IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER
AND SHRI R.S. PADVEKAR, JUDICIAL MEMBER

ITA No.1505/PN/2008
(A.Y. : 2005-06)

Addl. Commissioner of Income Tax,
Range-1, Pune. …. Appellant

Vs.

Bank of Maharashtra,
F.M. & A Department, 3rd Floor,
Lokmangal, 1501, Shivajinagar,
Pune – 411 005.

PAN : AACCB0774B …. Respondent

ITA No.1618/PN/2008
(A.Y. : 2005-06)

Bank of Maharashtra,
Dy. General Manager (F.M. & A.)
3rd Floor, Lokmangal, 1501,
Shivajinagar, Pune - 411 005.

PAN : AACCB0774B …. Appellant

Vs.

Addl. Commissioner of Income Tax,
Range- 1, Pune. …. Respondent

ITA Nos.1135 to 1138/PN/2013
(A.Ys. : 2006-07 to 2009-10)

Bank of Maharashtra,
Dy. General Manager (F.M. & A.)
3rd Floor, Lokmangal, 1501,
Shivajinagar, Pune - 411 005.

PAN : AACCB0774B …. Appellant

Vs.

Addl. Commissioner of Income Tax,
Range- 1, Pune. …. Respondent

ITA Nos.1219 to 1222/PN/2013
(A.Ys. : 2006-07 to 2009-10)

Dy. Commissioner of Income Tax,
Circle- 1(1), Pune. …. Appellant

Vs.

Bank of Maharashtra,

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F.M. & A Department, 3rd Floor,
Lokmangal, 1501, Shivajinagar,
Pune – 411 005.

PAN : AACCB0774B …. Respondent

Assessee by	:	Mr. S. Anardan & Ms. Lalitha Rameswaran
Department by	:	Mr. A. K. Modi
Date of hearing	:	10-09-2014
Date of pronouncement	:	17-09-2014

ORDER

PER G. S. PANNU, AM

The captioned are ten appeals, five appeals have been filed by the assessee and the other five are cross-appeals by the Revenue pertaining to the assessment years 2005-06 to 2009-10. Since some of the issues involved are common, all the appeals have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

2. First, we may take-up the cross-appeals preferred by the assessee and the Revenue for assessment year 2005-06 vide ITA No.1618/PN/2008 and ITA No.1505/PN/2008 respectively, which are directed against the order of the Commissioner of Income Tax (Appeals)-I, Pune dated 25.09.2008 which, in turn, has arisen from an order dated 29.11.2007 passed by the Assessing Officer u/s 143(3) of the Income-tax Act,1961 (in short "the Act").

3. In the appeal preferred by the assessee, the following Grounds have been raised in the Memo of Appeal :-

> *"1. The CIT(A) erred in not allowing depreciation on valuation of securities (scrip-wise) of Rs.375,89,72,351/- despite decision in UCO Bank – ITR (SC) and Corporation Bank – ITR (Kar) and other relevant case law. The addition is wrong in law based on relevant case law.*
>
> *2. The CIT (Appeals) erred in not allowing depreciation of Rs.1,52,07,500/- on items of Plant & Machinery considering them as items of Furniture & Fixtures.*

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3. The CIT (Appeals) erred in not considering the claim of Rs.68,06,15,000/- u/s 36(1)(vii) regarding Non-Rural Bad Debits written off."

4. Apart therefrom the assessee has raised 3 Additional Grounds of Appeal vide an application dated 18.02.2011, which read as under :-

"1. It may please be held that the correct amount of deduction u/s 36(1)(viia) of the I.T. Act, 1961 works out to Rs.155,48,95,324/- (subject to change on account of total income as defined in the said section) as against the amount of Rs.102,67,99,000/- erroneously claimed by the appellant bank in its return of income.

2. In the facts and circumstances of the case and in law, it may please be held that interest of Rs.13,45,53,175/- received by the appellant bank qualifies for exemption u/s 10(23G) of the I.T. Act, 1961 and the said income be held as exempt from taxation.

3. It may please be held that being a banking company the provisions of Section 115JA of the I.T. Act, 1961 are inapplicable to the appellant and the consequential reliefs in the matter may please be granted."

5. In so far as the admission of the Additional Grounds of Appeal is concerned, it has not been seriously opposed by the learned CIT-DR appearing for the Revenue. Moreover, similar nature of Additional Grounds were also raised before the Tribunal by the assessee in assessment years 2002-03 to 2004-05 wherein vide ITA Nos.637 & 638/PN/2007 and ITA No.967/PN/2008 respectively dated 30.05.2014, such Additional Grounds were admitted for adjudication following the ratio of the judgement of the Hon'ble Supreme Court in the case of National Power Thermal Corporation vs. CIT, (1998) 229 ITR 383 (SC). In this view of the matter, the aforestated Additional Grounds of Appeal were admitted for adjudication, as announced in the course of hearing, and thereafter both the parties have been heard with respect to the merits of the respective Additional Grounds of Appeal.

6. In so far as the cross-appeal of the Revenue for assessment year 2005-06 vide ITA No.1505/PN/2008 is concerned, the solitary issue raised therein reads as under :-

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> *"1. On the facts and in the circumstances of the case, the learned CIT (Appeal) erred in deleting the addition of Rs.213,92,63,435/- made on account of disallowance of depreciation on value of securities transferred from 'Available for Sale' to 'Held to Maturity' (HTM).*
>
> *2. The order of the CIT (Appeal) may be vacated and that of the A.O. restored."*

7. The Ground of Appeal No.1 in the appeal of the assessee as well as the Ground of Appeal No.1 raised by the Revenue in its cross-appeal relate to valuation of Securities and therefore the two cross-grounds are being taken-up together. In order to appreciate the controversy raised in the cross-grounds, the following discussion is relevant. The assessee bank has various accounts of investments viz. Government securities, shares, debentures, bonds, etc. It has been treating all the investments as stock-in-trade and income from investments, such as interest, profit / loss on the sale of these investments, etc. were offered to tax as business income in the past years and the same are assessed as such. In the books of account, assessee bank classifies the investments into three categories following the Reserve Bank of India guidelines, viz., Held to Maturity (HTM), Available for Sale (AFS) and Held for Trading (HFT). In its books of account, following the RBI guidelines, assessee bank has all along been valuing the HTM investments at cost. In respect of AFS and HFT investments the same are divided into 7 baskets and the valuation was carried out basket-wise and within the basket, any appreciation in value of a security is adjusted against depreciation in the value of another security. If the resultant figure in a basket is net depreciation, the same is debited to Profit & Loss Account. However, if the net figure is an appreciation, the same is ignored and is not adjusted against the depreciation in respect of other baskets.

8. For the purposes of income-tax, upto the previous year ending 31.03.2004 i.e. corresponding to the earlier assessment year of 2004-05, assessee bank had valued the HTM investments at cost only and AFS and

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HFT were valued as per RBI guidelines. In other words, upto and including assessment year 2004-05, the valuation of the investments made by the assessee it its books of account following the RBI guidelines was also adopted for the income-tax purposes. However, during the previous year relevant to the assessment year under consideration i.e. assessment year 2005-06, the assessee bank changed the method of valuation of its entire portfolio of securities/investments for the purposes of income-tax at lower of the cost or market value. This changed method adopted for the purposes of the income-tax has been consistently followed by the assessee bank in the subsequent years, as was asserted before us in the course of hearing.

9. For assessment year 2005-06 while filing its original return of income on 31.10.2005 assessee declared an income of Rs.203,22,98,600/- wherein the aforesaid changed method of valuation of its portfolio of securities was not effected. The assessee adopted the value as per the books of account arrived at on the basis of RBI guidelines. However, assessee bank filed a revised return of income on 30.03.2007 declaring a loss of Rs.129,69,92,560/- and in this revised return, assessee bank valued all the securities including the HTM category on the changed method i.e. at lower of cost or market value. As a result, it claimed an amount of Rs.359,24,58,508/- as loss on valuation of closing stock of securities, as noted by the Assessing Officer in para 3 of his order. This claim of the assessee has been rejected by the Assessing Officer as well as the CIT(A) and presently the assessee is in appeal before us on this aspect by way of Ground of Appeal No.1 stated above.

10. At the time of hearing, the learned counsel for the assessee submitted that by oversight the amount in the Ground of Appeal raised before the Tribunal has been wrongly stated at Rs.375,89,72,351/- whereas the correct figure is Rs.359,24,58,508/-. This error is stated to be on account of fact that the Assessing Officer had disallowed another sum of Rs.16,65,13,843/- being

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opening balance in the provision for depreciation in investments as per books of account, though it was not claimed by the assessee in the return of income. The CIT(A) has since deleted the said addition and therefore the relief now sought to be claimed by way of Ground of Appeal No.1 is to be taken as Rs.359,24,58,508/- only. On this aspect, there was no dispute between both the parties and therefore the Ground of Appeal No.1 is to be read as referring to a sum of Rs.359,24,58,508/- as against Rs.375,89,72,351/- stated therein.

11. Now, we may touch-upon the grievance in the cross-ground raised by the Revenue. In this context, it is to be noted that during the previous year relevant to the assessment year 2005-06, assessee bank shifted certain securities from AFS to HTM category following the RBI guidelines. As per the RBI guidelines, securities could be shifted from AFS to HTM category at lower of cost or market value on the date of shifting. The resultant depreciation on the date of shifting was debited to Profit & Loss Account and the value of the securities appearing in the books of account was reduced to that extent, following the RBI guidelines. The depreciation arising on shifting of securities from AFS to HTM category was computed at Rs.213,92,63,435/- which was claimed as a deduction in the return of income filed. The said claim was rejected by the Assessing Officer, which has since been allowed by the CIT(A) following his own decision in the case of the assessee for the immediately preceding assessment year 2004-05. The Revenue has challenged the said decision of the CIT(A) in its cross-appeal. Before us, on this aspect, there was a convergence between the assessee and the Revenue that the appeal of the Revenue for assessment year 2004-05 on the said issue has been dismissed by the Tribunal vide ITA No. 855/PN/2008 & others dated 30.05.2014. Therefore, in so far as the Ground raised in the appeal of the Revenue for assessment year 2005-06 is concerned, the same is liable to be decided in view of the said precedent. We hold so.

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12. However, in the course of hearing, the learned counsel for the assessee was required to explain as to whether or not the claim in the Ground of Appeal raised by the Revenue was subsumed in the claim for deduction being canvassed by the assessee in its Ground of Appeal No.1 so as to obviate a double deduction. In this context, the learned counsel for the assessee asserted that there was no double claim by pointing out that the year end valuation has been arrived at after considering the reduced cost of the securities shifted from AFS to HTM category. According to him, the reduced cost of securities is compared with the market value on the last date of the financial year and the lower of the two is considered as closing stock. Therefore, the year end valuation loss of Rs.359,24,58,508/- is over and above the shifting depreciation loss of Rs.213,92,63,435/- and therefore there is no double claim, even if assessee's Ground of Appeal is fully allowed. It has also been pointed out that in any case the deduction on account of shifting depreciation loss will not amount to double deduction for the assessment year 2005-06 since the assessee bank has changed the method of valuation of closing stock only as on 31.03.2005. Explaining it further the learned counsel pointed out that if the securities were not shifted from AFS to HTM category, the valuation loss as on 31.03.2005 would have increased by the amount of shifting depreciation loss of Rs.213,92,63,435/-.

13. The aforesaid factual assertions of the assessee have not been assailed by the Revenue before us. The said explanation of the assessee, in our view, obviates a situation where a double deduction is allowed to the assessee in the context of the two cross-grounds raised before us, namely, Ground of Appeal No.1 of the assessee and the Ground of Appeal No.1 raised by the Revenue in its appeal.

14. Now, we may consider the claim of the assessee of loss on valuation of closing stock of securities at Rs.359,24,58,508/- on account of the change in

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the method of valuation of securities undertaken for the first time during the year under consideration. The assessee has valued all the securities, including the HTM securities, as on the last day, i.e. 31.03.2005 at lower of cost or market value. So far as the valuation of AFS and HFT securities is concerned, the Revenue has accepted the stand of the assessee because according to the Revenue such securities represent stock-in-trade of the assessee bank and thus the valuation of such securities at the year end at the lower of cost or market value is acceptable. However, the Revenue has not accepted the changed method of valuation with respect to the HTM securities. The reason advanced for the same is that the HTM securities are in the nature of long term permanent investments since they are Held upto Maturity. The learned CIT-DR has defended the aforesaid stand of the Revenue by pointing out that due to its nature, the HTM securities are to be understood as permanent investments and the same should be valued at cost, which is the basis adopted by the assessee in its books of account. In the books of account, as we have noted earlier, assessee bank continues to value the HTM investments at cost, following the RBI guidelines. As per the learned CIT-DR, the HTM securities cannot be considered as stock-in-trade since they are to be held till maturity and are not available for sale or trading thereof. The learned CIT-DR asserted that in the account books, following the RBI guidelines, the HTM Securities are treated differently than the AFS / HFT securities. It is explained that wherever the cost of acquisition of HTM securities is higher than its face value, the premium is amortized over the remaining period of maturity and where the cost prize is less than the face value, the difference is ignored as per the RBI guidelines. However, securities in AFS Category are marked to market price and the securities in HFT category are held at original cost and are valued at monthly intervals at market rates. In sum and substance, the RBI guidelines have been pressed into service by the learned CIT-DR to emphasize that the HTM securities stand on a different footing than the AFS/HFT securities. It has also been submitted

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before us that assessee has not furnished any details to show that the securities under the HTM category have been sold prematurely prior to its maturity either during the year or in the past years. Therefore, according to the learned CIT-DR, there was no justification for effecting change in the method of valuation of closing stock of HTM securities.

