census data of the year 2011.

11.1 The Ld. Counsel for the assessee, submitted that as per the section the census data as available before the first day of the previous year can alone be considered. It was submitted that the Census data of 2011 was published only on 30.04.2013 and as such would be applicable only from the A.Y 2015-16. He further submitted that the issue is squarely covered the decision of the ITAT in the assessee's case in ITA no 2765/Chny/ 2017 order dt 3-11-2021 for the A.Y 2013-14.

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He also submitted that this is new issue considered by the CIT(A) and as such the power of enhancement could not be exercised.

11.2 The ld. DR relied on the orders of the authorities of below.

11.3 We have heard the rival parties, perused material available on record and gone through orders of the authorities below. We find that this issue is squarely covered by the coordinate bench of the ITAT in the assessee's case (supra). The Tribunal held as follows:

> *"14.6 Be that as it may. As per the provisions of section 36(1)(viia) of the Act, "rural branch" means a branch of a scheduled bank situated in a place which has a population of not more than ten thousand, according to the last preceding census of which the relevant figures have been published before the first day of the previous year". In this case, for the impugned assessment year the first day of relevant previous year is 01.04.2012. Therefore, the assessee while making provisions u/s.36(1)(viia) of the Act, should consider population figure of that place as on first day of relevant previous year. If you go by said analogy then, whether the assessee needs to consider population data of 2001 census or 2011 census is the question. Admittedly, the assessee has followed 2001 census for the purpose of classification of those 3 branches as rural branches. The assessee has adduced reasons for classifying those branches, as per 2001 census. According to the assessee, population data of 2011 was not available when the assessee has finalized its accounts and provision was created u/s.36(1)(viia) of the Act. For this*

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purpose, the assessee has furnished necessary evidences including reply received from Registrar General of India, Ministry of Home Affairs, in response to RTI application, as per which provisional and final population data of 2011 census was published in official Gazette on 30.04.2013. In this case, financial year relevant to assessment year 2013-14 ends on 31.03.2013. As per evidence available on record, the 2011 census data was not made available to the assessee as on 31.03.2013. Therefore, we are of the considered view that once official census figure was not published in official gazette of Government of India, then the assessee has to consider official census data available in public domain when the provision was created in the books of accounts of the assessee. In this case, no doubt of whatsoever with regard to population data of 2011 which is made available to general public only in April, 2013, which is beyond relevant financial year. Although, the ld.DR has filed certain evidences including Google search information, and argued that provisional census data of 2011 was released on 31.03.2013, but said data is unauthenticated, not certified by any authorities. Therefore, based on said evidence, we cannot conclude that population data of 2011 was available in public domain as on 31-03-2011."

11.4 Following the above decision of the ITAT in the assessee's own case we hold that the branches cannot classified considering the population as per 2011 census and therefore set aside the order of the CIT(A) on this issue and allow the ground of appeal of the assessee. Since the issue is decided on merits the technical ground raised by the appellant is left open.

12. The next issue that came up for our consideration from ground no. 9 of assessee appeal is deduction towards

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education cess and secondary and higher education cess. The Ld. Counsel for the assessee, at the time of hearing submitted that the assessee does not want to press this ground and thus, ground no. 9 of assessee appeal is dismissed as not pressed.

13. The next issue that came up for our consideration from ground no. 10 of assessee appeal is a technical ground regarding enhancement of income by the CIT(A). As detailed decisions have been rendered in this regard while deciding each issue, no separate decision is rendered for this ground.

14. In the result, appeal filed by the assessee for assessment year 2014-15 is partly allowed for statistical purposes.

ITA No: 1343/CHNY/2019 for AY 2014-15:

15. The revenue has raised common grounds of appeal for both the assessment years. Therefore, for the sake of brevity grounds of appeal filed by the revenue for assessment year 2014-15 is reproduced as under:

> *"1. The order of the learned CIT (A) is against law and in facts and circumstances of the case.*
>
> *2. The CIT(A) erred in deleting the disallowance of stale Draft Accounts to the tune of Rs.8,08,979/- quoting the "The Depositor Education and Awareness Fund scheme, 2014 of the*

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RBI guideline.

3. The learned CIT (A) has erred in not considering the fact that during assessment, the AO has verified and found that in most of the cases the amount was not repaid and has mentioned this fact in the order while deciding the issue on stale draft account.

4. The learned CIT (A) has erred in not considering the decision of the Hon'ble Kerala High Court in the case of Catholic Syrian Bank Ltd. Vs Addl. CIT which held that the amount of stale drafts found in the hands of the assessee bank has to be treated as income of the assessee while deciding the issue on stale draft account.

5. The learned CIT (A) has erred in not considering the decision of the ITAT Chennai Bench in the case of Lakshmi Vilas Bank Ltd in its order dated 29.01.2016 while deciding the issue on stale draft account.

6. The learned CIT (A) has erred in not considering the facts of the case of Kumaran Mills Ltd. Vs CIT are distinguishable and hence not squarely applicable to this case while deciding the issue on Ex-gratia payment.

7. The learned CIT (A) has erred in not considering the fact that decision towards exgratia payment was made on its own by the assessee and hence the same cannot be treated as "Business Expediency"

8. The learned CIT (A) has erred in allowing the claim on Ex-gratia payment without considering the fact that provisions of Sec.37(1) clearly stipulates that it does not cover the expenditure which is in the nature covered u/s. 30 to 36 and Bonus is covered u/s. 36 (1)(ii).

9. The learned CIT (A) has erred in not considering the fact that payment in contravention of any other act (Bonus Act in this case) is not an allowable deduction while deciding Ex-gratia payment issue.

10. The learned CIT (A) has erred in not considering the Hon'ble Apex Court's decision in the case of Southern Technologies Ltd vs JCIT [320 ITR 577 (SC)] which held that Sec.37 applies only to items which do not fall under Sections 30 to 36 while deciding Ex-gratia payment issue.

11. The learned CIT(A) has erred in deleting the disallowance under 14A to the tune of Rs.1,00,70,278/-, following the decision in favour of assessee in Supreme Court case law of Maxopp Investment Ltd 402 ITR 640 (SC) which is not

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applicable to this issue. As per the Hon'ble Supreme Court in the case of CIT vsWalfort Stock Brokers Pvt. Ltd and Godrey& Boyce Manufacturing Co. Ltd vs DCIT, has categorically held that application of the provision of section 14A are absolute.

12. The Hon'ble CIT(A) has erred while deciding the issue on interest accrued on NPAs by holding Rule 6EA(a) as non-compliant with Sec 43 Das no amendment in line with the changes in RBI's guidelines has been made.

13. The Hon'bleCIT(A) has erred in deleting the addition made towards accrued interest on loans on which recovery was due for more than 90 days but less than 180 days in view of section 43D r.w. Rule 6EA.

14. The CIT(A) has erred while deciding the issue on disallowance on account of depreciation of ATM claimed by the assessee is at the rate of 60% per annum for ATM machines (at the rate of depreciation allowed to computers) instead of 15% per annum by treating as Plant and Machinery. As in the case of DCIT vs Global Trust Bank Ltd, wherein it was held that the term " computer network" means the interconnection of one or more computer through the use of satellite, microwave, terrestrial line or other communication media and terminals or a complex consisting of two or more inter-connected computer whether or not the interconnection is continuously maintained and from this angle, LAN, WAN and ATM would undoubted form a part of computer.

15. The CIT(A) failed to see that no rural debt written off can be claimed u/s 36(1)(viia) if its value is less than the provision made u/s 36(1)(viia) and also failed to appreciate the fact that the list of debts written off filed by the assessee contains some rural debts also.

16. The CIT(A) erred in interpreting the 2nd limb of section 36(1)(viia). The CIT(A) allowed deduction on the total average outstanding rural advances made by the bank at the end of the accounting year without restricting the deduction to the incremental advance made during the year. The CIT(A) failed to appreciate the fact that income for each year is required to be computed separately as each accounting year is a separate unit for assessment purpose and therefore deduction was available only on incremental rural advance during the year and not on total outstanding at the end of the accounting year.

17. The learned CIT(A) has erred in the issue u/s 36(1)(viia) by considering partly allowed. The CIT(A) has not considered as rural branches, as the population of each of the branches exceeded 10,000 as per the Census of 2011 are to be excluded from the definition of 'rural branches' and the quantum of

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"Aggregate Average Rural Advances are to be free-worked.

18. The learned CIT(A) has erred in not considering the fact that only the provisions of Act and Rules existing as on date is applicable for deciding any issue.

19. For these and other reasons that may be adduced at the time of hearing, the order of the CIT(A) may be modified to the extent suggested above."

16. The first issue that came up for our consideration from Ground Nos.2 to 5 of Revenue appeal is deletion of addition made towards disallowance of stale drafts. The facts with regard to the impugned dispute are that the assessee is in the business of banking, has issued demand drafts to various persons and further any unclaimed demand drafts was kept in stale draft account under the head 'outstanding liabilities'. During the course of assessment proceedings, the AO noticed that an amount of ₹ 2,46,14,514/- was shown under the head outstanding liabilities towards stale draft and treated the same as income of the assessee and added to total income. On appeal before the ld. CIT(A), the CIT(A) has deleted addition made by the AO by following the decision of ITAT in assessee's own case for earlier years.

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16.1 The ld. DR submitted that the ld. CIT(A) has erred in deleting the disallowance made by the AO towards stale draft account without appreciating the fact that amount kept under stale draft account is nothing but income of the assessee and same need not to be paid to any person.

16.2 The ld.AR for the assessee on the other hand strongly supporting order of the CIT(A) submitted that the issue is squarely covered in favour of the assessee by the decision of ITAT in assessee's own case for assessment year 2013-14 in ITA No.2765/Chny/2017, where under identical circumstances the Tribunal has deleted addition made by the AO by holding that amount kept under stale draft account is not income of the assessee. He further submitted that the Hon'ble High Court of Madras has considered an identical issue in case of City Union Bank Ltd., vs. CIT reported in [2020] 118 taxmann.com 96, where it has been clearly held that amount kept under stale draft account cannot be treated as income of the assessee. The AR further submitted that the disallowance by the AO on this issue was Rs. 2,46,14,514/-, but in the grounds raised by the Revenue, the same was mentioned as Rs. 8,08,979/-.

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16.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that the issue has been decided in the assessee's own case by the ITAT order (supra). The ITAT held as follows:

> *"The assessee is in the banking business, has received money while issuing demand drafts / pay order to various customers. The said money was held by the bank on behalf of the drawee till he/she made claim. The assessee bank had no right over the amount which is standing unclaimed. Further, the assessee banks had to remit the amount outstanding for more than 10 years to Depositors Education & Awareness Fund Scheme maintained by Reserve Bank of India. Further, as and when the drawee makes a claim, the assessee shall issue demand draft / pay order in case the amount lying with the assessee and further, if the amount is transferred to RBI account after 10 years, then the Reserve Bank settles the claim of the drawee. Therefore, under these facts and circumstances amount lying in stale draft account cannot be treated as income of the assessee. The ITAT after considering relevant facts has rightly held that amount lying in stale draft account under the head 'outstanding liabilities' cannot be treated as income of the assessee. A similar view has been taken by the Hon'ble Jurisdictional High Court of Madras in the case of City Union Bank Ltd., vs. CIT, supra. Therefore, consistent with view taken by the Co-ordinate Bench, we are of the considered view that there is no error in the reasons given by the CIT(A) to delete addition made by the AO towards Stale Draft Account. Hence, we are inclined to uphold the findings of the CIT(A) and reject the ground taken by the Revenue."*

16.4 Respectfully following the above decision, we are inclined to uphold the findings of the CIT(A) and reject the ground taken by the Revenue.

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17. The next issue that came up for our consideration from Ground Nos. 6 to 10 of Revenue appeal is deletion of disallowance of ex-gratia payment of ₹ 26,05,79,311/-. The AO had disallowed ex-gratia payment made by the assessee to its staff by observing that the Revenue has filed appeals before the Hon'ble High Court against the orders of the ITAT and in order to keep the issue alive, the claim made by the assessee was disallowed. On appeal, the Ld. CIT(A) following the earlier orders of the ITAT, allowed the appeal of the assessee.