15. Apart from explaining the difference in the nature of HTM and the other securities, namely, AFS/HFT the learned CIT-DR pointed out that the assessee has also not justifiably explained the reasons and the circumstances in which it has changed the method of valuation of securities from the method adopted in the past years. The learned CIT-DR emphasized that the change in the method of valuation of closing stock has been effected only for the purpose of income-tax and not for the regular books of account, which are being maintained as per the RBI guidelines. It has also been pointed out that the assessee has not referred to any resolution passed by the Board of Directors of the assessee-bank regarding the change in the method of valuation of the securities.

16. The learned counsel appearing for the assessee has assailed the stand of the Revenue by pointing out that the change in the method of valuation of the securities for the purposes of income-tax is bona-fide and the changed method has been consistently followed by the assessee hereinafter. The learned counsel submitted that in so far as the assessee bank is concerned, it was treating all investments as ‘stock-in-trade’ even in the past years inasmuch as the income from such investments such as interest, profit on sale of investments, etc. have always been offered to tax as ‘business income’ and the same was also assessed as such by the income-tax authorities. The only change is with regard to the method of valuation of closing stock of securities made from assessment year 2005-06 onwards, whereby assessee has valued the investments at the lower of cost or market value, which is a universally

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accepted method of valuation. The learned counsel pointed out that the classification of investments in the books of account as HTM, AFS and HFT is primarily in compliance to the guidelines of RBI, and therefore in the books of account the valuation method adopted has to be in accordance with RBI guidelines. In so far as the plea of the learned CIT-DR with regard to the resolution of the Board of Directors, the learned counsel asserted that there was no such requirement and that in any case the Chairman & Managing Director of the assessee bank has appended his signature on the return of income filed. It is also pointed out that the computation of income along with the return of income is invariably placed before the Board of Directors from time to time and therefore it cannot be said that the change in the method of valuation was without the concurrence of the Board of Directors. In the course of the hearing, the learned counsel asserted that the impugned dispute is squarely covered by the following judgements:-

(i) Karnataka Bank Ltd. vs. ACIT (2013) 34 taxmann.com 150 (Karnataka);

(ii) Latur Urban Co-op. Bank Ltd. vs. DCIT in ITA No.778/PN/2012 order dated 31.08.2012;

(iii) CIT vs. Corporation Bank Ltd. (1998) 174 ITR 616 (Kar); and,

(iv) CIT vs. Karur Vysya Bank Ltd. (2005) 273 ITR 510 (Mad).

17. We have carefully considered the rival submissions. The crux of the controversy before us relates to the method of valuation of the closing stock of securities/investments adopted by the assessee in the current assessment year. The assessee is a nationalized bank and therefore it is operating within the purview of the RBI guidelines. In the books of account, the investments/securities held by the assessee bank are classified as per the RBI guidelines into three categories, namely, HTM, AFS and HFT. Not only the classification, it is also an accepted position that, the manner of valuation of

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such securities is also prescribed in the RBI guidelines, which the assessee is adhering to. In the earlier paragraphs, we have noted the RBI guidelines which prescribe the manner of valuation of the investments. Thus, in the books of account following the RBI guidelines HTM investments are valued at cost and in respect of AFS and HFT investments, the valuation is carried out basket-wise and within the prescribed basket any appreciation in security is adjusted against the depreciation of other any security. Up to the assessment year 2004-05, the method of valuation of closing stock of securities adopted in the books of account following the RBI guidelines, was also adopted by the assessee for the purposes of income-tax. It is in the instant assessment year of 2005-06 and in subsequent years, that assessee has changed the method of valuation for the purposes of its income-tax computation whereby assessee has valued the closing stock of securities / investments at lower of cost or market value. The resultant effect of such change in the assessment year 2005-06 amounting to Rs.359,24,58,508/- is not accepted by the Revenue, and hence the impugned addition of Rs.359,24,58,508/-.

18. Factually speaking, the change in the method of valuation has been partly accepted by the Revenue and we say so for the reason that qua the investments classified as AFS and HFT there is no dispute and, the valuation of such closing stock at lower of cost or market value, has been accepted. The dispute is only with regard to the closing stock of HTM securities, which according to the Assessing Officer, should continue to be valued 'at cost' only for the purposes of income-tax computation.

19. In the present context, the judgement of the Hon'ble Karnataka High Court in the case of Corporation Bank Ltd. (supra) is relevant. The issue before the Hon'ble High Court was with regard to the method of valuation of stock-in-trade adopted by the assessee. The assessee bank had all along valued the investments 'at cost' but for the assessment year 1975-76, which

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was before the Hon'ble High Court, assessee changed the method and instead valued the stock at lower of the cost or market value. The Revenue objected to the change on the ground that the change was not bona-fide, as it was done only in the return of income and not in the account books. The Hon'ble Karnataka High Court held that it was permissible for the assessee bank to value the closing stock either at market value or the cost price, whichever is lower. As per the Hon'ble High Court, irrespective of the basis adopted for valuation in earlier years, the assessee had the option to change the method of valuation of the closing stock to lower of cost or market value, at any time, provided the change was bona-fide and followed regularly thereafter. Similar proposition has also been upheld by the Hon'ble Madras High Court in the case of Karur Vysya Bank Ltd. (supra) following the ratio of the judgement of the Hon'ble Supreme Court in the case of United Commercial Bank Ltd. vs. CIT, (1999) 240 ITR 355 (SC).

20. In the background of the aforesaid legal position, a premise which can be drawn is that for the purposes of valuation of the closing stock it is permissible for the assessee to value it at the cost or market value, whichever is lower. In-fact, the Hon'ble Supreme Court in the case of Chainrup Sampatram vs. CIT, (1953) 24 ITR 481 (SC) held that the assessee is entitled to value the closing stock either at cost price or market value, whichever is lower. In the present case, Revenue does not dispute that the method of the valuation adopted by the assessee, namely, valuing the stock either at cost price or market value whichever is lower, is a generally accepted method of valuation. No doubt, there are no statutory rules for the valuation of closing stock but the ordinarily accepted method of commercial accounting support the valuation of closing stock based on the lower of the cost or market value. Therefore, the departure from the erstwhile method of valuation of closing stock by the assessee is quite appropriate, and in fact is line with a method approved by the Hon'ble Supreme Court in the case of Chainrup Sampatram

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(supra). In-fact, the only basis for the Revenue to challenge the bona-fides of the change is that the change has been effected only for the purpose of assessment of taxable income and is not incorporated in the account books. The aforesaid plea of the Revenue, in our view, is quite misplaced because it is well understood that assessee is a banking company and is statutorily mandated to maintain its books of account in terms of the RBI guidelines. On the other hand, the assessment of taxable income has to be based on the principle of law and cannot be guided merely by the treatment meted out to a particular transaction in the account books. In-fact, this aspect of the controversy has also been answered by the Hon'ble Karnataka High Court in the case of Corporation Bank Ltd. (supra) by relying on the judgement of the Hon'ble Supreme Court in the case of Kedarnath Jute Mfg. Co. Ltd. vs. CIT, (1971) 82 ITR 363 (SC). Therefore, we do not find any merits in the above objection of the Revenue. Moreover, the plea of the learned CIT-DR that nature of HTM securities is distinct from AFS and HFT securities and thus HTM securities are not stock-in-trade, is quite wrong. It cannot be denied that the securities held by the bank are stock-in-trade. Another plea of the learned CIT-DR was to the effect that the investments in the HTM category are not tradeable and the assessee may not be selling the HTM Securities prior to their maturity. Therefore, as per the learned CIT-DR, such securities could not be considered as 'stock-in-trade'. The aforesaid plea of the Revenue has been assailed by the learned Counsel for the assessee-bank. He has furnished a statement showing net profit on sale of HTM Securities as per the Balance Sheet for the various assessment years, viz. 2006-07 to 2009-10. On this basis, it is sought to be contended that the HTM category securities are also viewed as 'stock-in-trade' by the assessee-bank. In our opinion, the plea of the learned CIT-DR is quite untenable primarily because the very nature of banking activities allowed as per the Banking Regulation Act, 1949 are in the sphere of business / trade activities; and, accordingly the recognition of

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investments in HTM category as 'stock-in-trade' is not dependent on the frequency of their sale / purchase carried out by the assessee-bank.

21. In view of the aforesaid discussion, we, therefore, conclude by holding that in the present case the method of valuation of the closing stock adopted by the assessee i.e. cost or market value, whichever is lower is fair and proper and the income-tax authorities have erred in not accepting the same. The orders of the authorities below on this aspect are hereby reversed.

22. Apart from the aforesaid, it was also brought out by the learned CIT-DR that in the books of account, assessee has not maintained any Trading account in respect of the securities held. It has been pointed out that due to the variation in the method of valuation of investments adopted in the books of account and for the purposes of income-tax, assessee has been revising the figure of loss claimed on account of change in valuation of securities before the lower authorities. This observation of the learned CIT-DR has its genesis in the discussion in the orders of lower authorities on a similar dispute for assessment year 2006-07, which is also before us. In response to the aforesaid, the learned counsel for the assessee submitted that because of the change in the valuation method of the investments, assessee had re-worked the entire income relating to the investments/securities by preparing an 'Investment Trading Account'. The learned counsel explained that the assessee was also undertaking sale and purchase of securities and therefore the profit / loss thereon was also liable to be adjusted having regard to the change in valuation of the securities/investments. In this context, a statement showing the 'Investments Trading Account' and the effect of the change in the method of valuation of investments was furnished by way of tabulation in the course of hearing.

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23. The learned counsel for the assessee pointed out that an Investment Trading Account for the period ending on 31.03.2005 was submitted to the CIT(A) as a measure to enable the computation of real income of the assessee on account of valuation of investments, sale of investments as per books, depreciation in value of investments as per books, amortization of securities, etc.. The plea of the assessee in this regard has been put by way of a Note, which reads as under :-

> *"1.11.1. As submitted during the hearings in the Open Court on 09-06-2014 and 10-06-2014, the entire result on account of investment trading may be taxed on the basis of the investment trading account prepared and submitted by the appellant bank since it is the most scientific method. In this method, the appellant bank had considered the purchases and sales as per the audited books of accounts for the Financial Year 2004-05. The opening stock as at 01-04-2004 was considered as per the value based on the audited accounts as at 31-03-2004 since upto 31-03-2004, the bank had adopted the book method for income tax purpose also. The closing stock of the entire portfolio including HTM securities was arrived at after adopting scip wise valuation at lower of cost or market value (the method changed for the first time). The submission of the appellant bank is that the book results such as profit on sale of investments as per books, depreciation on investments as per books, Amortization on HTM securities as per books are all ignored and only the net result as per the investment trading account be adopted for the income tax purpose. This will remove all the anomalies and the real income is subject to tax. The investment trading account as on 31-03-2005 was submitted to the CIT(A) (Ref 51 of the paper book submitted on 09-06-2014). A statement showing the appeal relief on this account is enclosed as Annexure – 1."*

24. In-principle, we have already upheld the stand of the assessee to value the stock of its investments / securities at lower of cost or market value. By application of such method of valuation of its stock of securities / investments in assessment year 2005-06 assessee claimed deduction for a loss of Rs.359,24,58,508/-. The effect of the change in method of valuation on the computation of income for the purposes of income tax is a matter of factual appreciation, which is liable to be verified by the Assessing Officer appropriately. For the aforesaid purpose, we therefore direct the Assessing Officer to consider the stand of the assessee stated aforesaid and thereafter re-work the income of the assessee accordingly. Needless to mention, the assessee shall provide necessary workings to the Assessing Officer, including

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the Investment Trading Account and / or such other workings which would enable the Assessing Officer to re-work the income of the assessee in accordance with our decision in the earlier paragraphs. The Assessing Officer shall allow the assessee an appropriate opportunity of being heard and thereafter re-work the computation of income as per law and keeping in mind the aforesaid directions. Thus, on Ground of Appeal No.1 assessee succeeds.

25. The Ground of Appeal No.2 raised by the assessee is with regard to the depreciation of Rs.1,52,07,500/- on items of Plant & Machinery, which according to the assessee have been wrongly considered as items of Furniture & Fixtures.