17.1 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. An identical issue had been considered by the Tribunal in assessee's own case for assessment year 2013-14 in ITA No.2762/Chny/2017, where the Tribunal after considering relevant facts held that exgratia payment to staff is deductible u/s.37(1) of the Act. The relevant findings of the Tribunal are as under:

> *"7.1 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. An identical issue had been considered by the Tribunal in assessee's own case for assessment year 2012-13 in ITA No.3197/Chny/2017, where the Tribunal after considering relevant facts held that exgratia payment to staff is deductible*

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u/s.37(1) of the Act. The relevant findings of the Tribunal are as under:

> *16. The Ld. DR submitted that the Ld. CIT(A) erred in deleting the disallowance of ex-gratia payment following the decision of the CIT vsMaina Ore Transport Pvt. Ltd., 324 ITR 100 (Bom) and Kumaran Mills Ltd vs CIT (2000) 241 ITR 564 (Mad) which are distinguishable and not applicable to this case. Per contra, the Ld. AR supported the order of the Ld. CIT(A) and relied on this tribunal decision in its case in 72 ITR (Trib) 26 (Chennai), the relevant portion is extracted as under :*
>
> > *"24. Ground No.4 challenges the disallowance of ex-gratia payment of ₹ 4,46,29,688/-. We dealt with this issue in assessee's own case in ITA No.1342/Chny/2013 for AY 2007-08 for the reasons stated vide para 6.3 of the order therein, we allow this ground of appeal in favour of the assessee bank. We direct the AO to allow the ex-gratia of ₹ 4,46,29,688/- as a deduction. Hence, this ground of appeal is allowed.*
> >
> > *24.1 In the result, ground of appeal No.4 of the assessee is allowed."*
>
> *Following the co-ordinate bench decision, supra, we do not find merit in the Revenue's appeal, therefore, the corresponding grounds are dismissed."*

7.2 In this view of matter and consistent with view taken by the Co-ordinate Bench, we are of the considered view that there is no error in the reasons given by the ld.CIT(A) to delete additions made towards disallowance of ex-gratia payment and thus, we are inclined to uphold the findings of the ld.CIT(A) and reject ground taken by the Revenue."

17.2 Respectfully following the above decision, we are inclined to uphold the findings of the CIT(A) and reject the ground taken by the Revenue.

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18. The next issue that came up for our consideration from Ground No. 11 of the Revenue appeal is deletion of disallowance of expenditure relatable to exempt income u/s.14A of the Act. The assessee has earned dividend income of ₹ 1,19,14,795/-, however no disallowance as required u/s.14A of the Act had been made by the assessee. Therefore, the AO invoked the provisions of Rule 8D and disallowed Rs. 79,95,384/-. On appeal, the Ld. CIT(A) deleted the disallowance.

18.1 The ld. DR supporting order of the AO submitted that the moment exempt income is earned, disallowance contemplated u/s.14A triggers and the AO shall compute such disallowance by invoking Rule 8D of IT Rules, 1962 and thus, there is no error in the reasons given by the AO towards disallowance u/s.14A and the order of the AO should be upheld.

18.2 The ld.AR for the assessee at the time of hearing submitted that this issue is covered in favour of the assessee by the decision of ITAT in assessee's own case for assessment year 2013-14 in ITA No.2765/CHNY/2017, where it has been

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held that no disallowance u/s.14A is permissible in terms of Rule 8D where the assessee is engaged in banking business. He further submitted that in a decision in the case of South Indian Bank Ltd., vs. CIT, the Hon'ble Supreme Court in Civil Appeal No.9606 of 2011, vide order dated 09.09.2021 held that in the case of banking companies, Section 14A is not applicable.

18.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. An identical issue had been considered by the Tribunal in assessee's own case for assessment year 2013-14 in ITA No.2765/Chny/2017, where the Tribunal after considering relevant facts held that no disallowance u/s 14A is warranted. The relevant findings of the Tribunal are as under:

> *"12.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Admittedly, the issue is covered in favour of the assessee by the decision of ITAT in assessee's own case for assessment year 2012- 13, where under identical set of facts, the Tribunal by following certain judicial precedents including the decision of Hon'ble Punjab & Haryana High Court in the case of Pr.CIT vs. State Bank of Patiala, [2017] (2) TMI 125, held that no disallowance u/s.14A is permissible in terms of Rule 8D, where the assessee is engaged in banking business. A similar view is taken by the Hon'ble Supreme Court in the case of South Indian Bank Ltd vs. CIT in Civil Appeal No.9606 of 2011, and held that shares and securities held by a bank are stock-in-trade and income received on such shares and securities must be considered to be business income. That is*

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why, Section 14A of the Act would not be attracted to such income.
12.4 In this view of matter and consistent with view taken by the Co-ordinate Bench and also by respectfully following the decision of Hon'ble Supreme Court in the case of South Indian Bank Ltd., vs. CIT, supra, we direct the AO to delete addition made towards disallowance u/s.14A r.w.rule 8D of the IT Rules, 1962."

18.4 Respectfully following the above decision, we are inclined to uphold the findings of the CIT(A) and reject the ground taken by the Revenue.

19. The next issue that came up for our consideration from Ground No. 12 to 13 of Revenue appeal is deletion of addition made towards interest on non-performing assets. The AO has made addition of ₹ 93,92,500/- towards interest on non-performing assets (NPAs) by holding that interest on loans needs to be offered to tax on accrual basis in respect of NPAs, which are more than 90 days old but less than 180 days. According to him, Rule 6EA of the Income Tax Rules, 1962 applies only in respect of NPAs which are more than 180 days old. The ld. CIT(A) deleted addition made by the AO by following the decision of ITAT in the case of Lakshmi Vilas Bank and also the decision of the Hon'ble Supreme Court in

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the case of Vasisth Chaay Vyapar in Civil Appeal no. 5811 of 2012.

19.1 The ld. DR submitted that the ld. CIT(A) has erred in deleting disallowance of interest accrued on NPAs by following the guidelines issued by RBI ignoring the fact that Rule 6EA of the Income Tax Rules, 1962 deals with taxation of interest on NPAs, as per which NPAs which are less than 180 days are covered under Rule 6EA of Income Tax Rules, 1962, as per which the assessee shall recognize interest on accrual basis.

19.2 The ld.AR for the assessee submitted that this issue is squarely covered in favour of the assessee by the decision of ITAT in assessee's own case for assessment year 2013-14 in ITA No.2762/Chny/2017, where under identical set of facts, the Tribunal deleted addition made by the AO towards interest on NPAs.

19.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that an identical issue has been considered by the Tribunal in assessee's own case for assessment year 2013-

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14 in ITA No.2762/Chny/2017, where under identical set of facts and by following the decision of Hon'ble Supreme Court in the case of Vasisth Chary Vyapar Ltd., vs. CIT(supra), held that interest income cannot be said to have been accrued to the assessee on NPAs account. The relevant findings of the Tribunal are as under:-

> *"10.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that an identical issue has been considered by the Tribunal in assessee's own case for assessment year 2012-13 in ITA No.3197/Chny/2017, where under identical set of facts and by following the decision of Hon'ble Supreme Court in the case of Vasisth Chary Vyapar Ltd., vs. CIT(supra), held that interest income cannot be said to have been accrued to the assessee on NPAs account. The relevant findings of the Tribunal are as under:-*
>
> > *"17. The Ld. DR submitted that the Ld, CIT(A) erred in deleting disallowance on interest accrued on NPAs to the extent of ₹ 57,42,500/- quoting the RBI guidelines. In this regard, the Ld. AR supported the order of the Ld. CIT(A) and relied on this tribunal decision Per contra, the Ld. AR supported the order of the Ld. CIT(A) and relied on the SC decision in the case of Vasisth Chary Vyapar Ltd TMI 56 SC and this tribunal decisions in its case in , TMI 566- ITAT , Chennai, 72 ITR (Trib) 26 (Chennai), the relevant portion is extracted as under :*
> >
> > > *"29. The next ground of appeal challenges the addition on account of interest accrued in NPAs accounts of ₹ 14,00,000/-. The AO had brought to tax the interest on the NPAs accounts by holding that interest had accrued in terms of the agreement entered by the appellant with borrowers. This issue is now covered in favour of the assessee-bank by decision of Hon'ble Supreme Court in the case of CIT v. VasisthChayVyapar Ltd. [2019] 410 ITR 244 (SC), wherein the Hon'ble Supreme Court had confirmed the decision of Hon'ble Delhi High*

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> *Court, that the interest income cannot be said to have been accrued to the assessee on the NPA accounts. Accordingly, we direct the AO to delete the addition of ₹ 14,00,000/- made on interest on NP accounts. Accordingly, this ground of appeal stands allowed.*
>
> *29.1 In the result, the appeal filed by the assessee-bank is partly allowed."*
>
> *Following the co-ordinate bench decision, supra, we do not find merit in the Revenue's appeal, therefore, the corresponding grounds are dismissed."*
>
> *10.4 In this view of matter and consistent with view taken by the Co-ordinate Bench, we are of the considered view that there is no error in the reasons given by the ld.CIT(A) to delete additions made towards interest on NPAs and thus, we are inclined to uphold the findings of the ld.CIT(A) and reject ground taken by the Revenue."*

19.4 Respectfully following the above decision, we are inclined to uphold the findings of the CIT(A) and reject the ground taken by the Revenue.

20. The next issue that came up for our consideration from Ground No. 14 of Revenue appeal is deletion of disallowance of depreciation on ATMs. The assessee has claimed depreciation on ATMs at 60%. The AO however, treated the ATMs as Plant & Machinery and restricted the depreciation @ 15%. He thus, made an addition of ₹ 7,56,91,591/- towards excess depreciation claimed on ATMs. On appeal, the Ld. CIT(A) deleted the disallowance by following the ITAT decision in the

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case of Royal Bank of Scotland N.V. [2017] 88 taxmann.com 330.

20.1 The Ld DR relied on the order of the Assessing Officer.

20.2 The Ld AR submitted that this issue is covered by the decision of the Hon'ble Karnataka High Court in the case of NCR Corporation Pvt Ltd [2020] 117 taxmann.com 252 and also the decisions of the Chennai Bench of the ITAT in the case of Indian Bank 2016 (7) TMI 728 and City Union Bank Ltd in ITA No. 636/Chny/2020 for Asst Year 2017-18.

20.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that an identical issue has been considered by the Hon'ble Karnataka High Court in the case of NCR Corporation (supra) wherein the High Court held that the ATM machines are computers and are eligible for 60% depreciation. The High Court held as under:

> *"8. This takes us to the second substantial question of law whether ATMs are computers and are eligible for 60% depreciation. It is pertinent to note that provisions of the Karnataka Sales Tax Act, 1957 and provisions of Income Tax Act, 1961 are not parimateria provisions.*

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The classification of goods has been provided only for the purposes of sales tax whereas, the provisions of the income tax levy tax on income. It is pertinent to mention here that Appendix 1 to Income Tax Rules, the computer has been treated as plant and machinery.

Therefore, the decision relied upon by the revenue in ***DIEBOLD SYSTEMS PVT. LTD.,*** *supra has no application to the fact situation of the case. The tribunal by placing reliance on the decision of Bombay High Court in* ***'DCIT VS. DATA CRAFT INDIA LTD.,', (2010) 40 SOT 295*** *has held that so long as functions of the computers are performed with other functions and other functions are dependant on the functions of the computer, ATMs are to be treated as computers and are entitled to higher rate of depreciation. It has further been held that computer is integral part of ATM machine and on the basis of information processed by the computer in ATM machine only, the mechanical function of the dispensation of cash or deposit of cash is done.*

Therefore, it was held that ATMs are computers and are entitled to higher rate of depreciation. The aforesaid finding of fact has been recorded on correct analysis of the material available on record and by placing reliance on decision of the Bombay High Court."

20.4 Further, we also find that this issue is covered in favour of the assessee in the case of City Union Bank (supra). The relevant extract of the decision is as follows:

"47.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The issue of depreciation @60% on ATMs is no longer res-integra. The coordinate bench of ITAT, in appellant's own case for assessment year 2012-13 & 2013-14 has considered an identical issue and after considering relevant facts held that ATMs are akin to computer and computer software and are eligible for higher depreciation @ 60%, but not depreciation @ 15% as applicable to plant and machinery and as claimed by the Assessing Officer. The ld. CIT(A) deleted additions made by the Assessing Officer towards excess depreciation by following the decision of Hon'ble Supreme Court in the case of CIT vs State Bank of Patiala (Supra), where the Hon'ble Supreme

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Court has dismissed SLP filed by the revenue against the decision of Hon'ble Punjab and Haryana High Court. Therefore, we are of the considered view that there is no error in the reasons given by the ld. CIT(A) to delete additions made towards excess depreciation claimed on ATMs and thus, we are inclined to uphold the findings of the ld. CIT(A) and reject ground taken by the revenue."