26. At the time of hearing, it was a common ground between the parties that similar dispute has been adjudicated by the Tribunal in the assessee's own case for assessment year 2004-05 vide ITA No.967/PN/2008 dated 30.05.2014, wherein the operating portion of the order reads as under :-

> *"43. In our considered opinion, the action of the Assessing Officer is quite suspect having regard to the parity of reasoning laid down by the Hon'ble Bombay High Court in the case of Central Bank of India (supra) as well as Hon'ble Delhi High Court in the case Punjab & Sind Bank Ltd. (supra). In both the judgements, it clearly emerges that in the case of a banking company, for allowing depreciation in respect of lockers, counters, steel equipment, electrical fittings, etc., their functional utility has to be evaluated. As per the Hon'ble Delhi High Court, safe deposits were liable to be treated as 'Plant' by a banking company. Considering the parity of reasoning laid down in the aforesaid judgements, in our view, the Assessing Officer is required to go into the aspect of the depreciation allowable in relation to the impugned assets afresh. At the time of hearing, the learned counsel for the assessee submitted that it would suffice, if the matter is restored back to the file of the Assessing Officer to consider and apply the legal position stated in aforesaid judgements, so as to arrive at the correct depreciation allowable to the assessee. Considering the aforesaid, we hereby set-aside the order of the CIT(A) and direct the Assessing officer to re-work the claim of the depreciation on the impugned assets in the light of the aforesaid judgements. Needless to say, the Assessing Officer shall allow the assessee a reasonable opportunity to put-forth its claim and the Assessing Officer shall thereafter adjudicate the claim of the assessee as per law. Thus, assessee succeeds for statistical purposes."*

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27. Following the aforesaid precedent, we set-aside the order of the CIT(A) and direct the Assessing Officer to re-work the depreciation allowance on the impugned assets in the light of the Tribunal order for assessment year 2004-05 dated 30.05.2014 (supra). Needless to say, the Assessing Officer shall allow the assessee a reasonable opportunity of being heard and only thereafter, the Assessing Officer shall re-work the allowance of depreciation as per law. Thus, on this Ground assessee succeeds for statistical purposes.

28. By way of Ground of Appeal No.3, assessee has raised a claim of deduction of Rs.68,06,15,000/- u/s 36(1)(vii) of the Act on account of write off on debts by the non-rural branches of the assessee bank. The learned counsel for the assessee explained that the said claim was raised by way of an Additional Ground of Appeal before the CIT(A) vide letter dated 26.08.2008 but the same has not been inadvertently considered by the CIT(A). In this connection, a reference has been invited to a copy of the communication addressed to the CIT(A), which is placed in the Paper Book. Before us, it is sought to be canvassed that the said claim is covered by the judgement of the Hon'ble High Court in the case of Catholic Syrian Bank Ltd. vs. CIT, (2012) 343 ITR 270 (SC) and in the case of assessee for assessment years 2002-03, 2003-04 and 2004-05 the Tribunal vide its order dated 30.05.2014 (supra) admitted such an Additional Ground but remitted the same back to the file of the Assessing Officer for adjudication in the light of the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. (supra). The aforesaid factual matrix has not been disputed by the learned CIT-DR appearing for the Revenue. As a result, following the precedent in the assessee's own case, we deem it fit and proper to direct the Assessing Officer to consider the said claim of the assessee in the light of the judgement of the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. (supra). Needless to say, the Assessing Officer shall allow the assessee a reasonable opportunity to put-forth its claim

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and only thereafter he shall proceed to adjudicate the claim of the assessee as per law. Thus, on this Ground assessee succeeds for statistical purposes.

29. In so far as the Additional Ground Appeal No.1 is concerned, the same relates to the assessee's claim for deduction u/s 36(1)(viia) of the Act of Rs.155,48,95,324/- as against a claim of Rs.102,67,99,000/- made in its return of income. The pertinent dispute in this Ground is as to whether the deduction allowable u/s 36(1)(viia) of the Act is to be restricted to the actual amount of Provision made in the books of account for bad and doubtful debts or to the claim otherwise computed by the assessee in terms of section 36(1)(viia) of the Act. The said controversy has been considered by the Pune Bench of the Tribunal in the case of Shri Mahalaxmi Co-op. Bank Ltd. vs. ITO vide ITA No.1658/PN/2011 order dated 29.10.2013 wherein, following the ratio of the decision of the Hon'ble Punjab and Haryana High Court in the case of State Bank of Patiala vs. CIT, (2005) 272 ITR 54 (P&H), it has been held that the income-tax authorities were justified in restricting the claim of deduction allowable u/s 36(1)(viia) of the Act to the actual amount of Provision made in the books of account for bad and doubtful debts. The following discussion in the order of the Tribunal is relevant :-

> *"4. In the above background, the rival counsels have made their submissions. The short controversy in the present case is to the effect as to whether making of a Provision equal to the amount claimed as deduction under Section 36(1)(viia) of the Act, is necessary to be made in the books of account or not so as to be eligible for the claim of deduction under Section 36(1)(viia) of the Act. The stand of the assessee is that the deduction under Section 36(1)(viia) of the Act does not depend on making of a Provision for bad and doubtful debts in the account books while the stand of the Revenue is to the contrary i.e. making of a Provision equal to the amount claimed as deduction under Section 36(1)(viia) of the Act is necessary to be made in the books of account.*
>
> *5 ……..*
> *6. ……..*
> *7. ……..*
> *8. ……..*
>
> *9. We have carefully considered the rival submissions. We have also anxiously perused the authorities cited at Bar in order to determine the controversy on hand. The relevant portion of Section 36(1)(viia) of*

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the Act, as applicable for the assessment year under consideration i.e. A.Y. 2008-09 reads as under : -

> *"[(viia) [in respect of any provision for bad and doubtful debts made by –*
>
> *(a) a scheduled bank [not being [* * *] a bank incorporated by or under the laws of a country outside India] or a non-scheduled bank [or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank], an amount [not exceeding seven and one-half per cent] of the total income (computed before making any deduction under this clause and Chapter VIA) and an amount not exceeding [ten] per cent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner :*

10. A bare perusal of aforesaid section clearly brings out that the deduction specified therein is in "respect of any provision for bad and doubtful debts made by…….." an eligible assessee. The presence of the aforesaid expression in the section supports the plea of the Revenue, which is to the effect that the deduction allowable under Section 36(1)(viia) of the Act is in respect of the provision "made" by the assessee. In our considered opinion, the judgement of the Hon'ble Punjab & Haryana High Court in the case of State Bank of Patiala (supra) clearly covers the controversy in favour of the Revenue and belies the interpretation sought to be canvassed by the assessee. In the case before the Hon'ble High Court, assessee-bank had originally filed its return of income for assessment year 1985-86 claiming deduction under Section 36(1)(viia) of the Act at Rs.1,90,36,000/-. After filing of the return the provisions of Section 36(1)(viia) of the Act were amended by Finance Act, 1985 whereby deduction was enhanced to 10% of the profit or 2% of the aggregate average advances made by rural branches of the bank, whichever was higher. On account of the amended provisions, assessee filed a revised return of income on 24.04.1986 enhancing the claim for deduction from Rs.1,90,36,000/- to Rs.1,94,21,000/-. The Assessing Officer restricted the deduction under Section 36(1)(viia) of the Act to Rs.1,90,36,000/- only and disallowed the balance on the ground that in the books of account pertaining to the relevant assessment year, assessee had made a Provision for bad and doubtful debts of Rs.1,90,36,000/- only. The assessee argued that the Provision of Rs.1,90,36,000/- was made in the Balance-Sheet finalized on 14.02.1985 which was as per the unamended provisions of Section 36(1)(viia) of the Act and that in view of the amendment of Section 36(1)(viia) of the Act permitting higher claim of deduction, the assessee could not have possibly made the higher Provision in the Balance-Sheet finalized on a prior date, but it made up the shortfall by making an adequate Provision in the Balance-Sheet of the subsequent assessment year. On this basis, it was sought to be made out that there was substantial compliance with the requirement of law of making Provision for bad and doubtful debts and therefore assessee justified the claim of deduction for the complete amount of Rs.1,94,21,000/- and not restricted to Rs.1,90,36,000/-. The CIT(A) as well as the Tribunal negated the plea of the assessee and accordingly, the matter was carried before the Hon'ble Punjab & Haryana High Court. The Hon'ble High Court referred to the provisions of Section 36(1)(viia) of the Act and observed that "…..the deduction allowable under the above provisions is in respect of the provision made" and further went on to hold that "…..making of a provision for bad and doubtful debts equal to the amount mentioned in this section is must for claiming such

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deduction." In view of the aforesaid judgement of the Hon'ble Punjab & Haryana High Court, in our view, the position sought to be canvassed by the assessee deserves to be repelled. We reproduce hereinafter the relevant portion of the order of the Hon'ble High Court, which reads as under :-

> *"5. Sec.36(1)(viia) of the Act as applicable to the asst. yr. 1985-86, reads as under :*
>
> *"in respect of any provision for bad and doubtful debts made by a scheduled bank [not being a bank approved by the Central Government for the purposes of cl.(viiia) or a bank incorporated by or under the laws of a country outside India] or a non-scheduled bank, an amount not exceeding ten per cent of the total income (computed before making any deduction under this clause and Chapter VI-A) or an amount not exceeding two per cent of the aggregate average advances made by the rural branches of such bank, computed in the prescribed manner, whichever is higher."*
>
> *6. A bare perusal of the above shows that the deduction allowable under the above provisions is in respect of the provision made. Therefore, making of a provision for bad and doubtful debts equal to the amount mentioned in this section is a must for claiming such deduction. The Tribunal has rightly pointed out that this issue stands further clarified from the proviso to cl.(vii) of s.36(1) of the Act, which reads as under :*
>
> *"Provided that in the case of an assessee to which cl.(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."*
>
> *7. This also clearly shows that making of provision equal to the amount claimed as deduction in the account books is necessary for claiming deduction under s. 36(1)(viia) of the Act. The Tribunal has distinguished various authorities relied upon by the assessee wherein deductions had been allowed under various provisions which also required creation of reserve after the assessee had created such reserve in the account books before the completion of the assessment. It has been correctly pointed out that in all those cases, reserves/provisions had been made in the books of account of the same assessment year and not of the subsequent assessment year.*
>
> *8. In the present case, the assessee has not made any provision in the books of account for the assessment year under consideration, i.e., 1985-86, by making supplementary entries and by revising its balance sheet. The provision has been made in the books of account of the subsequent year.*
>
> *9. We are, therefore, satisfied that the Tribunal was right in holding that since the assessee had made a provision of Rs.1,19,36,000 for bad and doubtful debts, its claim for deduction under s. 36(1)(viia) of the Act had to be restricted to that amount only. Since the language of the statute is clear and is not capable of any other interpretation, we are satisfied that no substantial question of law arises in this appeal for consideration by this Court.*

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11. In view of the aforesaid interpretation of Section 36(1)(viia) of the Act by the Hon'ble Punjab & Haryana High Court, the orders of the lower authorities deserve to be upheld inasmuch as the assessee has not made a Provision for bad and doubtful debts in the books of account equal to the amount of deduction sought to be claimed under Section 36(1)(viia) of the Act, and therefore, in our view, the lower authorities were justified in restricting the deduction to Rs.50,00,000/-, being the amount of Provision actually made in the books of account.

12. The learned counsel for the assessee has cited certain decision in support of his proposition that the claim of deduction under Section 36(1)(viia) of the Act is not linked to making of a Provision in the account books. At the outset, we may observe that the decisions relied upon by the assessee are of various Benches of the Tribunal and not of any High Court. Therefore, the judgement of the Hon'ble High Court in the case of State Bank of Patiala (supra), which is contrary to the decisions of the Tribunal relied upon by the assessee; and being solitary judgement of a High Court, is required to be applied, having regard to the established norms of judicial discipline. For the said reason, we refrain from discussing each of the decisions of the Tribunal relied by the assessee before us.

13. The other plea of the assessee was that the contents of the CBDT Circular dated 26.11.2008 (supra) is contrary to the provisions of Section 36(1)(viia) of the Act and therefore the same should be disregarded. In our view, the following explanation in respect of Section 36(1)(viia) of the Act rendered by the CBDT in Circular dated 26.11.2008 (supra) by way of para 2(iii)(b) as under :-

> *"(b) The deduction for provision for bad and doubtful debts should be restricted to the amount of such provision actually created in the books of the assessee in the relevant year or the amount calculated as per provisions of section 36(1)(viia), whichever is less."*

is in line with the interpretation of the section rendered by the Hon'ble Punjab & Haryana High Court and cannot be said to be contrary to the provisions of the Act. Therefore, the reliance placed by the lower authorities on the CBDT Circular dated 26.11.2008 (supra) cannot be faulted.

14. Before parting, we may refer to the decision of the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. (supra) relied upon by the assessee and also the decision of our co-ordinate Bench in the case of Jaysingpur Udgaon Sahakari Bank Ltd. (supra). We have carefully perused the said decision and found that the issue before the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. (supra) was quite different; and, in any case none of the observations of the Hon'ble Supreme Court run contrary to the pronouncement of the Hon'ble Punjab & Haryana High Court in the case of State Bank of Patiala (supra) to the effect that making of a Provision for bad and doubtful debts equal to the amount mentioned in Section 36(1)(viia) of the Act is must for claiming such deduction. Therefore, the judgement of the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. (supra) does not help the assessee in the present controversy before us. Further, even in the case of Jaysingpur Udgaon Sahakari Bank Ltd. (supra), the Tribunal has merely set-aside the matter for adjudication

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afresh back to the file of the Assessing Officer and it does not contain any positive finding with respect to the controversy before us.

15. In the result, considering the aforesaid discussion, in our view, the orders of the authorities below on this aspect are liable to be upheld. We hold so."

30. Following the aforesaid precedent, the Additional Ground of Appeal No.1 raised by the assessee is dismissed, as the CIT(A) has rightly restricted the deduction u/s 36(1)(viia) of the Act to the actual amount of provision made in the books of account for bad and doubtful debts.