20.5 Respectfully following the above decisions, we are inclined to uphold the findings of the CIT(A) and reject the ground taken by the Revenue.

21. The next issue that came up for consideration from Ground no. 15 is with regard to allowing rural debt written off.

21.1 The Ld. AR submitted that this ground is infructuous since the CT(A) did not allow any rural write off as deduction u/s 36(1)(vii).

21.2 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that this ground is infructuous since the CIT(A) has not allowed rural write off as deduction. The ground of the Department is therefore dismissed.

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22. The next issue that came up for our consideration from Ground Nos. 16 to 17 of the Revenue appeal is towards the deduction u/s 36(1)(viia). The AO did not deal with this issue in the Assessment order. However, during the appellate proceedings before the CIT(A), he moved an enhancement petition through which, he had requested the CIT(A) to disallow the deduction claimed by the bank u/s 36(1)(viia) by computing the Aggregate Average Rural Advances by considering the incremental advance and not outstanding advance. The CIT(A) rejected the enhancement petition by relying on the ITAT decision in the assessee's own case in ITA Nos 1496 & 1527/Mds/2013 order dated 27-04-2017.

22.1 The Ld. DR relied on the enhancement petition made by the AO.

22.2 The Ld. AR submitted that this issue is squarely covered by the decision of this ITAT in the case of City Union Bank in ITA No. 1120/Chny/2019 order dated 11-03-2024.

22.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities

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below. We find that an identical issue has been considered by the Tribunal in the case of City Union Bank (supra), where under identical set of facts has decided the issue in favour of the assessee. The relevant findings of the Tribunal are as under:-

> *"12.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. As per Rules 6ABA of I.T. Rules, 1962, for the purpose of clause (viia) of sub-section (1) of section 36, an aggregate average advance made by the rural branches of a scheduled bank shall be computed by taking into account the amount of advances made by each rural branch as outstanding at the end of the last day of each month comprised within the previous year. If you go by Rule 6ABA of I.T. Rules, 1962, it talks about the aggregate average advances made by the rural branches as outstanding at the end of the last day of each month, but it does not speak about only advances given by rural branches during the relevant financial year. Further, the Hon'ble Madras High Court in appellant's own case has considered an identical issue and by following the decision of Hon'ble Kolkata High Court in the case of PCIT vsUttarbangakshetriyaGramin Bank [2018] 94 Taxman.com 90 Kolkata, held that aggregate average advances made by rural branches as outstanding at the end of the last day of each month should be considered, but not aggregate monthly advances taking loans and advances made only during the previous year relevant to the assessment year as computed by the Assessing Officer. But, the High Court has remitted the matter back to the file of the Assessing Officer for the purpose of re-computation after considering the fact that the Assessing Officer has not computed deduction based on the documents produced by the assessee. The relevant findings of the Hon'ble High Court are as under:*
>
> > *"10.2 Similarly, the second issue relating to deduction of Rs. 8.53 crores u/s. 36(1)(viia) with regard to the provision for bad and doubtful debts, is covered by the decision in Principal Commissioner of Income Tax, Jalpaiguri v. UttarbangaKshetriyaGramin Bank [(2018)*

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94 taxmann. Com 90 (Calcutta), in favour of the assessee and the relevant passage of the same is usefully extracted below:

> *"6. Mr. Nizamuddin,learned advocate appeared on behalf of the Revenue and submitted the amended direction made by the Tribunal on the ITO has resulted in the assessee getting double deduction which is not permissible on computation made under Rule 6ABA. He submitted a double deduction in the manner thus obtained by the assessee has not been expressly provided. He relied on a judgment of the Supreme Court in the case of Escorts Ltd. v. Union of India reported in (1993) 199 ITR 43, on the following portion in the said judgment appearing in page 64 of the report.*
>
> > *"A double deduction cannot be a matter of inference, it must be provided for in clear and express language, regard being had to its unusual nature and its serious impact on the revenues of the State."*
>
> *7. Mr.Khaitan, learned senior Advocate appeared on behalf of the assessee and submitted that the computation to be made as prescribed by Rule 6ABA is for the purpose of fixing the limit of the deduction available under section 36(1)(viia). Clause (a) and (b) in Rule 6ABA cannot be given the restricted interpretation. The amount of advances as outstanding at the last day of each month would be a fluctuating figure depending on the outstanding as increased or reduced respectively by advances made and repayments received. The assessee might provide for bad and doubtful doubts but the deduction would only be allowed at the percentage of aggregate average advance, computation of which is prescribed by Rule 6ABA.*
>
> *8. We find from the amended direction made by the Tribunal that such direction is in terms of Rule 6ABA. The ITO has made the computation of aggregate monthly advances taking loans and*

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advances made during only the previous year relevant to assessment year 2009-10 as confirmed by CIT (A). The Tribunal amended such direction, in our view, correctly applying the rule.

9. For the reasons aforesaid we do not find the questions suggested to be substantial questions of law involved in the case. As such the application and appeal are dismissed. "

11. This court has no disagreement with the legal proposition laid down in the aforesaid decisions. However, in the present case, though there was no double deduction, as alleged by the appellant / Revenue, there was no clear vision about the advances made by the rural and non-rural branches of the bank and the quantum of deduction was not properly determined by the assessing officer based on the materials furnished by the respondent / assessee. In this context, the relevant paragraphs of the assessment order dated 31.03.2006 passed by the assessing officer are quoted below:

> *"5.3 When the assessee was asked to clarify whether the advances which were considered to be bad and doubtful in earlier years and for which the provision was made so as to claim deduction under section 36(1)(viia) of the Act, have been recovered subsequently, it was stated that as the provision claimed was not with reference to any particular debt due to the assessee but on an overall basis, it is not possible to certify that the bad debts claimed as trading loss for deduction u/s. 36(1)(viia) was recovered or not. It was also stated that the assessee would not be able to give age-wise details of outstanding advances for the branches more so for the rural branches with reference to which the deduction was claimed, so as to determine whether any advance of earlier year for*

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which provision was made is still outstanding.

5.4. In other words, the assessee is not in a position to give details of the advances with reference to which the deduction of Rs. 14.99 crores was allowed as per Annexure 2 as deduction under section 36(1)(viia) towards unknown and anticipated trading loss by virtue of mere provision made on ad-hoc basis for bad and doubtful debts and to confirm that these advances were still outstanding as at the end of the previous year relevant to this accounting year."

"6.3.1. Therefore due to assessee's inability to relate the provision to any particular advance of a branch, it cannot be said whether it is a provision for rural advance or for non-rural advance so as to examine the monetary limit prescribed under section 36(1)(viia) for allowing deduction thereunder. Then such provision is only reserve for bad debts and not provision for bad and doubtful debts. Though the provisions of section 36(1)(viia) may be understood as a beneficial provision to the assessee company to claim deduction even in respect of reserve created by it to meet certain anticipated loss or contingency due to default of its debtors whom the assessee may not be able to easily identify at the end of the previous year, yet the computation machinery for determining the deduction admissible in the matter of write off bad and doubtful debts of rural or non-rural advance u/s. 36(1)(v) read with the proviso thereunder and section 36(2)(v) of the Act would fail."

Thus, it is evident from the above extract that the quantum of deduction arrived at by the assessing officer was not based on the documents produced by the respondent / assessee. The CIT(A) as well

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as the Tribunal also, did not look into those aspect, while allowing the deduction claimed by the respondent / assessee. Therefore, this court is of the opinion that for that limited purpose, the matter has to be re-examined by the assessing officer and the same has also been agreed upon by the learned counsel appearing for both sides.

12. In such view of the matter, the order of the Tribunal, which is impugned herein, is set aside and the matter is remitted to the assessing officer for quantification of the deduction allowable to the respondent. The assessing officer shall complete the said exercise, after providing due opportunity to the respondent for submission of both oral and documentary evidence, if any, and pass appropriate orders, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this judgment.

12.4 In so far as deciding a particular branch is rural branch or not, the population of 2011 census should be considered because said data was officially available with the bank while deciding the branches as rural branches or urban branches and this issue is covered by the decision of ITAT, Chennai benches in the case of KarurVysya Bank in ITA Nos. 2762/Chny/2017 & 332/Chny/2018, dated 03.11.2011, where the issue has been discussed in detail. Therefore, we direct the Assessing Officer to consider the issue in light of the decision of the ITAT, Chennai Benches in the case of KarurVysya Bank vs CIT (Supra).

12.5 In this view of the matter and considering facts and circumstances of the case and also following the decision of Hon'ble High Court of Madras in appellant's own case for earlier years, we are of the considered view, that the Assessing Officer is erred in computing deduction u/s. 36(1)(viia) of the Act, by considering only incremental advances made by rural branches of appellant bank as against the aggregate average advances made by rural branches of appellant bank as outstanding at the end of the financial year and thus, we direct the Assessing Officer to consider aggregate average advances outstanding at the end of the relevant financial year for the purpose of computing deduction u/s. 36(1)(viia) of the Act.

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Further, to compute correct amount of deduction, the matter has been set aside to the file of the Assessing Officer with a direction to reconsider the issue in light of our discussions given herein above and also the details that may be filed by the assessee."

22.4 Respectfully following the above decision, we are inclined to uphold the findings of the CIT(A) and reject the ground taken by the Revenue.

23. In the result, appeal filed by the Revenue for Asst Year 2014-15 is dismissed.

ITA No. 678/Chny/2019 for AY 2015-16:

24. The first issue that came up for our consideration from ground no. 2.1 to 2.2 of assessee appeal is against the addition of Rs. 28,85,24,740/- made by the AO towards income received in advance. The AO observed that the assessee claimed income received in advance amounting to Rs. 28,85,24,740/- as liability in the revised return. He further observed that for the Asst Year 2003-04 an addition of Rs. 3,30,62,439/- on the issue of income received in advance was made and the same was upheld by the ITAT in ITA No. 1340/Mds/2013 dated 27-04-2017. On account of this, he

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treated the income received in advance as income of the assessee for the Asst Year 2015-16 and added to the total income.

24.1. The Ld Counsel for the assessee submitted that this issue is squarely covered by the Hon'ble Madras High Court decision in the assessee's own case for the Asst Year 2003-04 reported in [2020] 16 ITR-OL 374 in which the jurisdictional Hon'ble Madras High Court reversed the decision of the ITAT relied on by the AO.

24.2. The ld. DR relied on the orders of the authorities of below.

24.3. We have heard the rival parties, perused material available on record and gone through orders of the authorities below. We find that this issue is squarely covered by the Hon'ble Madras High Court decision in the assessee's case (supra) in which it allowed the appeal of the assessee and reversed the decisions of the lower authorities. Since the decision of the ITAT based on which the AO made the addition has been reversed by the Hon'ble Madras High Court,

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respectfully following the same, we delete the addition made by the AO and allow the assessee's ground of appeal.

25. The next issue that came up for our consideration from ground nos. 3.1 to 3.4 of assessee appeal is depreciation on investments. The appellant bank is treating its security as stock in trade. For the purpose of income tax, it prepares a separate investment trading account and offers the net result of the trading account to tax. It values individual securities at lower of cost or market value. However, for the purpose of books of accounts, the bank classifies securities as per RBI norms in the following categories i.e., Held to Maturity (HTM), Available for Sale (AFS) and Held for Trading (HFT) and also value them as per RBI guidelines. The AO by relying on the instruction no. 17/2008 dated 26th Nov 2008 held that the appreciation of Rs. 3,27,56,636/- has to be netted off against the depreciation and only the net depreciation if any, can be claimed. He further observed that the assessee has claimed a depreciation of Rs. 5,75,99,181/- on the preference shares – Non performing. He also observed that the claim of the assessee is not covered by any specific provision of the Act and it also does not quality u/s 36(1)(viia). Further, he relied

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on the decision of the Hon'ble Supreme Court in the case of Southern Technologies in CA no. 1337/2003. He therefore, disallowed the amount of Rs. 5,75,99,181/- and added to the total income. He thus, added an amount of Rs. 9,03,55,817/- (3,27,56,636 + 5,75,99,181) being the depreciation on investment claimed by the assessee.