31. In so far as the Additional Ground of Appeal No.2 is concerned, the same is with respect to the exemption u/s 10(23G) of the Act in relation to interest income earned by the assessee on infrastructural advances. On this aspect the plea of the assessee is that a similar claim has been admitted by the Tribunal in its order dated 30.05.2014 (supra) but the matter was remitted back to the file of the Assessing Officer to decide on merits, having regard to the facts and circumstances of the case. Following the aforesaid precedent in the present year also we restore the matter back to the file of the Assessing Officer for adjudication on its merits, having regarding to the facts and circumstances of the case. Needless to say, the Assessing Officer shall allow the assessee a reasonable opportunity to put-forth its claim and the Assessing Officer shall thereafter adjudicate the claim of the assessee as per law. Thus, on this Additional Ground of Appeal No.2 assessee succeeds for statistical purposes.

32. The Additional Ground of Appeal No.3 relates to the claim of the assessee that the provisions of section 115JB of the Act are not applicable to it, being a banking company. Section 115JB of the Act prescribes, as applicable for the assessment year under consideration, that where the income-tax payable on the total income as computed under the Act is less

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than 7.5% of its book profits, then the tax payable for the year shall be deemed to be 7.5% of such book profits.

33. In the present case, it is pointed out by the learned CIT-DR that the income finally assessed by the Assessing Officer u/s 143(3) of the Act is as computed under the normal provisions of the Act, as it was higher than 7.5% of book profits u/s 115JB of the Act, and, thus the above ground of appeal is quite infructuous. However, the plea of the assessee is that when the income is finally assessed, having regard to the decisions in appeal by the higher authorities, there might arise a situation whereby the provisions of section 115JB of the Act may be triggered by the Assessing Officer. In this background, it is sought to be made out, on the basis of the following judgements,

(i) Canara Bank vs. CIT (LTU) in Appeal No.305/Bang/2011 dated 18.06.2012;
(ii) ICICI Lombard General Insurance Co. Ltd. vs. ACIT, 2012-TIOL-690-ITAT-Mum; and,

(iii) State Bank of Hyderabad vs. DCIT in ITA No.578/H/2010 dated 07.09.2012;

that the provisions of section 115JB of the Act are not applicable to a banking company, and thus no tax liability can be determined against the assessee u/s 115JB of the Act..

34. On the other hand, the learned CIT-DR has not disputed the aforesaid factual matrix but pointed out that sub-section (2) of section 115JB of the Act has been amended by the Finance Act, 2012 to include companies which are governed by section 211(2) of the Companies Act, 1956 for the purposes of applicability of section 115JB of the Act.

35. We have carefully considered the rival submissions. Ostensibly, there is no dispute that assessee is a banking company. The Bangalore Bench of the Tribunal in the case of Canara Bank (supra) held that section 115JB of the Act is not applicable to a banking company. In coming to such conclusion, the

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Bangalore Bench of the Tribunal relied upon the earlier decisions of the Tribunal in the cases of Union Bank of India vs. ACIT (ITA Nos.4702 & 4706/2010 dated 30.06.2011) and Indian Bank vs. Addl. CIT (ITA No.469/Mds/2010 dated 03.08.2011). Similar is the decision of the Hyderabad Bench of the Tribunal in the case of State Bank of Hyderabad (supra). In so far as the objection of the learned CIT-Departmental Representative, based on the amendment made to section 115JB of the Act by the Finance Act, 2012 is concerned, the same is misconceived because the said amendment is applicable from assessment year 2013-14 onwards. Therefore, the aforesaid amendment does not negate the ratio of the aforesaid precedents, which hold the field so far as the assessment year before us is concerned. Therefore, following the aforesaid precedents and in the absence of any contrary decision, we hereby hold that assessee, being a banking company, does not fall within the purview of section 115JB of the Act. The Assessing Officer is hereby directed to consider the aforesaid legal position as and when he is to finally determine the total income. Thus, on this Additional Ground of Appeal No.3 assessee succeeds.

36. In the result, so far as the assessment year 2005-06 is concerned the appeal of the assessee in ITA No.1618/PN/2008 is partly allowed whereas the cross-appeal of the Revenue in ITA No.1505/PN/2008 is dismissed.

37. Now, we may take-up the cross-appeals preferred by the assessee and the Revenue for assessment year 2006-07 vide ITA No.1135/PN/2013 and ITA No.1219/PN/2013 respectively, which are directed against the order of the Commissioner of Income Tax (Appeals)-I, Pune dated 28.03.2013 which, in turn, has arisen from an order dated 29.12.2008 passed by the Assessing Officer u/s 143(3) of the Act.

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38. In the appeal preferred by the assessee, the following Grounds have been raised in the Memo of Appeal :-

> *"1. In the facts and circumstances of the case and in law, the learned CIT (A) has erred in not allowing the deduction of Rs.500,28,54,643/- for Loss as per Trading Account prepared for the securities held by the bank.*
>
> *2. Without prejudice to Ground of appeal No.1 above the appellant submits that it is well settled law, that learned CIT (A) can either adjudicate the issue or set aside the assessment and direct the Assessing Officer to decide the issue afresh. Since the CIT (A) has held that the HTM securities are capital assets and loss on valuation on HTM category is not allowable revenue deduction and in respect of other securities viz. AFS / HFT learned CIT (A) has given directions to Assessing Officer to verify the allowable deduction, the impugned order passed by the learned CIT (A) is bad in law, null and void and please may be vacated / quashed.*
>
> *3. Without prejudice to Ground of appeal No.1 & 2 above and by way of alternate submission, the appellant submits that the Loss on valuation of securities debited to the profit & loss account of Rs.185,10,72,645/- is allowable expenditure.*
>
> *4. It may please be held that the securities held by the appellant bank under HTM category constitute its stock in trade and not Capital assets as held by the learned CIT (A).*
>
> *5. In the facts and circumstances of the case and in law, the learned CIT (A) erred in sustaining the addition of Rs.1,04,62,090/- made by the Assessing Officer on account of write back of provision made for Non Performing Investments where as the corresponding provision was already taxed in the earlier assessment years.*
>
> *6. The appellant submits that the amortization of public issue expenses is allowable expense u/s 35D and same may please be allowed to the appellant.*
>
> *7. Without prejudice to the above ground, the appellant submits that only the net expenditure after deducting the income earned on the application money be disallowed.*
>
> *8. In the facts and circumstances of the case and in law, the disallowance of Rs.139,27,20,607/- made by the learned CIT (A) u/s 36(1)(vii) of the I.T. Act 1961, being bad in law, arbitrary, perverse and legally unsustainable. The said claim may please be allowed to the appellant. The learned CIT (A) erred in holding that the appellant had not written off the debts, which is against the facts.*
>
> *10. In the facts and circumstances of the case and in law, the appellant submits that the full amount considered as donation is contribution to the society for the promotion of the business and reputation. Hence full amount may please be allowed as deduction u/s 37.*
>
> *11. In the facts and circumstances of the case and in law, the learned CIT (A) has erred in restricting the claim made by the appellant u/s 36[1][viia] of the I.T. Act 1961 to Rs.83,00,00,000/- as against the claim of Rs.172,49,54,970/-. It may please be held that the correct amount of deduction u/s 36(1)(viia) is Rs.172,49,54,970/- [subject to change on*

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account of total income as defined in the said section]. The Learned CIT (A) has failed to appreciate that the deduction should not be restricted to the provision made in the books accounts.

12. It may please be held that the provisions of Section 115JB of the IT Act 1961 are inapplicable to the appellant being a banking company and the consequential reliefs in the matter may please be granted.

13. The provision for frauds amounting to Rs.13,77,108/- being the actual loss sustained by the appellant bank on account of frauds in the accounts of customers, the same may please be allowed as deduction as business expenditure u/s 28 or u/s 37 of Income Tax Act, 1961."

39. In so far as the cross-appeal of the Revenue for assessment year 2006-07 vide ITA No.1219/PN/2013 the following Grounds of Appeal have been raised :-

"1. The order of the learned Commissioner of Income-tax (Appeals) on the issues mentioned herein below are contrary to law and to the facts and circumstances of the case.

2. Even while holding that the provisions of section 36(1)(viia) are applicable only in respect of rural advances in view of the Hon'ble Supreme Court's decision in the case of Catholic Syrian Bank Ltd., 343 ITR 270, the learned Commissioner of Income-tax (Appeals) has erred in not restricting admissible deduction u/s.36(1)(viia) to the extent of the provision made for rural advances only.

3. The learned Commissioner of Income-tax (Appeals) has erred in not directing the Assessing Officer to disallow the excess deduction allowed to the assessee, u/s.36(1)(viia), to the extent of the provision made for urban advances forming part of the total provision.

4. The learned Commissioner of Income-tax(Appeals) grossly erred in failing to appreciate that, as would be evident from the financial accounts of the assessee, the provision made by the assessee in respect of Non Performing Assets (NPA) as per the Reserve Bank of India guidelines tallies with the provision made u/s.36(1)(viia) which in itself would establish that the provision made u/s.36(1)(viia) was inclusive of the provision for non-rural advances which are not admissible in view of the Hon'ble Supreme Court's decision in the case of Catholic Syrian Bank Ltd., 343 ITR 270.

5. In view of the foregoing, the learned Commissioner of Income-tax (Appeals) has erred in routinely accepting the assessee's claim that the provision made by it, u/s.36(1)(viia), pertained to the rural advances whereas the facts emerging from the financial accounts prove to the contrary; and, the learned Commissioner of Income-tax (Appeals) has also erred in not giving opportunity to the Assessing Officer to examine and rebut the above claim of the assessee as was required under Rule 46A of the Income-tax Rules, 1962.

6. The learned Commissioner of Income-tax (Appeals) has erred in deciding on the issue of provision u/s.36(1)(viia) without taking cognizance of the specific request made by the Assessing Officer in his remand report dated 05.02.2013 to exclude the non-rural advances for

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the purpose of computing deduction u/s.36(1)(viia) of the Act.

7. The learned Commissioner of Income-tax (Appeals) has erred in holding that the assessee is entitled to deduction of Rs.1,00,00,000/- u/s.37 of the Income-tax Act, 1961 in respect of the donations of Rs.75,00,000/- and Rs.25,00,000/- paid by it to the Maha Bank Agriculture Research and Development and to the Gramin Mahila Va Bal Vikas Mandal respectively.

8. The learned Commissioner of Income-tax (Appeals) has erred in failing to appreciate that the Assessing Officer had correctly allowed deduction u/s.80G on the above donations and, moreover, in view of the fact that both the recipients are approved institutions for the purpose of section 80G and the assessee also did not have any business nexus with them, the provisions of section 37 are not at all attracted.

9. For these and such other grounds as may be urged at the time of the hearing, the order of the learned Commissioner of Income-tax(Appeals) may be vacated and that of the Assessing Officer be restored."

40. The Grounds of Appeal No.1 to 4 in assessee's appeal involve an issue similar to the issue decided in Ground of Appeal No.1 in appeal of the assessee for assessment year 2005-06 vide ITA No.1618/PN/2008 in the earlier paragraphs. Our decision thereon shall apply mutatis-mutandis in the present Grounds of Appeal No.1 to 4 also. The Assessing Officer is directed accordingly.

41. In so far as the Ground of Appeal No.5 is concerned, it was a common point between the parties that the issue raised is similar to Additional Ground of Appeal No.1 adjudicated in the case of assessee for assessment year 2004-05 by the Tribunal vide ITA No.967/PN/2008 (supra). The following is relevant discussion in the order of the Tribunal dated 30.05.2014 (supra) :-

"44. The Additional Ground of Appeal No.1 raised by the assessee is towards exclusion of a sum of Rs.4,30,01,225/- out of the total income on account of write back of Provision for non-performing investments.

45. The relevant facts in this regard are that during assessment proceedings, assessee stated that out of the Provision for non-performing investments made in earlier years and disallowed, an amount of Rs.4,30,01,225/- was recovered during the year under consideration. The assessee asserted that such amounts be reduced from the total income as the same were taxed in past. The CIT(A) has noted that the Assessing Officer rejected the plea without any discussion, because this claim was neither made in the original return of income and nor in the revised return of income. The aforesaid claim has been denied by the CIT(A) also on the ground that the

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same was not made in the returns of income filed before the Assessing Officer.

46. Factually speaking, the claim has been made by the assessee in the course of assessment proceedings before the Assessing Officer. The factual matrix of the claim, as noted by the CIT(A) in para 8.1 of his order shows that the assessee had written back a provision of Rs.6,79,45,780/- by way of credit to Profit & Loss Account and thus offered it for taxation. The said amount represented excess provision made in the past on account of fall in value of investments. The assessee had offered such write back of excess provision, on the strength that in the past years the provision made was claimed as a deduction out of taxable income. However, it was during the impugned assessment proceedings, assessee found that in the past year of 2001-02 deduction was not allowed in respect of such provision. Out of such disallowed provision a sum of Rs.4,30,01,225/- was recovered, which formed a part of the excess provision of Rs.6,79,45,780/- offered for tax in this year. Because such amount was not allowed in the past as a deduction, assessee claimed that the sum of Rs.4,30,01,225/- be not considered as an amount exigible to income tax in this year. In our view, the aforesaid claim could not have been foreseen by the assessee at the time of filing of the return of income as it has emerged out of the past assessments, wherein certain additions/disallowances were made by the income-tax authorities. Therefore, instead of shutting out such a claim merely because of its absence in the return of income, the income-tax authorities ought to have examined the same on its merits. As a result, we therefore deem it fit and proper to set-aside the order of the CIT(A) on this aspect and direct the Assessing Officer to consider the factual position and thereafter allow the claim of the assessee in accordance with law. Needless to mention here, the Assessing Officer shall allow the assessee a reasonable opportunity to put-forth its claim and the Assessing Officer shall thereafter adjudicate the claim of the assessee as per law. Thus, assessee succeeds on this Ground for statistical purposes."