25.1 The Ld. Counsel for the assessee, submitted that this issue is squarely covered in favour of the assessee by the decision of the ITAT in the case of State Bank of India in ITA No. 3644 & 4563 / Mum / 2016 – order dated 03-02-2020 in which the ITAT after analysing various decisions of Hon'ble Supreme Court, held that the notional appreciation need not be adjusted against the depreciation. With regard to the valuation of preference shares – Non Performing and claiming of the depreciation on the same, the Ld Counsel submitted that the Bank is treating all its investments as stock in trade and is entitled to value the same at lower of cost or market value. He submitted that this issue has been decided in its favour by the Hon'ble Madras High Court [2005] 273 ITR 510 in its own case and also the decision of the ITAT in its own case reported 2022 (2) TMI 112 & [2019] 72 ITR (Trib) 26 .

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He further relied on the decision of the Hon'ble Madras High Court in the case of Indian Overseas Bank 2021 (9) TMI 484 and the Hon'ble Karnataka High Court decision in the case of Canara Bank [2023] 147 taxmann.com 171.

25.2 The ld. DR, adopted the submissions made on this issue for the Asst Year 2014-15 and also relied on the orders of the lower authorities.

25.3 We have heard the rival parties, perused material available on record and gone through orders of the authorities below. We find that this issue is squarely covered by the ITAT in the case of State Bank of India (supra) with regard to addition of notional appreciation. In the said decision, the ITAT after analysing various decisions of the Hon'ble Supreme Court held that notional appreciation cannot be taxed. In this regard, ITAT held as follows:

> *"66. In context of netting off depreciation against appreciation, the Madras High Court in the case of CIT vs. Chari & Ram [1949] 17 ITR 1 (Madras) has held that there would be no assurance that there would be a market for the entire stock of articles of which the market value is higher and therefore, it would be hazardous to assume that the entire stock could be sold at the prevailing market rate and necessarily bring in a profit. The High Court also held that there is no provision of law or principle according to which the assessee could be*

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compelled to adopt either the average cost for all the items or the market rate for all the items. Further, the Supreme Court in the case of United Commercial Bank vs. CIT [1999] 240 ITR 355 (SC) has held that there is no such question of following two different methods for valuing its stock-in-trade (investments) because bank was required to prepare balance sheet in the prescribed form and it had no option to change it and for the purpose of income-tax, what is taxed is the real income which is to be deduced on the basis of the accounting system regularly maintained by the assessee. In view of the above, it was claimed that the assessee be allowed a deduction in respect of depreciation on each securities, scrip wise, while ignoring the appreciation.

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

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

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

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

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

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and settled principle of non-taxation of notional income, as laid by the Supreme Court in the case of SanjeevWollen Mills vs. CIT [2005] 279 ITR 434 (SC) and others discussed supra. Hence, we are of the view that this disallowance of depreciation/ reducing of depreciation on appreciation in the value of securities held as available for sale and held for trading category are allowable. We direct the AO accordingly."

25.4 On the issue of valuation of Preference Shares, we find that the same is held by the assessee as stock in trade. The Courts have consistently held in various decisions that the securities held by the Bank are stock in trade and can be valued at lower of cost or market value. Further we also find that the Board has issued a circular no. 18/2015 dated 02-11-2015 in which it has stated that all the securities held by the Bank are business assets. In view of the above, we hold that the notional appreciation need not be offered to tax and the depreciation on the Preference shares is allowable and we delete the addition made by the AO and allow the assessee's ground of appeal.

26. The next issue that came up for our consideration from Ground Nos.5.1 to 5.3 of assessee appeal is disallowance u/s.36(1)(viii) of the Act for ₹ 15,33,68,165/-. The appellant bank has claimed a deduction of ₹ 30,00,00,000/-

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u/s.36(1)(viii) of the Act and the same was restricted to Rs. 14,66,31,835 by the AO by substituting his own method of calculation. On appeal, the ld.CIT(A) upheld the disallowance.

26.1 The ld.AR for the assessee submitted that this issue is squarely covered by the of the ITAT vide its order dated 03-11-2021 in assessee's own case in ITA No.2765/CHNY/2017 for assessment year 2013-14.

26.2 The ld. DR on the other hand strongly supported order of the lower authorities.

26.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to eligibility of assessee for claiming deduction u/s.36(1)(viii) of the Act. The only dispute is with regard to the manner in which such deduction should be computed. The assessee has followed a particular method. But the AO has substituted his own method and has disallowed a sum of ₹ 15,33,68,165/-. We find that this issue has been decided by the ITAT in the assessee's case for the

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Asst Year 2013-14 (supra), where in the Tribunal held as follows:

> *"A similar issue had been considered by the Tribunal right from assessment years 2010-11 to 2012-13, where the Tribunal has set aside the issue to the file of the AO and directed him to reconsider the issue in accordance with provisions of section 36(1)(viii) of the Act. We further noted that the AO had passed an order dated 04.11.2019 to give effect to the orders of the Tribunal. In the said order, the AO has examined computation submitted by the assessee and allowed deduction as per the computation of the assessee. Since, the AO had already accepted computation methodology adopted by the assessee-bank for assessment years 2010-11 & 2011-12, based on directions of ITAT, we are of the considered view that this year also the issue needs to go back to the file of the AO to consider the issue in light of directions of the Tribunal for earlier years. Hence, we set aside the issue to the file of the AO and direct him to follow the directions given by the Tribunal for earlier assessment years."*

26.4 Respectfully following the above decision, we set aside the issue to the file of the AO and direct him to follow the directions given by the Tribunal for earlier assessment years. This ground of the assessee is allowed for statistical purpose.

27. The next issue that came up for our consideration from ground no. 5.1 to 5.4 of assessee's appeal is deduction u/s. 36(1)(vii) of the Act, non rural bad debts written off in the books of accounts of the assessee. An identical issue has been considered by us in the Appellant own case for the Asst Year 2014-15 in ITA No. 677/Chny/2019. The facts are similar for

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this year also. The reasons given by us in preceding paragraph no. 9 to 9.4, shall mutatis mutandis apply to this appeal as well. Therefore, for similar reasons, we set aside the order of the CIT(A) and direct the AO to delete the additions made towards disallowance of bad debts based on the directions of the CIT(A) and allow the assessee ground of appeal.

28. The next issue that came up for our consideration from ground no. 6.1 to 6.2 of assessee's appeal is with respect to classification of 8 branches as non rural by the AO.