42. Following the aforesaid precedent the impugned issue raised by the assessee is set-aside to the file of the Assessing Officer with directions to pass an order afresh keeping in mind the directions of the Tribunal contained in order dated 30.05.2014 (supra) on similar issue. Needless to mention here, the Assessing Officer shall allow the assessee a reasonable opportunity to put-forth his claim and only thereafter the Assessing Officer shall pass an order afresh as per law. Thus, assessee succeeds for statistical purpose.

43. By way of Ground of Appeal Nos.6 and 7, assessee has sought deduction on account of amortization of public issue expenses u/s 35D of the Act amounting to Rs.2,20,00,000/-. The Assessing Officer and thereafter the CIT(A) denied the claim of the assessee on the ground that the appellant, being a banking company, was not one of the entities eligible for the benefits

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of section 35D of the Act. The aforesaid position is not contested by the learned Representative for the assessee before us and therefore in-principle, the stand of the income-tax authorities is hereby sustained.

44. However, in the course of hearing an alternative plea has been raised by way of Ground of Appeal No.7. According to the assessee, when the share application monies were received from the public pending allotment, such monies kept with the bank earned some interest income. The claim is that such interest income be reduced from the total cost incurred by the assessee towards the public issue expenses and only the net expenditure be considered for the purposes of denial of assessee's claim for amortization of expenditure u/s 35D of the Act. The learned counsel has relied upon the judgement of the Hon'ble Rajasthan High Court in the case of CIT vs. Neha Proteins Ltd. (2008) 306 ITR 102 (Raj) only for the purpose of supporting his proposition that the amount of interest accrued on the share application monies lying in deposit with the bank has a nexus with the expenditure incurred on raising of the public issue and therefore it is only the net expenditure which should be considered for denying the benefit of amortization u/s 35D of the Act. The learned CIT-DR has opposed the plea of the assessee but the factual aspect of the matter has not been assailed.

45. In our considered opinion, the alternative plea of the assessee deserves to be considered for the purposes of determining the quantum of amount disallowable with respect to the assessee's claim for amortization of expenditure u/s 35D of the Act. Accordingly, we restore the matter back to the file of the Assessing Officer to re-compute the net expenditure incurred on public issue carried out by the assessee, and the disallowance shall be limited to such 'net' expenditure. Thus, assessee succeeds for statistical purposes on this aspect.

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46. The Ground of Appeal No.8 relates to the assessee's claim for deduction u/s 36(1)(vii) of the Act in respect of debts written-off of non-rural branches which stands on similar footing to the Additional Ground of Appeal No.3 for assessment year 2005-06 decided in the earlier paragraphs. Our decision in the said appeal with respect to the aforesaid issue, shall apply *mutatis-mutandis* in this appeal also and the Assessing Officer is directed accordingly. Thus, assessee partly succeeds on this Ground.

47. The next Ground of Appeal is No.10, which relates to the action of the CIT(A) in retaining disallowance of Rs.15,60,000/- out of donations. As per the CIT(A), the deduction in relation to the aforesaid donations, would be eligible only to the extent of 50% of the amount paid as per section 80G of the Act. The claim of the assessee was that the entire amount be allowed u/s 37(1) of the Act. The CIT(A) rejected the plea as assessee had failed to establish that such donations were fully and exclusively for assessee's business. In the absence of any cogent reasoning, we affirm the finding of the CIT(A) on this aspect, and accordingly the Ground of Appeal No.10 is dismissed.

48. The Ground of Appeal No.11 relates to the assessee's claim for deduction u/s 36(1)(viia) of the Act of Rs.172,49,54,970/- as against Rs.83,00,00,000/- claimed in the return of income. The CIT(A) has restricted the claim to the actual amount of provision made in the books of account for bad and doubtful debts, as per section 36(1)(viia) of the Act. The Ground of Appeal No.2 to 6 in the Cross-appeal of the Revenue relate to the claim of the assessee u/s 36(1)(viia) of the Act which has been upheld by the CIT(A) to the extent of the Provision for bad and doubtful debts actually made in the account books amounting to Rs.83,00,00,000/-. Since, the issue raised is similar, the Cross-Grounds are being taken-up together.

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49. In this regard, the plea of the assessee is that deduction u/s 36(1)(viia) of the Act is allowable to the extent it was computable in terms of section 36(1)(viia) of the Act and cannot be restricted to the amount of Provision for bad and doubtful debts actually made in the account books. Accordingly, assessee has raised the claim to the extent of Rs.172,49,54,970/-, which was restricted by the CIT(A) to Rs.83,00,00,000/- representing the amount of Provision for bad and doubtful debts actually made in the account books. This aspect of the controversy has already been adjudicated by us in assessee's appeal for assessment year 2005-06, wherein it has been held that the deduction u/s 36(1)(viia) of the Act is admissible only to the extent of Provision for bad and doubtful debts actually made in the books of account. The CIT(A) has already allowed Rs.83,00,00,000/- following the aforesaid proposition which is hereby affirmed, and the balance of assessee's claim is inadmissible as the corresponding Provision has not been made in the books of account. Thus, assessee's Ground of Appeal No.11 and Ground of Appeal Nos.2 to 6 of the Revenue are dismissed.

50. The Ground of Appeal No.12 relates to the claim of the assessee that the provisions of section 115JB of the Act are not applicable to it, being a banking company, which stands on similar footing as additional Ground of Appeal No.3 considered in assessee's own case for assessment year 2005-06 in the earlier paragraphs. Our decision in the said appeal with respect to the aforesaid issue, shall apply *mutatis-mutandis* in this appeal also and the Assessing Officer is directed accordingly. Thus, assessee partly succeeds on this Ground.

51. The Ground of Appeal No.13 raised by the assessee with regard to deduction of Rs.13,77,108/- representing Provision for frauds. The plea of the assessee is that the aforesaid amount reflects actual loss sustained by the

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bank on account frauds in the accounts of the customers, etc. which is an allowable business loss u/s 28 of the Act or it is deductible u/s 37(1) of the Act.

52. It was a common point between the parties that the aforesaid plea was not before the Assessing Officer and that it was raised before the CIT(A) as an Additional Ground of Appeal, which has not been entertained by the CIT(A).

53. Since the aforesaid issue has not been considered by the lower authorities on its merits, we therefore deem it fit and proper to restore the matter back to the file of the Assessing Officer who shall consider the plea of the assessee on its merits. Needless to say, the Assessing Officer shall allow the assessee a reasonable opportunity of being heard and only thereafter pass an order on this aspect in accordance with law. Thus, on this Ground, assessee succeeds for statistical purposes.

54. Thus, the appeal of the assessee for assessment year 2006-07 is partly allowed.

55. Now, we may take-up the remaining Grounds in the Cross-appeal of the Revenue for assessment year 2006-07. In so far as the Ground of Appeal No.1 is concerned, it is general in nature and is hereby dismissed.

56. The only other issue remaining in the appeal of Revenue is by way of Grounds of Appeal No.7 and 8, which relates to the action of the CIT(A) in allowing deduction for donations paid by the assessee to Maha Bank Agriculture Research & Development and to Gramin Mahila Va Bal Vikas Mandal amounting to Rs.75,00,000/- and Rs.25,00,000/- respectively. The aforesaid amounts were disallowed by the Assessing Officer. The CIT(A) has allowed the claim by making following discussion :-

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"13.7. A view has already been taken in respect of A.Y. 2009-10 that the contribution made by the appellant to Mahabank Agricultural Research & Rural Development Foundation (MARDEF) is fully allowable. Accordingly, it is held that contribution of Rs.50 lakhs during the impugned assessment year is to be allowed in full. The other donation which qualifies for business expenditure u/s 37 is the contribution made by the appellant for Rs.25 lakhs towards the corpus of GMBVM (Gramin Mahila Va Bal Vikas Mandal) which is a trust sponsored by the appellant since the year 1989 for empowerment of rural women. The appellant has in respect of the other amounts, already been allowed the benefit of deduction u/s 80G. The claim of the appellant in respect of these other donations u/s 37 is not fully established to be solely and exclusively for the purposes of business. While allowing the amounts referred to above, the Assessing Officer would only allow the balance amount (taking into account the deduction already allowed u/s 80G). Additional ground no.2 is treated as partly allowed."

57. We find no reasons to interfere with the aforesaid conclusion of the CIT(A) as no infirmity has been demonstrated by the Department and accordingly the same is affirmed. Accordingly the Revenue fails on this Ground.

58. In the result, for assessment year 2006-07, appeal of the assessee vide ITA No.1135/PN/2013 is partly allowed that of the Revenue vide ITA No.1219/PN/2013 is dismissed.

59. Now, we may take-up the cross-appeals preferred by the assessee and the Revenue for assessment year 2007-08 vide ITA No.1136/PN/2013 and ITA No.1219/PN/2013 respectively, which are directed against the order of the Commissioner of Income Tax (Appeals)-I, Pune dated 28.03.2013 which, in turn, has arisen from an order dated 31.12.2009 passed by the Assessing Officer u/s 143(3) of the Act.

60. In the appeal preferred by the assessee, the following Grounds have been raised in the Memo of Appeal :-

1. In the facts and circumstances of the case and in law, the learned CIT (A) has erred in not considering the submission of trading account and allowing the deduction of Rs.222,87,96,292/- for Loss as per Trading Account prepared for the securities held by the bank.

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2. Without prejudice to Ground of appeal No.1 above by way of alternate submission the appellant submits that learned CIT (A) has erred in upholding the disallowance of depreciation of Rs.218,62,00,033/- on shifting of securities from AFS to HTM categories, after having not allowed the loss arising on account of valuing the stock at lower of cost or market value.

3. Without prejudice to Ground of appeal No. 1 & 2 above and by way of alternate submission, the appellant submits that if the depreciation on shifting of securities from AFS to HTM is disallowed then the such depreciation for current and all such earlier years may be allowed to the assessee in full on sale/maturity of such securities.

4. It may please be held that the securities held by the appellant bank under HTM category constitute its stock in trade and not Capital assets as held by the learned CIT(A).

5. In the facts and circumstances of the case and in law, the disallowance of Rs.200,66,59,549/- made by the learned CIT (A) u/s 36(l)(vii) of the I.T. Act 1961, being bad in law, arbitrary, perverse and legally unsustainable. The said claim may please be allowed to the appellant. The learned CIT (A) erred in holding that the appellant had not written off the debts, which is against the facts.

6. In the view of well settled principals of law that there is no estoppel in the tax proceedings, the total disallowance of Rs.3,56,69,000/- u/s 14A being patently illegal, bad in law, devoid of merits, being arbitrary and legally unsustainable, the same may please be deleted and it may please be held that no disallowance u/s 14A of I. T. Act, 1961 is warranted in the case.

7. The appellant submits that the amortization of public issue expenses is allowable expense u/s 35D and same may please be allowed to the appellant.

8. Without prejudice to the above ground, the appellant submits that only the net expenditure after deducting the income earned on the application money be disallowed.

9. In the facts and circumstances of the case and in law, the learned CIT (A) has erred in restricting the claim made by the appellant u/s 36[1][viia] of the I.T. Act 1961 to Rs.138,47,60,000/- as against the claim of Rs.252,47,36,951/-. It may please be held that the correct amount of deduction u/s 36(1)(viia) is Rs.252,47,36,951/- [subject to change on account of total income as defined in the said section]. The Learned CIT (A) has failed to appreciate that the deduction should not be restricted to the provision made in the books accounts.

10.An amount of Rs.16,51,995/- being the actual loss sustained by the appellant bank on account of frauds in the accounts of customers, the same may please be allowed as deduction as business expenditure u/s 28 or u/s 37 of Income Tax Act, 1961.

11.In the facts and circumstances of the case and in law, the appellant submits that the full amount considered as donation is contribution to the society for the promotion of the business and reputation. Hence full amount may please be allowed as deduction u/s 37.

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12. It may please be held that the provisions of Section 115 JB of the IT Act 1961 are inapplicable to the appellant being a banking company and the consequential reliefs in the matter may please be granted.

13. The appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal.

61. In so far as the cross-appeal of the Revenue for assessment year 2007-08 vide ITA No.1220/PN/2013 the following Grounds of Appeal have been raised :-

1. The order of the learned Commissioner of Income-tax (Appeals) on the issues mentioned herein below are contrary to law and to the facts and circumstances of the case.

2. Even while holding that the provisions of section 36(1)(viia) are applicable only in respect of rural advances in view of the Hon'ble Supreme Court's decision in the case of Catholic Syrian Bank Ltd., 343 ITR 270, the learned Commissioner of Income-tax (Appeals) has erred in not restricting admissible deduction u/s.36(1) (viia) to the extent of the provision made for rural advances only.

3. The learned Commissioner of Income-tax (Appeals) has erred in not directing the Assessing Officer to disallow the excess deduction allowed to the assessee, u/s.36(1)(viia), to the extent of the provision made for urban advances forming part of the total provision.

4. The learned Commissioner of Income-tax(Appeals) grossly erred in failing to appreciate that, as would be evident from the financial accounts of the assessee, the provision made by the assessee in respect of Non Performing Assets (NPA) as per the Reserve Bank of India guidelines tallies with the provision made u/s.36(1)(viia) which in itself would establish that the provision made u/s.36(1)(viia) was inclusive of the provision for non-rural advances which are not admissible in view of the Hon'ble Supreme Court's decision in the case of Catholic Syrian Bank Ltd., 343 ITR 270.

5. In view of the foregoing, the learned Commissioner of Income-tax (Appeals) has erred in routinely accepting the assessee's claim that the provision made by it, u/s.36(1)(viia), pertained to the rural advances whereas the facts emerging from the financial accounts prove to the contrary; and, the learned Commissioner of Income-tax (Appeals) has also erred in not giving opportunity to the Assessing Officer to examine and rebut the above claim of the assessee as was required under Rule 46A of the Income-tax Rules, 1962.

6. The learned Commissioner of Income-tax (Appeals) has erred in deciding on the issue of provision u/s.36(1)(viia) without taking cognizance of the specific request made by the Assessing Officer in his remand report dated 05.02.2013 to exclude the non-rural advances for the purpose of computing deduction u/s.36(1)(viia) of the Act.

7. The learned Commissioner of Income-tax (Appeals) has erred in holding that the assessee is entitled to deduction of

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Rs.8,76,000/- u/s.37 of the Income-tax Act, 1961 in respect of the donations of Rs.5,76,000/- and Rs.3,00,000/- paid by it to the National Institute of Bank Management (NIBM) and to the Rajiv Gandhi Foundation respectively.

8. The learned Commissioner of Income-tax (Appeals) has erred in failing to appreciate that the Assessing Officer had correctly allowed deduction u/s.80G on the above donations and, moreover, in view of the fact that both the recipients are approved institutions for the purpose of section 80G and the assessee also did not have any business nexus with them, the provisions of section 37 are not at all attracted.

9. For these and such other grounds as may be urged at the time of the hearing, the order of the learned Commissioner of Income-tax(Appeals) may be vacated and that of the Assessing Officer be restored.

10. The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal during the course of the appellate proceedings before the Hon'ble Tribunal.

62. At the time of hearing, it was a common ground between the parties that issues involved in all the Grounds raised in the Cross-appeals for assessment year 2007-08 except Ground of Appeal No.6 in assessee's appeal (relating to disallowance u/s 14A of the Act) have been decided in the Cross-appeals for assessment years 2005-06 and 2006-07 in earlier paras. Thus, our decision in Cross-appeals for assessment years 2005-06 and 2006-07 shall apply *mutatis-mutandis* in the respective Grounds (except Ground of Appeal No.6 in assessee's appeal) of the Cross-appeals relating to assessment year 2007-08.

63. Now, we may take up the Ground of Appeal No.6 in assessee's appeal, wherein the dispute relates to a disallowance of Rs.3,56,69,000/- made by invoking section 14A of the Act. In this context, relevant facts are that the assessee had earned interest on tax-free bonds and dividends amounting to Rs.1,53,08,503/- and Rs.3,30,31,470/-, which were exempt from tax. Section 14A of the Act prescribes that for the purposes of computing the total income, no deduction shall be allowed in respect of any expenditure incurred by the assessee in relation to an income which does not form part of the total income

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under the Act. On account of application of section 14A of the Act, assessee *suo-motu* quantified an amount of Rs.2,63,45,285/- as expense relatable to the exempted income and such amount was added back to the total income in the return of income filed for the assessment year 2007-08. The Assessing Officer however, did not accept the disallowance of Rs.2,63,45,285/- worked out by the assessee. Instead, the Assessing Officer computed the disallowance u/s 14A of the Act by application of Rule 8D of the Rules at Rs.3,56,69,000/-. A disallowance of Rs.3,21,99,000/- was worked out by applying clause (ii) of sub-rule (2) of Rule 8D of the Rules and an amount of Rs.34,70,000/- was worked out by applying sub-clause (iii) of sub-rule (2) of Rule 8D of the Rules, thereby totalling to Rs.3,56,69,000/-. Since, assessee had already *suo-motu* disallowed a sum of Rs.2,63,45,285/- in its computation of income, the balance of Rs.93,23,715/- was disallowed and added back to the total income.

64. The assessee carried the matter in appeal before the CIT(A). In appeal before the CIT(A), assessee not only challenged the disallowance made by the Assessing Officer of Rs.93,23,715/- but also canvassed that the disallowance of Rs.2,63,45,285/- *suo-motu* made in the return of income was also not justified. It was asserted by the assessee that the *suo-motu* disallowance made in the return of income was due to the mis-apprehension and confusion about the legal provisions and lack of proper advice. The assessee submitted that *suo-motu* disallowance made in the return of income was erroneously worked out and therefore, after soliciting expert opinion, the modified Ground of Appeal was raised before the CIT(A). On merits of the disallowance, assessee contended that the same was unwarranted. Firstly, it was contended that the investments yielding the tax-free interest and dividend income are a part of stock-in-trade and any income on sale of such investments is taxed as business income. Therefore, it could not be said that the interest and dividend income in question did not have any tax component,

i.e. the same could not be treated as exempt incomes *per se* for the purposes of section 14A of the Act. Secondly, it was canvassed that the provisions of Rule 8D of the Rules cannot be applied for the assessment year 2007-08 in view of the judgment of the Hon'ble Bombay High Court in the case of Godrej and Boyce Mfg. Co. Ltd. v. Deputy Commissioner of Income-tax (2010) 328 ITR 81 (Bom).

65. The CIT(A) has affirmed the disallowance made by the Assessing Officer and the modified Ground of Appeal raised by the assessee before him has been dismissed. As per the CIT(A), the Assessing Officer was justified in applying Rule 8D of the Rules for the purposes of computing the disallowance u/s 14A of the Act. Further, as per the CIT(A), the assessee was in possession of interest free as well as interest bearing funds which were kept by the assessee in a common pool. Therefore, it was difficult to segregate which part of the funds were utilized for the purposes of making investments and which part was utilized for business transactions. Having regard to the complexity involved in apportioning expenditure relatable to the earning of tax free incomes, the CIT(A) upheld the action of the Assessing Officer to apply Rule 8D of the Rules for the purposes of computing the disallowance u/s 14A of the Act. Not being satisfied with the order of CIT(A), assessee is in further appeal before us.

66. Before us, the learned Counsel for the assessee vehemently pointed out that though assessee-bank had disallowed proportionate expenses in the return of income but during the course of assessment as well as appellate proceedings, it was contended that no expenditure could be disallowed u/s 14A of the Act. It is explained that assessee-bank has interest-free funds in the shape of share capital, reserves and current account balances and such interest free funds far exceed the value of investments which have yielded tax-free incomes. Secondly, it is contended that the tax-free income portfolio is

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handled by the Treasury department at Mumbai and impugned interest income is directly credited to assessee-bank's account by the payees, thus there is no expenditure incurred to collect such incomes. It is pointed out that the Treasury department carries out other activities and therefore, no expenditure was incurred to earn the tax-free incomes. Therefore, the plea of the assessee is that the disallowance made by invoking section 14A(2) of the Act with respect to expenditure by way of interest as also other expenses is wrong. Addressing the finding of the lower authorities that the funds are kept in a common pool, according to learned Counsel it is clear that the interest-free funds available with the assessee exceed the value of investments which have yielded the exempt incomes. Therefore, having regard to the judgment of the Hon'ble Bombay High Court in the case of CIT vs. Reliance Utilities & Power Ltd. (2009) 178 taxmann.com 135 (Bom), it has to be concluded that such investments are made out of interest-free funds available with the assessee. Therefore, no interest can be allocated to the investments which have yielded exempt income for the purposes of disallowing interest expenditure in terms of section 14A of the Act. It has also been pointed out that in so far as the assessment year 2007-08 is concerned, the provisions of Rule 8D of the Rules are not applicable and the same are applicable from assessment year 2008-09 as held by the Hon'ble Bombay High Court in the case of Godrej and Boyce Mfg. Co. Ltd. (supra).

67. On the other hand, the learned CIT-DR has defended the orders of the authorities below by reiterating the reasoning contained therein, which we have already noted in earlier paras and is not being repeated for the sake of brevity. The learned CIT-DR has emphasized that the Assessing Officer was justified in applying the formulae contained in Rule 8D of the Rules to compute the disallowance as the business of the assessee was composite and indivisible and therefore, it was not possible to apportion expenditure between the taxable and exempt income from different sources.

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68. We have carefully considered the rival submissions. In the context of the disallowance made u/s 14A of the Act, we find that a similar issue came up before the Tribunal in the assessee's own case for the assessment year 2002-03 in the order of the Tribunal dated 30.05.2014 (supra). The propositions now been canvassed by the assessee have been dealt with by the Tribunal in its order dated 30.05.2014 (supra), wherein, the relevant paras read as under:-

> *"14. We have carefully considered the rival submissions. Firstly, in so far as the plea with regard to the allocation of interest expenditure towards earning of exempt income is concerned, the same in our view, cannot be shut-out merely because it was disallowed suo motu by the assessee in the return of income. On the contrary, the claim is required to be considered and examined on its merits. As noted earlier, section 14A of the Act prescribes that the Assessing Officer shall, while computing the total income, deny deduction in respect of any expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. Ostensibly, in this case assessee has earned interest income of Rs.8,10,00,000/- on tax-free securities, which is exempt from tax. The cost of such securities is stated to be Rs.78.50 crores. The plea of the assessee is that no interest expenditure is relatable to the acquisition of such securities because in the years of their acquisition, assessee had enough non-interest bearing funds in the shape of cash profits and other free Reserves. In our considered opinion, the proposition sought to be advanced by the assessee is quite apt and deserves to be examined in the light of the facts of the present case. In-fact, the Hon'ble Gujarat High Court in the case of UTI Bank Ltd. (supra) was considering a disallowance made by the Assessing Officer out of interest expenditure, being relatable to earning of tax-free income in the context of section 14A of the Act. The Hon'ble Gujarat High Court following the judgement of the Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd. (supra) held that since the interest-free funds available with the assessee were in excess of the investments which yielded the exempt income; therefore, no interest could be disallowed by invoking section 14A of the Act. The Hon'ble Bombay High Court in the case of Reliance Utilities & Power Ltd. (supra) was considering a case where the entire funds of the assessee were in a common hotch-potch and there was no segregation of funds in relation to activity of long term investments. No separate pool of funds was maintained by the assessee for its different activities, i.e. long term investments and the normal business activities. As per the Hon'ble Bombay High Court, if there were funds available, both the interest-free and interest-bearing, then a presumption would arise that the investments are made out of interest-free funds generated or available with the assessee, provided such interest-free funds were sufficient to cover the investments. The aforesaid presumption laid down by the Hon'ble Bombay High Court has also been found applicable by the Hon'ble Gujarat High Court in the case of UTI Bank Ltd. (supra) in the context of application of section 14A of the Act. In view of the aforesaid legal position, we are inclined to affirm the plea of the assessee in-principle that if the investments which have yielded the tax-free income are out of interest-free funds generated or available with it then no part of interest expenditure can be*

said to have been incurred in relation to earning of such exempt income for the purposes of section 14A of the Act. The aforesaid assertion made by the assessee has not been put to any verification by the CIT(A), because the CIT(A) refused to entertain the Additional Ground of Appeal. Ostensibly, verification of the aforesaid proposition, requires a factual appreciation, and for that purpose we deem it fit and proper to restore the matter to the file of the Assessing Officer with directions to verify the assertions of the assessee and thereafter allow appropriate relief on this count. Needless to say, the Assessing Officer shall allow the assessee a reasonable opportunity of being heard and only thereafter he shall pass an appropriate order on this issue as per law.

15. Now, in so far as the operating expenses allocated by the CIT(A) towards earning of the exempt income amounting to Rs.3,76,53,360/- are concerned, the same, in our view, does not require any interference. Assessee has asserted before the CIT(A) as well as before us that not much activity was performed in relation to the earning of the exempt income however the assessee furnished a working before the CIT(A) according to which the amount of operating expenses allocable to the exempt income was determined as 3,76,53,360/-. In our considered opinion, the stand of the assessee that no expenditure was allocable towards the earning of exempt income is a bald assertion; and, therefore the CIT(A) made no mistake in rejecting it and considering a portion of operating expenses as having been incurred towards earning of exempt income. The quantification of such expenditure done by the assessee is Rs.3,76,53,360/-, which is the amount disallowed by the CIT(A) u/s 14A of the Act. We find no reason to discard the working which the assessee itself furnished and accordingly in so far as the disallowance of Rs.3,76,53,360/- u/s 14A of the Act made by the CIT(A) is concerned, the same is hereby affirmed. Thus, assessee partly succeeds on Grounds of Appeal relating to the disallowance u/s 14A of the Act, as manifested by Ground of Appeal No.1 and Additional Ground of Appeal No.2.

16. The Additional Ground of Appeal No.1 relates to assessee's claim of exemption u/s 10(23G) of the Act with respect to the interest income earned by the assessee from infrastructure advances. The aforesaid Ground of Appeal has been admitted by us in the earlier paragraphs. Since the aforesaid issue was not before the lower authorities, we deem it fit and proper to restore it to the file of the Assessing Officer, who shall consider the assessee's claim of exemption u/s 10(23G) of the Act on its merits, having regard to the facts and circumstances of the case. Needless to say, the Assessing Officer shall allow the assessee a reasonable opportunity to put-forth its claim, and only thereafter, he shall adjudicate the claim of the assessee as per law. Thus, assessee succeeds on Additional Ground of Appeal No.1 for statistical purposes.

17. The Additional Ground of Appeal No.3 raised by the assessee is with regard to the deduction u/s 36(1)(vii) of the Act amounting to Rs.60 crores in respect of debts written-off by non-rural branches. The said Additional Ground has also been admitted by us in the earlier paragraphs. The claim of the assessee is that the said Additional Ground is entirely in tune with the judgement of the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. (supra). On this aspect also, we deem it fit and proper to restore the matter back to the file of the Assessing Officer who shall consider the claim of the assessee in the light of the judgement of the Hon'ble Supreme Court in the case of Catholic Syrian Bank Ltd. (supra). Herein also the Assessing Officer

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shall allow the assessee a reasonable opportunity to put-forth its claim and only thereafter, he shall adjudicate the claim of the assessee as per law. Thus, assessee succeeds for statistical purposes on Additional Ground of Appeal No.3."

69. In so far as the assessment year 2007-08 is concerned, the insistence of the Revenue on applying Rule 8D of the Rules in order to compute the disallowance u/s 14A of the Act, in our view is unjustified because Rule 8D of the Rules is applicable w.e.f. assessment year 2008-09, as laid down by the Hon'ble jurisdictional High Court in the case of Godrej and Boyce Mfg. Co. Ltd. (supra). Of course, for assessment years prior to 2008-09, when Rule 8D of the Rules is not applicable, the Assessing Officer had power to enforce the provisions of section 14A of the Act. In other words, the competence of the Assessing Officer to determine the expenditure which has been incurred in relation to income which does not form part of the total income under the Act is available for assessment years prior to 2008-09 also. So, however, the Assessing Officer is expected to adopt a reasonable basis or a method consistent with all the relevant facts and circumstances in order to determine such expenditure. The main plea of the assessee is that no expenditure on account of interest is liable to be considered for disallowance because the investments which have yielded the exempt incomes are out of interest-free funds available with the assessee. The aforesaid presumption is based on the decision of the Hon'ble Bombay High Court in the case of Reliance Utilities & Power Ltd. (supra). As per the Hon'ble Bombay High Court, if there are funds available, both interest-free and interest bearing, then a presumption would arise that the investments are made out of interest-free funds generated or available with the assessee, provided such interest-free funds are sufficient to cover the investments. In fact, as has been noted by the Tribunal in its order dated 30.05.2014 (supra), the aforesaid presumption laid down by the Hon'ble Bombay High Court has also been found applicable by the Hon'ble Gujarat High Court in the case of CIT vs. UTI Bank Ltd., (2013) 32 taxmann.com 370 (Gujarat) in the context of application of section 14A of the Act. Therefore, in

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the aforesaid background, the plea canvassed by the assessee cannot be shut out. In its order dated 30.05.2014 (supra), the Tribunal had accepted the aforesaid propositions in-principle which is to the effect that if the investments which have yielded the tax-free incomes are out of interest-free funds available with the assessee, then no part of interest expenditure can be said to have been incurred in relation to earning of such exempt income for the purposes of application of section 14A of the Act. We find that no reason to depart from the aforesaid decision of the Tribunal in its order dated 30.05.2014 (supra) for assessment year 2002-03. However, both the lower authorities have rejected the aforesaid assertions of the assessee without putting it to any verification exercise in the context of the facts of the instant year. Therefore, we deem it fit and proper to restore the matter back to the file of the Assessing Officer with directions to verify the assertion of the assessee and thereafter, allow the appropriate relief in so far as it relates to the component of interest expenditure disallowed u/s 14A of the Act. Needless to say, the Assessing Officer shall allow the assessee a reasonable opportunity of being heard and only thereafter he shall pass an appropriate order on this issue as per law.

70. Now, in so far as the disallowance made by the Assessing Officer out of the other expenses amounting to Rs.34,70,000/- by application of sub-clause (iii) to sub-rule (2) of Rule 8D of the Rules is concerned, our decision is as follows. In the assessment year 2002-03, the Tribunal had upheld the operating expenses allocated by the income tax authorities towards earning of exempt income. In the present year also, we do not find any justification in the assertions of the assessee that no expenses have been incurred to earn the tax-free incomes. In fact, the factum of the Treasury department of the assessee carrying out such activities itself shows that expenses in the nature of salaries, overheads, etc. are being incurred in relation to earning of the exempt incomes. The quantification of such expenditure done by the

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Assessing Officer at Rs.34,70,000/-, in our view does not require any interference which is hereby affirmed.

71. In this manner, the assessee partly succeeds in relation to the Ground of Appeal No.6 relating to disallowance u/s 14A of the Act for assessment year 2007-08.

72. Before parting, we may observe that in other assessment years 2008-09 and 2009-10 also, assessee is in appeal challenging the disallowance computed u/s 14A of the Act. The manner of computing the disallowance by income tax authorities in the said two assessment years is para-materia to the manner in which it was computed for the assessment year 2007-08, which we have dealt with in earlier paras. The issue being similar, our decision in assessment year 2007-08 ought to apply *mutatis-mutandis* in other two assessment years also. However, the learned CIT-DR pointed out that so far as the assessment years 2008-09 and 2009-10 are concerned, the provisions of Rule 8D of the Rules become applicable as per the ratio of the decision of the Hon'ble Bombay High Court in the case of Godrej and Boyce Mfg. Co. Ltd. (supra). In our considered opinion, the recourse to Rule 8D of the Rules for the purposes of computing the disallowance u/s 14A of the Act would arise only if the situation so warrants. It may be noted that the invoking of Rule 8D of the Rules is subject to fulfilment of the conditions contained in section 14A (2) of the Act which is to the effect the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of expenditure incurred in relation to the income which does not form part of the total income. In other words, recourse to Rule 8D of the Rules in order to compute the disallowance u/s 14A of the Act is neither automatic nor is triggered merely because assessee has earned certain exempt incomes. This aspect of the controversy has been dealt with at length by the Pune Bench of the Tribunal in the case of Kalyani Steels Ltd. vs. Addl.

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CIT for assessment year 2008-09 vide ITA No.1733/PN/2012 dated 30.01.2014. The relevant discussion in the order of the Tribunal dated 30.01.2014 (supra) is as under:

> *"8. We have carefully considered the rival submissions. Section 14A of the Act contemplates that for the purposes of computing the total income, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. Sub-section (2) of section 14A of the Act prescribes that the Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income in accordance with such method as may be prescribed, such prescribed method being contained in rule 8D of the Rules. However, the aforesaid empowerment of the Assessing Officer to invoke application of rule 8D of the Rules is superscribed by a condition contained in sub-section (2) of section 14A of the Act which is to the effect that the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of expenditure incurred in relation to the income which does not form part of the total income. Therefore, the invoking of rule 8D of the Rules in order to compute the disallowance u/s 14A of the Act is neither automatic and nor is triggered merely because assessee has earned an exempt income. The invoking of rule 8D of the Rules is permissible only when the Assessing Officer records the satisfaction in regard to the incorrectness of the claim of the assessee, having regard to the accounts of the assessee. In other words, section 14A(2) of the Act envisaged a condition precedent for invoking rule 8D of the Rules and computing disallowance thereof only if the Assessing Officer records that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure, having regard to the account of the assessee. In this context, it would be appropriate to refer to the following observations of the Hon'ble Bombay High Court in the case of Godrej & Boyce Manufacturing Co. Ltd. (supra) :-*
>
> > *"70. Now, in dealing with the challenge it is necessary to advert to the position that sub-section (2) of section 14A prescribes a uniform method for determining the amount of expenditure incurred in relation to income which does not form part of the total income only in a situation where the Assessing Officer, having regard to the accounts of the assessee is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. It, therefore, merits emphasis that sub-section (2) of section 14A does not authorize or empower the Assessing Officer to apply the prescribed method irrespective of the nature of the claim made by the assessee. The Assessing Officer has to first consider the correctness of the claim of the assessee having regard to the accounts of the assessee. The satisfaction of the Assessing Officer has to be objectively arrived at on the basis of those accounts and after considering all the relevant facts and circumstances. The application of the prescribed method arises in a situation where the claim made by the assessee in respect of expenditure which is relatable to the earning of income which does not form part of the total income under the Act is found to be incorrect. In such a situation a method had to be devised for apportioning the expenditure incurred by the assessee between what is incurred*

in relation to the earning of taxable income and that which is incurred in relation to the earning of non-taxable income. As a matter of fact, the memorandum explaining the provisions of the Finance Bill, 2006, and the Central Board of Direct Taxes circular dated December 28, 2006, state that since the existing provisions of section 14A did not provide a method of computing the expenditure incurred in relation to income which did not form part of the total income, there was a considerable dispute between taxpayers and the Department on the method of determining such expenditure. It was in this background that sub-section (2) was inserted so as to provide a uniform method applicable where the Assessing Officer is not satisfied with the correctness of the claim of the assessee. Sub-section (3) clarifies that the application of the method would be attracted even to a situation where the assessee has claimed that no expenditure at all was incurred in relation to the earning of non-taxable income.

71. <u>Parliament has provided an adequate safeguard to the invocation of the power to determine the expenditure incurred in relation to the earning of non-taxable income by adoption of the prescribed method. The invocation of the power is made conditional on the objective satisfaction of the Assessing Officer in regard to the correctness of the claim of the assessee, having regard to the accounts of the assessee.</u> When a statute postulates the satisfaction of the Assessing Officer "Courts will not readily defer to the conclusiveness of an executive authority's opinion as to the existence of a matter of law or fact upon which the validity of the exercise of the power is predicated". (M. A. Rasheed v. State of Kerala [1974] AIR 1974 SC 2249). A decision by the Assessing Officer has to be arrived at in good faith on relevant considerations. <u>The Assessing Officer must furnish to the assessee a reasonable opportunity to show cause on the correctness of the claim made by him. In the event that the Assessing Officer is not satisfied with the correctness of the claim made by the assessee, he must record reasons for his conclusion.</u> These safeguards which are implicit in the requirements of fairness and fair procedure under article 14 must be observed by the Assessing Officer when he arrives at his satisfaction under sub-section (2) of section 14A. As we shall note shortly hereafter, sub-rule (1) of rule 8D has also incorporated the essential requirements of sub-section (2) of section 14A before the Assessing Officer proceeds to apply the method prescribed under sub-rule (2).*

[underlined for emphasis by us]

9. The aforesaid observations of the Hon'ble High Court clearly show that the satisfaction of the Assessing Officer with regard to the correctness or otherwise of the claim made by the assessee must be based on reasons and on relevant considerations. Ostensibly, the invoking of rule 8D of the Rules in order to compute the disallowance u/s 14A of the Act is to be understood as being conditional on the objective satisfaction of the Assessing Officer with regard to the incorrectness of the claim of the assessee, having regard to the accounts of the assessee. At this stage, we may also touch-upon a similar view expressed by the Hon'ble Delhi High Court in the case of Maxopp Investment Ltd. & Ors. vs. CIT, (2012) 247 CTR 162 (Del), wherein reference has been made to the judgment of the Hon'ble

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> *Bombay High Court in the case of Godrej & Boyce Manufacturing Co. Ltd. (supra). As per the Hon'ble Delhi High Court, the requirement of the Assessing Officer embarking upon a determination of the amount of expenditure incurred in relation to exempt income in term of rule 8D of the Rules would be triggered only if the Assessing Officer records a finding that he was not satisfied with the correctness of the claim of the assessee in respect of such expenditure. According to the Hon'ble Delhi High Court, sub-section (2) of section 14A of the Act deals with cases where the assessee specifies a positive amount of expenditure in relation to income which does not form part of the total income under the Act and sub-section (3) applies to cases where the assessee asserts that no expenditure has been incurred in relation to such exempt income. Explaining further, as per the Hon'ble High Court in both the cases the recourse to rule 8D of the Rules is possible only if the Assessing Officer records a finding that he was not satisfied with the correctness of the claim of the assessee in respect of such expenditure.*

73. Therefore, it has to be understood that Rule 8D of the Rules can be invoked for the purposes of computing the disallowance u/s 14A of the Act only when the Assessing Officer records a finding that he was not satisfied with the correctness of the claim made by the assessee in respect of expenditure relatable to the income which does not form part of the total income under the Act. Moreover, in the case of Kalyani Steels Ltd. (supra), the Tribunal also considered an objection of the Department, which is similar to the objection taken by the learned CIT-DR in the present case, which is to the effect since assessee was not maintaining separate accounts with regard to the earnings of tax-free incomes, the satisfaction contemplated u/s 14A(2) of the Act is to be understood as having been impliedly recorded. The Tribunal in the case of Kalyani Steels Ltd. (supra), noted that the said objection of the Revenue was contrary to how the implications of sub-section (2) of section 14A of the Act has been understood and explained by the Hon'ble Bombay High Court in the case of Godrej and Boyce Mfg. Co. Ltd. (supra) and also by the Hon'ble Delhi High Court in the case of Maxopp Investment Ltd. & ors. vs. CIT (2012) 247 CTR 162 (Delhi). Therefore, the objection of the learned CIT-DR is hereby rejected.

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74. In view of the aforesaid discussion, we therefore, deem it fit and proper to direct the Assessing Officer to consider the plea of the assessee to the effect it has enough interest-free funds to cover the investments which have yielded impugned exempt incomes in assessment years 2008-09 and 2009-10 also. If the Assessing Officer is satisfied with the assertions of the assessee, having regard to the material and submissions put forth before him, no disallowance on account of interest expenditure would be required to be made for the purposes of section 14A of the Act. In sum and substance, our decision on this issue in assessment year 2007-08 would also be applicable for other two assessment years of 2008-09 and 2009-10.

75. Before parting, we may clarify that so far as the disallowance relating to the operating expenses incurred in relation to earning income is concerned, our decision in assessment year 2007-08 to sustain the action of the lower authorities would also be applicable for assessment years 2008-09 and 2009-10 also, as the facts and circumstances are similar.

76. Therefore, in conclusion, we hold that our decision for assessment year 2007-08 in relation to the issue of disallowance u/s 14A of the Act shall apply *mutatis-mutandis* in other two assessment years of 2008-09 and 2009-10 also.

77. Now, we may take-up the cross-appeals preferred by the assessee and the Revenue for assessment year 2008-09 vide ITA No.1137/PN/2013 and ITA No.1221/PN/2013 respectively, which are directed against the order of the Commissioner of Income Tax (Appeals)-I, Pune dated 20.03.2013 which, in turn, has arisen from an order dated 27.12.2010 passed by the Assessing Officer u/s 143(3) of the Act.

78. In the appeal preferred by the assessee, the following Grounds have been raised in the Memo of Appeal :-

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1. In the view of well settled principals of law that the total disallowance of Rs.10,00,62,000/- u/s 14A being patently illegal, bad in law, devoid of merits, being arbitrary and legally unsustainable, the same may please be deleted and it may please be held that no disallowance u/s 14A of I. T. Act, 1961 is warranted in the case.

2. The appellant submits that the amortization of public issue expenses of Rs.2,20,08,000/- is allowable expense u/s 35D and same may please be allowed to the appellant.

3. Without prejudice to ground no 2 the appellant submits that only the net expenditure after adjusting the income earned on the application money need to be disallowed.

4. In the facts and circumstances of the case and in law, the disallowance of Rs.107,66,03,447/- made by the learned CIT (A) u/s 36(1)(vii) of the I.T. Act 1961, being bad in law, arbitrary, perverse and legally unsustainable. The said claim may please be allowed to the appellant. The learned CIT (A) erred in holding that the appellant had not written off the debts, which is contrary to the facts.

5. In the facts and circumstances of the case and in law, the learned CIT (A) has erred in restricting the claim made by the appellant u/s 36[1][viia] of the I.T. Act 1961 to Rs.84,31,27,000/- as against the claim of Rs.306,43,96,695/- and enhancing the income of the appellant to the extent of Rs.222,12,69,695/-. It may please be held that the deduction allowed by the Assessing Officer u/s 36 (1)(viia) amount to Rs.306,43,96,695/- is correct. The Learned CIT (A) has failed to appreciate that the deduction should not be restricted to the provision made in the books accounts. It may please be held that the enhancement of income made by the learned CIT (A) is unwarranted.

6. The appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal.

79. In so far as the cross-appeal of the Revenue for assessment year 2008-09 vide ITA No.1221/PN/2013 the following Grounds of Appeal have been raised :-

1. *The order of the learned Commissioner of Income-tax (Appeals) on the issues mentioned herein below are contrary to law and to the facts and circumstances of the case.*

2. *Even while holding that the provisions of section 36(1)(viia) are applicable only in respect of rural advances in view of the Hon'ble Supreme Court's decision in the case of Catholic Syrian Bank Ltd., 343 ITR 270, the learned Commissioner of Income-tax (Appeals) has erred in not restricting admissible deduction u/s.36(1) (viia) to the extent of the provision made for rural advances only.*

3. *The learned Commissioner of Income-tax (Appeals) has erred in not directing the Assessing Officer to disallow the excess deduction allowed to the assessee, u/s.36(1)(viia), to the extent of the provision made for urban advances forming part of the total provision.*

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4. *The learned Commissioner of Income-tax(Appeals) grossly erred in failing to appreciate that, as would be evident from the financial accounts of the assessee, the provision made by the assessee in respect of Non Performing Assets (NPA) as per the Reserve Bank of India guidelines tallies with the provision made u/s.36(1)(viia) which in itself would establish that the provision made u/s.36(1)(viia) was inclusive of the provision for non-rural advances which are not admissible in view of the Hon'ble Supreme Court's decision in the case of Catholic Syrian Bank Ltd., 343 ITR 270.*

5. *In view of the foregoing, the learned Commissioner of Income-tax (Appeals) has erred in routinely accepting the assessee's claim that the provision made by it, u/s.36(1)(viia), pertained to the rural advances whereas the facts emerging from the financial accounts prove to the contrary; and, the learned Commissioner of Income-tax (Appeals) has also erred in not giving opportunity to the Assessing Officer to examine and rebut the above claim of the assessee as was required under Rule 46A of the Income-tax Rules, 1962.*

6. *The learned Commissioner of Income-tax (Appeals) has erred in deciding on the issue of provision u/s.36(1)(viia) without taking cognizance of the specific request made by the Assessing Officer in his remand report dated 05.02.2013 to exclude the non-rural advances for the purpose of computing deduction u/s.36(1)(viia) of the Act.*

7. *The learned Commissioner of Income-tax (Appeals) has erred in holding that the assessee is entitled to deduction of Rs.23,50,000/- u/s.37 of the Income-tax Act, 1961 in respect of the donations of Rs.20,00,000/- and Rs.7,00,000/- paid by it to the Gokhale Education Society, Nashik and to the Rajiv Gandhi Foundation respectively.*

8. *The learned Commissioner of Income-tax (Appeals) has erred in failing to appreciate that the Assessing Officer had correctly allowed deduction u/s.80G on the above donations and, moreover, in view of the fact that both the recipients are approved institutions for the purpose of section 80G and the assessee also did not have any business nexus with them, the provisions of section 37 are not at all attracted.*

9. *For these and such other grounds as may be urged at the time of the hearing, the order of the learned Commissioner of Income-tax(Appeals) may be vacated and that of the Assessing Officer be restored.*

10. *The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal during the course of the appellate proceedings before the Hon'ble Tribunal.*

80. At the time of hearing, it was a common ground between the parties that issues involved in all the Grounds raised in the Cross-appeals for assessment year 2008-09 have been decided in the Cross-appeals for assessment years 2005-06, 2006-07 and 2007-08 in earlier paras. Thus, our decision in Cross-appeals for assessment years 2005-06, 2006-07 and 2007-

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08 shall apply *mutatis-mutandis* in the respective Grounds of the Cross-appeals relating to assessment year 2008-09.

81. Now, we may take-up the cross-appeals preferred by the assessee and the Revenue for assessment year 2009-10 vide ITA No.1138/PN/2013 and ITA No.1222/PN/2013 respectively, which are directed against the order of the Commissioner of Income Tax (Appeals)-I, Pune dated 28.03.2013 which, in turn, has arisen from an order dated 29.12.2011 passed by the Assessing Officer u/s 143(3) of the Act.

82. In the appeal preferred by the assessee, the following Grounds have been raised in the Memo of Appeal :-

> *1. In the view of well settled principals of law that the total disallowance of Rs.11,84,83,000/- u/s14A being patently illegal, bad in law, devoid of merits, being arbitrary and legally unsustainable, the same may please be deleted and it may please be held that no disallowance u/s 14A of I. T. Act, 1961 is warranted in the case.*
>
> *2. In the facts and circumstances of the case and in law, the appellant submits that the full amount considered as donation is contribution to the society for the promotion of the business and reputation. Hence full amount may please be allowed as deduction u/s 37.*
>
> *3. In the facts and circumstances of the case and in law, the disallowance of Rs.148,66,19,240/- made by the learned CIT (A) u/s 36(1)(vii) of the I.T. Act 1961, being bad in law, arbitrary, perverse and legally unsustainable. The said claim may please be allowed to the appellant. The learned CIT (A) erred in holding that the appellant had not written off the debts, which is contrary to the facts.*
>
> *4. In the facts and circumstances of the case and in law, the learned CIT (A) has erred in restricting the claim made by the appellant u/s 36[1][viia] of the I.T. Act 1961 to Rs.187,17,06,000/- as against the claim of Rs.392,06,45,032/-. It may please be held that the deduction allowed by the Assessing Officer u/s 36 (1)(viia) amount to Rs. 392,06,45,032/- is correct. The Learned CIT (A) has failed to appreciate that the deduction should not be restricted to the provision made in the books accounts. It may please be held that the enhancement of income made by the learned CIT (A) is unwarranted.*
>
> *5. In the facts and circumstances of the case and in law, the learned CIT (A) has erred in not allowing the deduction of Rs.9,19,09,647 /- for Loss as per Trading Account prepared for the securities held by the bank.*

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6. Without prejudice to Ground of appeal No. 6 above the appellant submits that it is well settled law, that learned CIT (A) can either adjudicate the issue or set aside the assessment and direct the Assessing Officer to decide the issue afresh. Since the CIT (A) has held that the HTM securities are capital assets and loss on valuation on HTM category is not allowable revenue deduction and in respect of other securities viz. AFS / HFT learned CIT (A) has given directions to Assessing Officer to verify the allowable deduction, the impugned order passed by the learned CIT (A) is bad in law, null and void and please may be vacated / quashed.

7. It may please be held that the securities held by the appellant bank under HTM category constitute its stock in trade and not Capital assets as held by the learned CIT (A).

83. In so far as the cross-appeal of the Revenue for assessment year 2009-10 vide ITA No.1222/PN/2013 the following Grounds of Appeal have been raised :-

1. *The order of the learned Commissioner of Income-tax (Appeals) on the issues mentioned herein below are contrary to law and to the facts and circumstances of the case.*
2. *Even while holding that the provisions of section 36(1)(viia) are applicable only in respect of rural advances in view of the Hon'ble Supreme Court's decision in the case of Catholic Syrian Bank Ltd., 343 ITR 270, the learned Commissioner of Income-tax (Appeals) has erred in not restricting admissible deduction u/s.36(1) (viia) to the extent of the provision made for rural advances only.*
3. *The learned Commissioner of Income-tax (Appeals) has erred in not directing the Assessing Officer to disallow the excess deduction allowed to the assessee, u/s.36(1)(viia), to the extent of the provision made for urban advances forming part of the total provision.*
4. *The learned Commissioner of Income-tax(Appeals) grossly erred in failing to appreciate that, as would be evident from the financial accounts of the assessee, the provision made by the assessee in respect of Non Performing Assets (NPA) as per the Reserve Bank of India guidelines tallies with the provision made u/s.36(1)(viia) which in itself would establish that the provision made u/s.36(1)(viia) was inclusive of the provision for non-rural advances which are not admissible in view of the Hon'ble Supreme Court's decision in the case of Catholic Syrian Bank Ltd., 343 ITR 270.*
5. *In view of the foregoing, the learned Commissioner of Income-tax (Appeals) has erred in routinely accepting the assessee's claim that the provision made by it, u/s.36(1)(viia), pertained to the rural advances whereas the facts emerging from the financial accounts prove to the contrary; and, the learned Commissioner of Income-tax (Appeals) has also erred in not giving opportunity to the Assessing Officer to examine and rebut the above claim of the assessee as was required under Rule 46A of the Income-tax Rules, 1962.*

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6. The learned Commissioner of Income-tax (Appeals) has erred in deciding on the issue of provision u/s.36(1)(viia) without taking cognizance of the specific request made by the Assessing Officer in his remand report dated 05.02.2013 to exclude the non-rural advances for the purpose of computing deduction u/s.36(1)(viia) of the Act.

7. The learned Commissioner of Income-tax (Appeals) has erred in holding that the assessee is entitled to deduction of Rs.1,60,00,000/- u/s.37 of the Income-tax Act, 1961 in respect of the donations of Rs.1,50,00,000/- and Rs.10,00,000/- paid by it to the Mahabank Agricultural Research & Rural Development Foundation (MARDEF) and to the National Institute of Rural Development (NIRD), Hyderabad respectively.

8. The learned Commissioner of Income-tax (Appeals) has erred in failing to appreciate that the Assessing Officer had correctly allowed deduction u/s.80G on the above donations and, moreover, in view of the fact that both the recipients are approved institutions for the purpose of section 80G and the assessee also did not have any business nexus with them, the provisions of section 37 are not at all attracted.

9. For these and such other grounds as may be urged at the time of the hearing, the order of the learned Commissioner of Income-tax(Appeals) may be vacated and that of the Assessing Officer be restored.

10. The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal during the course of the appellate proceedings before the Hon'ble Tribunal.

84. At the time of hearing, it was a common ground between the parties that issues involved in all the Grounds raised in the Cross-appeals for assessment year 2009-10 have been decided in the Cross-appeals for assessment years 2005-06, 2006-07, 2007-08 and 2008-09 in earlier paras. Thus, our decision in Cross-appeals for assessment years 2005-06, 2006-07, 2007-08 and 2008-09 shall apply *mutatis-mutandis* in the respective Grounds of the Cross-appeals relating to assessment year 2009-10.

85. In the final analysis, the captioned appeals preferred by the assessee are partly allowed, and the captioned Cross-appeals of the Revenue are dismissed.

86. Order pronounced in the open Court on 17th September, 2014.

Sd/-	Sd/-
(R.S. PADVEKAR)	**(G.S. PANNU)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Pune, Dated: 17th September, 2014.

Sujeet / GCVSR

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Copy of the order is forwarded to: -

1) The Assessee;
2) The Department;
3) The CIT(A)-I, Pune;
4) The CIT-I, Pune;
5) The DR "B" Bench, I.T.A.T., Pune;
6) Guard File.

By Order

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Assistant Registrar
I.T.A.T., Pune

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