28.1 The Ld. AR of the assessee submitted that though specific ground was raised in this regard before the CIT(A) challenging the classification adopted by the AO, the same was not adjudicated by the CIT(A). He therefore, prayed that this ground may be sent back to CIT(A) with a direction to decide the issue raised before him.

28.2 The Ld. DR did not object to the same.

28.3 We have heard both the parties perused materials available on record and gone through orders of the authorities

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below. We find that vide ground no. 8.3 before the CIT(A), the assessee has specifically challenged the classification of some of the branches as not rural. However, we find that the CIT(A) has not adjudicated this ground. Hence, in the interest of justice, we remit the issue back to the CIT(A) with a direction to adjudicate the same. This ground of the assessee is allowed for statistical purpose.

29. The next issue that came up for our consideration from ground no. 7 of assessee appeal is deduction towards education cess and secondary and higher education cess. The Ld. Counsel for the assessee, at the time of hearing submitted that the assessee does not want to press this ground and thus, ground no. 7 of assessee appeal is dismissed as not pressed.

30. The next issue that came up for our consideration from ground no. 8 of assessee appeal is a technical ground regarding enhancement of income by the CIT(A) in relation to bad debts written off by the non rural branches of the Bank. Since the issue has been decided on merits while adjudicating ground nos. 5.1 to 5.4, this ground and it is left open.

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31. In the result, appeal filed by the assessee for assessment year 2015-16 is partly allowed for statistical purposes.

ITA No. 1321/CHNY/2019 for AY 2015-16:

32. At the outset, we find that there is a delay of 11 days in appeal filed by the revenue, for which petition for condonation of delay along with reasons for delay has been filed. After considering the petition filed by the revenue and also hearing both the parties, we find that there is a reasonable cause for the revenue in not filing appeal on or before the due date prescribed under the law and thus, in the interests of justice, we condone delay in filing of appeal and admit appeal filed by the revenue for adjudication.

33. The first issue that came up for our consideration from Ground Nos.2 to 5 of Revenue appeal is deletion of addition made towards disallowance of stale drafts. An identical has been considered by us in the Appellant's own case for the Asst Year 2014-15 in ITA No. 1343/Chny/2019. The facts are identical for the year under consideration. The reasons given by us in the preceding paragraph no. 16 to 16.4, shall mutatis mutandis applicable to this issue also. Therefore, for the

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similar reasons, we are inclined to uphold the findings of CIT(A) and reject the ground taken by the Revenue.

34. The next issue that came up for our consideration from Ground Nos. 6 to 10 of Revenue appeal is deletion of addition made towards exgratia payment of Rs. 28,06,72,471/-. An identical has been considered by us in the Appellant's own case for the Asst Year 2014-15 in ITA No. 1343/Chny/2019. The facts are identical for the year under consideration. The reasons given by us in the preceding paragraph no. 17 to 17.2, shall mutatis mutandis applicable to this issue also. Therefore, for the similar reasons, we are inclined to uphold the findings of CIT(A) and reject the ground taken by the Revenue.

35. The next issue that came up for our consideration from Ground No. 11 of Revenue appeal is deletion of addition made u/s 14A of Rs. 1,00,70,278/-. An identical has been considered by us in the Appellant's own case for the Asst Year 2014-15 in ITA No. 1343/Chny/2019. The facts are identical for the year under consideration. The reasons given by us in the preceding paragraph no. 18 to 18.4, shall mutatis mutandis applicable to

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this issue also. Therefore, for the similar reasons, we are inclined to uphold the findings of CIT(A) and reject the ground taken by the Revenue.

36. The next issue that came up for our consideration from Ground No. 12 of Revenue appeal is deletion of addition made towards interest accrued but not due on Government securities of Rs. 29,26,79,551/-. The AO made this addition by holding that income has accrued on the Government securities for the period from December 2014 to May 2015 and the same should be offered to tax for the Asst Year 2015-16. On appeal, the CIT(A) by following the decision of the Hon'ble Madras High Court in TC no. 2144 of 2008 deleted the addition.

36.1 The Ld. DR supported the order of the AO.

36.2 The Ld. AR submitted that the income on government securities accrues only on appointed days and therefore, the broken period interest receivable is not liable to tax. He submitted that this issue is decided by the Hon'ble Madras High Court (supra) in assessee's own case in favour of the assessee and also relied on the decision of Hon'ble Karnataka

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High Court in the case of Karnataka Bank 2014 (11) TMI 221. He also relied on a few ITAT decisions in this regard.

36.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that this issue has been decided by the Hon'ble Madras High Court in the assessee's own case in favour of the assessee. Further, we find that the Hon'ble Karnataka High Court also decided the issue in favour of the assessee.

36.4 Respectfully following the above decisions, we are inclined to uphold the findings of the CIT(A) and reject the ground taken by the Revenue.

37. The next issue that came up for consideration from Ground no. 13 is with regard to allowing rural debt written off.

37.1 The Ld. AR submitted that this ground is infructuous since neither the assessee claimed rural write off as deduction nor the CT(A) allow any rural write off as deduction u/s 36(1)(vii).

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37.2 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that this ground is infructuous since the CIT(A) has not allowed rural write off as deduction. The ground of the Department is therefore dismissed.

38. The next issue that came up for our consideration from Ground Nos. 14 to 15 of Revenue appeal is deletion of addition made towards deduction u/s 36(1)(viia) of Rs. 107,09,31,052/-. An identical has been considered by us in the Appellant's own case for the Asst Year 2014-15 in ITA No. 1343/Chny/2019. The facts are identical for the year under consideration. The reasons given by us in the preceding paragraph no. 22 to 22.4, shall mutatis mutandis applicable to this issue also. Therefore, for the similar reasons, we are inclined to uphold the findings of CIT(A) and reject the ground taken by the Revenue.

39. In the result, appeal filed by the Revenue for Asst Year 2014-15 is dismissed.

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40. As a result, the appeals filed by the assessee for both assessment years are partly allowed for statistical purpose and appeal filed by the revenue for both assessment years are dismissed.

Order pronounced in the court on 09th April, 2024 at Chennai.

Sd/-	**Sd/-**
(वी दुर्गाराव)	**(मंजुनाथा. जी)**
(V. DURGA RAO)	**(MANJUNATHA. G)**
न्यायिकसदस्य/Judicial Member	**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,
दिनांक/Dated: 09th April, 2024
JPV
आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. Assessee
2. Revenue
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF